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CCWG ACCOUNTABILITY PLENARY

Wednesday, October 18, 2017 - 19:00 to 21:00

[Captioner standing by]

>> Hello, everyone. It's the top of the hour, so can I please ask the operator to have the recording started.

>> The records have started.

>> Thank you very much. Welcome everyone to CCWG and the Accountability Work Stream 2 call. We have a pretty packed agenda today. We will be having our roll call as usual, with those [indiscernible]. I would like to check on whether there is anyone that is not yet in Adobe Connect room, but is on the audio bridge.

>> [Indiscernible] here I have been on audio for the past 15 minutes or so.

>> Thank you very much, Jordan. Anyone else on audio bridge? I think Jordan is the only one on audio at this point. Is there anyone else on audio only? Great hearing no one else, we will jump right into the topics of this call and as usual, I would like to remind you of any updates that you want to do to your [indiscernible], if you have any problems accessing the Wiki. The staff will be happy to assist you in achieving that task. And as usual, we also remind everyone to speak to the standards of behavior that we are already familiar with, that we already know. And there are a couple of administrative items that we will be reviewing as well. We have a legal committee update, [indiscernible] for the Subgroup, the first for the transparency Subgroup, a second reading of the Human Rights Subgroup, the first reading of the Jurisdiction Subgroup,

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and then we will have a section for any other business. And we will also have a review of the next Plenary in our calendar. And after we will close the call.

So this is the agenda we have for today. As you can see, it's really packed, so we will be having a timer that will be set for 90 seconds because we know that many people want to express their thoughts on the issues that are going to be discussed today. So we kindly ask you to abide to the time of 90 seconds. We ask that you complete in as short as possible so we can benefit from as many participants as possible during this call.

So the next item for administration issues, for that I would like to hand the floor to Bernard Turcotte. Bernard, you have the floor.

>> BERNARD TURCOTTE: Can you hear me?

>> We can hear you.

>> BERNARD TURCOTTE: Thank you. I see Kavouss has his hand up, so maybe it's something you want to deal with before I do that, Leon.

>> I'm sorry, Bernie.

>> BERNARD TURCOTTE: Kavouss has his hand up, maybe it's something we should deal with before administration.

>> Oh, yes, certainly, Kavouss, you have the floor.

>> KAVOUSS ARASTEH: Yeah, Leon, I'm sorry to ask for the floor this early in the meeting. Good morning, good afternoon, good evening to everyone. We are all distinguished Co Chairs and

we should understand that we are dealing with difficult subjects, sometimes we have agreement with each other, sometimes we disagree with each other, but in no way should we insult each other, in no way should we make a [indiscernible] to each other in one way or another, in no way any [indiscernible] to each other, in no way [indiscernible] statement. I have seen that and this is unacceptable. People should be calm, quiet, and not emotional. This is not in the benefit and interest of the ICANN or community. Please read the e mails of some people, I don't name them, and in reply to Thiago and in reply to [indiscernible] that they use the terms, the language, the [indiscernible] and [indiscernible] and so on is not a good and friendly manner. Please kindly, as usual, remind the people if they do not correct that, we will raise and file a formal objection to the Ombudsman to rectify the problem. At this time we don't do that. Just people need to be quiet, calm, not emotional. Thank you.

>> Thank you very much, Kavouss for this. And we will remind everyone of the standards of behavior, like we did at the beginning of the call. And just to let you know for the record, our charter indicates a that when we see some kind of behavior that is not in line with the standards of behavior that we have in ICANN, the Co Chairs have the ability to make a call, a private call to any person that is not abiding to the standards of behavior. So, of course, this first call to order is made privately and that's why it's not seen, of course. But rest assured that we do take things very seriously and we do make calls to the different participants that sometimes are crossing the lines in terms of behavior. So that is just for you to know and to share with the rest of the group. Thank you for this reminder.

So I will now

>> KAVOUSS ARASTEH: I'm sorry, Leon, it is not intentional, but it is emotional. I don't take it intentional, but I take it emotional, the action. Thank you.

>> Thank you very much, Kavouss. So now let's keep moving on the items and I'll go back to Bernard so he can walk us through the administration items. Bernie, you have the floor.

>> BERNARD TURCOTTE: Thank you. ICANN 60, just a reminder our face to Friday is Friday, 27 October, 08:30 to 17:00 in person. If you wish to attend remotely, that is 04:30 to 13:00 UTC. There is also a high interest presentation on Work Stream 2, Monday 30 October 10:30 12:00 local time, so right after the opening meeting of ICANN 60. That's more remote participants 06:30 to 08:00 UTC.

As noted in the agenda this week, we need to have one Rapporteur per Subgroup present at this session to answer questions from the community. The focus of that high interest session is to answer questions from the community, so please, I have received a few confirmations from Rapporteurs that they will be available. If all the Subgroups could confirm that they will have a Rapporteur available. If there is a single Rapporteur and they are not available, can you please inform us so we can take appropriate steps?

Also, we're asking for people to confirm by the end of the day tomorrow who is the Rapporteur and if they will be there. In cases where there are multiple Rapporteurs, we'll be having everyone up on the front stage and we really can't have everyone or it's going to get a little too crowded, so we would ask the groups where there are multiple Rapporteurs to pick one, please, and advise that at the same time.

So that's for ICANN 60. Are there any questions? Not seeing any, we'll move on.

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ICANN 61, reminder we will hold our usually pre conference face to face on 9 March, 2018. Someone pointed out in the funding memo I made the mistake of not change 2017 to 2018. Obviously it's not 9 March 2017, it's 9 March 2018.

Funding applications are being received and [dog barking] and I think we are very used to sorry about the noise everyone is very used to the process by now, it seems to be running well, and just a reminder that we'll be closing applications on Sunday 19 November 23:59. We have to submit a final list to ICANN by Monday 27 November. So just a reminder to everyone if you are applying for travel funding for Work Stream 2, please keep these dates in mind.

And that's it for administration, Leon. Back to you. Thank you.

>> LEON: Thank you very much, Bernie. And next agenda item, it's an update on the legal committee. And we sent some questions to ICANN legal back some weeks ago, but we haven't had any reply. I feel that [indiscernible] on the issue, but I have not had a reply from Sam as well and I will [indiscernible] as soon as I have a reply [indiscernible] the questions that were submitted for reply from ICANN legal.

So next on our agenda is the second reading of the draft recommendation for the Ombuds Subgroup. And for that, I will now hand the floor to my Co Chair Jordan.

Jordan, you have the floor.

>> Thanks, Leon. Good morning, afternoon, evening, everyone. Can you hear me?

>> BERNARD TURCOTTE: Yes, we can hear you, Jordan.

>> Great. Thank you. This is an easy task for me because what I will do is invite Sebastien to take the floor as the Rapporteur to update the group on the progress of the Ombudsman report since our first reading a week or two ago, Sebastian the floor is yours.

>> SEBASTIEN: Thank you very much. I don't know what is the next slide, if there's any next slide on the Ombuds report. Yes. And we have made very short changes. I am not sure it's a change from the last discussion, but do you want me to repeat what were the changes from the previous version of the document when we were [indiscernible] the first reading or do we consider that I have already read all that last week and I don't need to read it again? I am open for both. What do you think?

>> JORDAN: I think Sebastien, I sent the slides and Bernie Turcotte and interpret and advise. And by the way, I'm not Leon, Leon is the other Co Chair, my name is Jordan. I think what the slides have done in the red is to just pick out the key changes to the report since the last version. The small update that is were made following the feedback. And Bernie, can you update us if that's not right or if that is what the slides do? And Sebastien, I think you can just highlight those with an update for the Plenary.

>> BERNARD TURCOTTE: These slides are the same slides we had 11 October presentation which showed the changes from the 28 September discussion, which we updated. Back to you, Jordan.

>> Ah, okay. And so Sebastien, I think it's over to you, but my instance is people have worked through this once, they are familiar with those changes, and that working through them in detail now would not be necessary. But if there were any particular points, you wanted to highlight, you could do that. And then we could test the [indiscernible] of the Plenary if there

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are any final comments before moving to confirm the second reading. So are there any points that you would like to really emphasize?

>> Yes, thank you very much, Jordan. This is Sebastien speaking. I think here we will go quickly to the different changes as [indiscernible] previous version. Here it was just to confirm that there is no currently change on how the Ombuds will work and what is in charge of the big picture.

If we can go to the next slide, please. We agreed to take away KPIs and leave timelines. And the question of subject to practicality was also agreed by everyone since two weeks.

If we can go to the next one, I guess it's recommendation 8, the one where we have the most discussion. And I think at the end of the discussion last time we said that it will be useful to have this sent for public comments. But I wanted to take this opportunity to read one small part of what was written in the report of the external reviewer because I think it could help to understand. It's on page 5 of the final report and I will read the number three strengths and independence. There is a clear need to strengthen the perception of the Ombuds function in [indiscernible]. That's an external reviewer. Recording the [indiscernible] Ombuds desired panel independent of the Board to take some of the oversight work currently done by the Government's committee and to have a system of guidance and support for the Ombuds. We also [indiscernible] some change to the Ombuds employment. And I think it's explained why we are having this proposal on the table and we try to catch what the group wanted us to change from the discussion on that issue. And it seems that it was agreed at the last meeting, but, therefore, here is the second reading.

May I have the next slide, please? Okay, I guess we are done with that. I am open to any questions, but I am in your hands, Jordan.

>> Thank you, Sebastien for that. We talked to the [indiscernible] of these updates last time. I would ask if there are any comments about the Ombuds recommendation that relates to this. Kavouss, I see your hand is up.

>> KAVOUSS ARASTEH: Thank you very much. Thank you very much, Sebastien. I have a question on the first reading and [indiscernible] wait, we don't have time, [indiscernible] discussion it and we will come back to that. The question I raised was, what are the areas that Ombudsman shall not or shouldn't intervene? This is not clear in the report. It has been given [indiscernible] and all aspects [indiscernible] that they should not intervene at all. So this is not clear from the report. I don't want [indiscernible] draft something that you have to mention that now, whether you have discussed that or not, so I don't think that this should go or he or she [indiscernible] responsibility mandate and [indiscernible] all aspects and doing something that is not expected to do. So please kindly clarify this issue. Thank you.

>> Thank you very much, Kavouss.

>> I can just .

>> Go ahead, Sebastien.

>> This is Jordan, sorry. It's your call, not mine. Sorry.

>> I was just going to ask the staff to scroll us back to the previous slide, please, the previous slide to this one. One more. Yeah, that one. Thank you.

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Kavouss, I think this slide has the clarification that is intended. This report isn't meant to recap and to completely reconstitute the Ombuds function, so it doesn't need to set out in all the details the things it does and does not cover because those things are not changing. So anything that the Ombudsman covers today, they would continue to cover. Anything that the Ombudsman does not cover today, they would not cover. If there's a lack of clarity in the rules today about what the Ombudsman can and cannot cover, that could have been something that was raised in the process of the Subgroup's work to date and it could but that time has passed. If there are issues like that, the best way to sort of raise those and get those on the table, I think, will be through the public comment period that will commence on this report once we have a second reading and put it out for public comment.

So there's no change from this report and if there are concerns in the way the scope of the Ombudsman is defined today, the excellent opportunity will be to raise those in public comment because then the working group can work through them and maybe provide further clarification as we move to a final report.

Sebastien, would you like to add anything to that or if you disagree, feel free do that as well.

>> Yes, thank you very much, Jordan. No, I agree totally. I just want to explain that it's a little bit like, I would say, a pyramid. We have the bylaws, we talked about the Office of The Ombuds and we have the Ombuds framework and we have decided that we will not get into changing any of those first pillars of the work, we just add on top, it's important work, the external review. And on top of the external review, we add our rewriting of the proposed or recommendation of the external reviewer. It's why we are at the top of the pyramid here with a very short document. And if we want and it was the work done within the Subgroup, we take

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into account all the parts of this pyramid, but we don't ask everybody within ICANN during the public comment to read all of that, but just the changes that we are suggesting with those recommendations. Thank you.

>> Thank you, Sebastien. And Kavouss, does that answer your question? I see your hand up.

>> KAVOUSS ARASTEH: Not exactly. Not exactly. [Indiscernible] Co Chair. We are representing Government and we are under the [indiscernible] of Government. [Indiscernible] that Ombudsman get into the area that is outside the [indiscernible] we have received from our Government and [indiscernible] so really he or she should be really [indiscernible] us, we are not private sector, we are a representative Government and [indiscernible] from our Government and [indiscernible] would not be allowed to intervene and criticize the rate of the [indiscernible]. We are responsible to our Government and no one else. We are not responsible to ICANN. We are not responsible to Ombudsman. So I don't think that we should agree to any [indiscernible] outside what we receive from our Government. If it is different from [indiscernible] I'm sure that the bylaws have already effected this situation and we need to [indiscernible] the integrity and [indiscernible] of the people and integrity of the Government and the [indiscernible] Government given to the [indiscernible]. If they say something, it should not be questioned by the Ombudsman. Thank you.

>> And thank you, Kavouss. The only suggestion I can make at this point is that the way the Ombudsman function is structured in the bylaws is causing concerns to you and your Government or the [indiscernible] that would be addressed in the public comments here. The problem that we face is we can't really adjust that problem now without a bit more of an idea

of what the challenge is. And the best place to lodge that is in the public comments so it can be given proper and serious consideration to the issue you are raising.

>> KAVOUSS ARASTEH: I'm not talking [indiscernible] of class, I'm sorry, I am not talking on behalf of the class. I'm talking on behalf of my own. Thank you.

>> Okay, thanks. Thanks for that clarification.

Sebastien, I see your hand is up.

>> Yeah, just to I agree with you, Jordan, I will not say better, but if Kavouss wants to point me to some lack of clarity in some part of any document regarding the Government, I will be happy to help with that, but I think that your proposal to take that into account within the public comment page will be the best way. But if, in any case, I can be of any help on that, I will. Thank you.

>> Thanks, Sebastien. Okay, there are no more people in the cue, so I'm going to move to a sort of formal call for a second reading. Are there any objections to the second reading of the Ombudsman report and putting it out for public comment and community input? Are there any objections? Okay, I hear no objections. So we can consider that second reading passed. Thank you, everyone, for that discussion and process. Thank you, Sebastien for being Rapporteur in this area of the CCWG's work.

And I am now in the lucky position and so are all of you that are hearing my voice because [indiscernible] Co Chair our next agenda item on the first reading of the transparency Subgroup. Sorry, I have been advised by staff that I forgot to make the point that the

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Ombudsman report as finalized will now be placed on the record for public comment, opening soon.

Back to transparency, the final report is available. The first reading is here and so is Michael, the Rapporteur for this. So Michael, I'm going to invite you to take the floor and work the group through the final report of the transparency Subgroup. Please go ahead.

>> Thanks so much for that. Can you hear me?

>> We can.

>> I'm taking that as a yes. So hi, everybody. So this is the first reading of the final recommendations. In preparing and responding to the public comment period that was previously done, there were several kind of small wordsmithing and clarification changes, as well as three or four more major ones. So we're going to go through the changes that have been made.

Could we see the next slide please?

Okay, so we're jumping right to the recommendation yeah, we're jumping oh, sorry, I think that went two forward. Can we go back one, please? There it is.

So in terms of the more substantive changes, the first was about the so called duty to document. So this was revised in consultation with ICANN legal. Just to clarify how this is going to work out, there were some concerns raised about the time commitment that would be related to this and we wanted to clarify that we're just trying to bring something in with good administrative practice in order to provide a paper trail for major decisions. So that has been

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rewritten as you see in front of you so it's clarified that the DIDP should include a documentation rule whereby, if significant elements of a decision making process take place orally, or otherwise without a lasting paper trail, the participants should be required to document the substance of the conversation and include it alongside other documents related to this decision making process. That's to clarify how it's to be done. As well as concerns from ICANN legal that this would impose a single documentation standard across ICANN's work because they made the case that different assets of ICANN had different documentation rules, which is a fair point, so basically all we are saying is that as a general rule, there should be documentation of decisions. And ICANN signed off on the revised wording of this or ICANN legal did.

The next change is a more minor one, which is about processing requests. It basically just says that ICANN should impose ICANNs the DIDP should impose clear guidelines on ICANN for how to process. That was just a minor wordsmithing change.

Could we move to the next slide, please? Great.

The next change I would also rule as minor wordsmithing to clarify concerns that were raised during the comment period about what is being expected through the DIDP. It says that the DIDP will commit to comply with the requesters reasonable preferences regarding the form of the information of the request if ICANN already has that information available in the requested format or can convert it to requested format relatively easily, so the idea there is we don't want ICANN to have to scan thousands of pages that they only have on paper if people request it. The idea of this recommendation is that if they have different formats available, you can request the format that you want.

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Regarding recommendation 8, which is also a fairly minor change, ICANN should direct requesters with as much specificity as possible to information publicly available that is subject to request. And so we clarified that to show that in their response ICANN should direct the requesters. And that's also to respond to a concern that people are going to use the DIDP as kind of a broad research tool, which is obviously not or to say, you know, to have ICANN collate information for researchers on their disclosures, which is not what is intended through the DIDP and so that was to ensure that all we're saying is that if a person makes a request and the information is already available, which is grounds to deny the request, ICANN, rather than just saying, it's not available, should direct them to where the information is available.

Next slide, please. Okay.

Where an exception is applied to protect a third party, the DIDP should include a mechanism for ICANN staff to contact the third party. There was a comment made that there was ambiguity in the previous phrasing as to whether the individual making the request would be contacting the third party and that's problematic and impractical for a bunch of reasons, so we are clarifying ICANN staff should be doing that.

Number 15 relates to transparency at ICANN legal. So this is, unfortunately, probably the one area, is really the only area that we were, I think, unfortunately, unable to find a good avenue forward. Previous drafts had included specific recommendations on how ICANN legal should proceed, should invoke attorney/client privilege and would include rules around how that should be done. Unfortunately, there was disagreement within the Subgroup on this and ultimately some people were uncomfortable with moving forward with any narrowing of attorney/client privilege that didn't have buy in from ICANN legal. So I spoke to ICANN legal

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and although some of my earlier conversations with them seemed to suggest that they were open to this and this is something that they already do, unfortunately, I had a later conversation with them and they were pretty resistant to anything that would have imposed any kind of clear rules or standards on how this would be done, so, unfortunately, for this specific recommendation, we ended up basically just saying that we ended up just basically pushing this forward and saying there should be future processes to expand transparency at ICANN legal, including clarifications of how attorney/client privileges are invoked and hopefully this will be done as part of the future process.

Next slide, please.

For proactive for contracting information, we sort of broadened it out a little bit rather than the rule that was mentioned previously that you can see below. Now the recommendation says that ICANN's contracts should be proactively disclosed or available for request under the DIDP where ever possible. The DIDP should allow ICANN to withhold information subject to a non disclosure agreement, and that such an agreement should be entered into where the contracting party satisfies ICANN that it has a legitimate commercial reason for requesting the NDA, or where information contained therein would be subject to other exceptions within the DIDP. So this is basically just to introduce the idea of greater transparency in contracting while respecting non disclosure agreements that have already been signed and making sure ICANN has enough latitude to enter into non disclosure agreements where there's a legitimate interest there. So this has been clarified further as well.

Next slide, please.

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And the only other minor recommendation that's been made is that in terms of expenditures on political activities, I believe the previous wording was for anything over 5,000 and that's been shifted to anything over 20,000.

We can go to the next slide, but I think that should be it. Oh, okay. So with that being said, are there any comments on these revised recommendations?

>> Any comments or questions for Michael from any of the participants? Thank you for taking us through them, Michael.

A little bit of action in the chat window. Thank you, Michael for the presentation.

It's been a while since this has come before us in the Plenary, but the changes certainly don't [indiscernible] on my part.

If there are no comments or queries for Michael, I will formally move to ask whether there are any objections. Oh, sorry, there is a question in the chat, it's from Steve DelBianco and I'll read it out. Are there any recommendations that the group has consensus but decided not to make the recommendation because ICANN legal was opposed? So, Michael, could you briefly respond to that question from Steve.

>> Certainly. The only area where we got significant pushback from ICANN legal was on number 15, on transparency from ICANN legal. Other than that, there was support on all of the other recommendations.

On that one, within the working group people expressed unease at moving forward with a recommendation that didn't have ICANN legal's buy in. It's probably not accurate for me to

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say there was consensus in the working group, but it's also not quite accurate to say people in the working group were arguing for ICANN legal's position. So it's a bit of a weird situation where the expression of the people in the working group was that they were uncomfortable moving forward with this, that their response depended on ICANN legal's response.

And I'll also add there was a challenge in terms of timelines where, unfortunately, it was take quite a long time to get responses back on these issues and because we're running kind of close to the deadline of getting things included in the final report, that was also going to be a challenge. If we were going to try to push things forward through resistance of ICANN legal, there would need to be another consultation, which would push us beyond the timelines we had in front of us.

Robin notes in the chat that it seems inappropriate for ICANN legal to block transparency at ICANN legal, which I kind of agree with. I think it's kind of an unfortunate result for that reason. But, of course, there were people that were supportive of ICANN legal's opposition to this within the working group and within the consultation, which it's only fair to point out.

>> Great. Thank you for that, Michael. Thank you for responding to those questions.

I think where we're at now is that these have been through public comments. This is sort of the first reading for the revised report. And I hear the way you described that concern about ICANN legal's responsiveness and I think I might just refer to Co Chair Leon Sanchez who has been managing the legal committee and who is about to be raised to the [indiscernible] heights of the ICANN Board. The response is taking quite a long time from ICANN legal and I think that's something we should address with the organization at the Abergavenny. But that is a slight tangent.

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In the end, the question now is if there are any objections to a first reading of this final recommendation report from the transparency Subgroup? And I'll call for any of those objections now. You can use a red cross in your Adobe room and a green check if you are not objecting, if you'd like. Thank you, everyone, and thank you, Michael, I'm going to declare that a successful first reading of these recommendations. We will come back for a second reading, I believe, at the Plenary in Abergavenny, if not before. Thank you very much, Michael, for working us through that.

I am now going to turn the chairing back, he says very slowly while he finds the list, to Leon Sanchez to take us through the second reading of the final recommendations of the Human Rights Subgroup report. Leon, please take the chair.

>> Thank you very much, Jordan. And congratulations to all of those who have contributed to how [indiscernible] experience. And I would now like to call [indiscernible] to walk us through the second reading of the final recommendation of the Human Rights Subgroup. As you might remember, we made a successful first reading in our previous call. There were a couple of points that needed some rewording and wordsmithing that were taken offline and that were agreed by those participants that were reviewing the issue. And I would like to ask Niels if he could help us go through the second reading, which would be confirming that we have on the first reading and we [indiscernible] look at the prior wording that was agreed by the parties that reviewed these [indiscernible] that were made to the final report. So Niels, you have the floor.

>> Thanks so much, Leon. Friends, Colleagues, Comrades, I can report back very happily that based on the mandate and the task that the Plenary put back in the hands of the Subgroup

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and some people, Greg and Jorge specifically, but also David McAuley and others have put in some great work and we managed to iron out a text which we can show to you. And I hope Bernie has that on a slide. Or else I can read it to you. We have a compromised proposal which we would insert in the consideration section of the document which would add one footnote which reads that the U.N. guiding principles for business and Human Rights is a non binding document developed to provide guidance for business organizations.

And secondly, the text was, it will be inserted into a considerations document, to the extent that ICANN organization is a business, it's good to consider certain aspects of the guiding principles as a useful guides when applying the Human Rights core value to its business activities.

As you can see on the slide here as well. I see Sebastien's hand is up. Sebastien, please come in.

>> It's an error. Sorry, I made a mistake. Sorry.

>> No problem whatsoever. So except for that, there are no changes since last week. And changes since between last week and the one before the previous were just one grammatical correction and one inclusion in another footnote that including, but not limited to mentioned [indiscernible] instruments. Very small additions, so I hope with this we can conclude the second reading of the document, which also means that which would also mean, I hope, that the dissenting opinion will be dropped and we can continue with a full consensus on the Human Rights framework of interpretation and considerations document. Thank you.

Leon, back over to you.

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>> Thank you very much, Niels. So at this point, I would like to call for any comments or any objections to the second reading. Okay, so seeing none objections, I would like to thank everyone [indiscernible], you have the floor.

>> KAVOUSS ARASTEH: Thank you [indiscernible] I wanted to [indiscernible] for a considerable amount of effort, devotion [indiscernible] in trying to resolve any last minute or any last [indiscernible] or last [indiscernible] or last area in order to have the consensus. It is really the most competent and [indiscernible] and really kind person that made a lot of effort and we are very happy to have him on board and his activities are very highly appreciated. Thank you.

>> Thank you very much, Kavouss, for the very constructive comments.

And at this point, seeing no objections and no further comments, I believe the final report on Human Rights, I would like to call this as approved in the second reading and I would ask staff to ready this report [indiscernible] Human Rights for the next steps after our procedures. And I would also like to thank everyone that has [indiscernible] in this work [indiscernible] all the participants and all the members of the different constituency, including, of course, the [indiscernible] who have pretty much constructed [indiscernible]. And I see Greg Shatan's hand up, so, Greg, would you like to give comments?

>> GREG SHATAN: Sure. It's [audio echoing] it's Greg Shatan. I just wanted to note that the slide isn't quite the compromised language. The language in the footnote was not meant to be repeated in the text. And right now, looking at the slide, that's what's happening. I think that was just an error in kind of transferring the document on to the slide. So I hope that's understood. The footnote is actually a footnote to the first reference to the guiding principles

in this part of the of the document. So just to clarify that. But the intent and result, I think, is the same in any case. Thanks.

>> Excellent. Thank you very much for noting this, Greg. Your assumption is correct, it was a mistake made by staff as noted in the chat and on the record. I'm told it is a mistake made by our staff who sometimes have too much in their hands and of course are not able [indiscernible]. So thank you for pointing this out and we will make sure that the final text is [indiscernible].

So thank you, again. And we have a quite interesting topic up next and for that, I would like to hand the floor to Thomas [indiscernible].

>> Thanks very much, Leon. Good afternoon and good evening to everyone. This is Thomas [indiscernible] speaking. We are now going to discuss the work product of the jurisdiction Work Stream. And since this is the first reading of report, there will be quite some time needed for the Rapporteur to guide you through the recommendations that the group has reached consensus on, but before I hand it over to Greg, the Rapporteur, I would like to make a few opening remarks.

And first of all, I would like to take the opportunity to thank both Greg, as well as the subteam for very, very hard work for months and months to come up with this report. I think that has been possibly one of the toughest subjects to work on. And I think you have done a remarkable job converging the various views to consensus recommendations.

Now I do appreciate that the recommendations that the group came up with did not go far enough for some. I think that if we went around the table, you would hardly find anyone who

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would not like to have gone further with the recommendations of the CCWG. Not only in the area of jurisdiction, but even more so in other areas that we've been working on. But as you know, we are working against time limits and we have promised to the community that we would work in Work Stream 2 in a timely fashion and present something to the community. We've already gone into overtime and I think now it's time for us to bring our subteam's work to closure, put things out for public comment, finalize, wrap things up in one report, and then conclude this part of our work.

And so I think that, you know, the frustration of some that we did not possibly achieve as much as we would have loved to when we embarked on this journey is shared by many, not only in the CCWG, but in the wider community. But we have to live with the realities that we are working in and, therefore, I would like to anticipate some of the comments at this point, at this early point of the jurisdiction agenda item. We have two dissenting opinions that have been filed. I understand that the discussions surrounding these are still in progress, so we do not have final language of these dissenting opinions at hand. And they focus on process as well as on substance. And I think we should have the discussion on substance after we've given Greg the opportunity to show us through the substance of the report.

But I would like to quickly comment on some of the procedure issues before we continue with the deliberations on the substance of the report. Also, there have been two questions by [indiscernible] who unfortunately can't be with us today. And he has asked two questions, one of which related to the possibility or the lack of possibility for our group to directly request changes to the registry agreement and the Registrar presentation agreement. And he sort of requested a clear yes or no answer from the Co Chairs, which I will offer right now.

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As many of you well know, the contracted parties have contracts with ICANN and these are binding, legal agreements between two parties and, therefore, it is not possible for a third party, and the CCWG technically is a third party, it's not possible for a third party to directly influence the content of such legal agreement. And, therefore, we must leave our recommendation to be a recommendation that can be considered according to the principles in those two agreements that I've referred to, which allow for changes to these agreements.

So that's with respect to the first question.

And the second question was relating to limitations or to a clear choice of the different options that Greg will present to us with respect to Choice of Law and venue. And I think that this question, although [indiscernible] asked the Co Chairs and the CCWG to respond, I think it's best placed for Greg to respond to when we come to Q&A later. Or he might even choose to respond to that point when he presents the recommendations.

Now there has been some criticism with respect to how consensus was formed and allegedly the process that was conducted by Greg to conform support or consensus for the recommendations was flawed. And I would like to go on the record on behalf of the Co Chairs, that we fully support how Greg has handled this ably. He has taken a lot of effort to allow for everyone to make their voices heard. He has asked on the various ideas that have been proposed whether there is sufficient traction for these to be carried further. He has, as we discussed at length in Johannesburg, he has abandoned some recommendations that did not get sufficient traction to reach consensus within the subteam. And when consensus for the recommendation was determined, that was not done in single meetings, but in according with the working principles that we've been using in the CCWG i.e. in two readings and he has asked

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for objections. And actually, there was no substantial objection that would not qualify the level of support as rough consensus.

I should also note that the final decision for consensus on the report, not only the jurisdiction report, but any report or recommendations that come from the subteams, is confirmed only at the time when the Plenary has two readings and the Co Chairs determine whether there is consensus or not.

And as you know, or probably you don't, but if you choose to, you can read that in the charter for our group. There is a process for objections with the Co Chairs determination of the presence or absence of consensus or other levels of support or objection for recommendations. And we would request that those who take issue with the consensus determination be patient for a little more and if they think that the Co Chairs determination of consensus is flawed, then they should deploy the procedure laid down in the charter of our group.

Then in the dissenting opinions that we received in draft form, at least in the forms that we [indiscernible] to read them. As I noted earlier, there seems to be further debate and work surrounding these statements, some of these do not respond directly to the recommendations in the jurisdiction subteam. And they also contain various inaccuracy. And we would like to announce that in case those statements are being upheld, the Co Chairs will reserve the right to append a corrective note to the report with respect to these minority opinions or dissenting opinions.

We should also note that if the jurisdiction report does not pass first reading on this meeting, it will be difficult that it passes the second reading on the face to face meeting on the 27th. And

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if it fails to achieve support or get support there, then it will likely not be considered in the final report.

So as I mentioned at the outset, unfortunately, we did not have time to do everything that individuals in our big team wanted to see handled. Some would have loved to go further, but according to my firm belief, and I hope this is shared widely in this group, the subteam has reached consensus on very, very important points. And if you read the report, when you listen to Greg's presentation, please consider carefully whether you support these recommendations. And if you support the recommendations, please do not object to the report. If you object to the report just because you think it doesn't go far enough, then you automatically object to the recommendations in the report and that might jeopardize that the report will be included in our final report. This is not to threaten anyone to express their views or to object as they see fit. But I just caution everyone should consider what to support. And as I mentioned, I think that the recommendations that the jurisdiction subteam have come up with are remarkable and unprecedented improvements to ICANN system.

Let me conclude by saying there are other places where further improvements that we can't work on in the framework of this work can be worked on. We have mandatory reviews, the ATRE reviews and other reviews, and those places can be used for discussing issues that could not be reviewed as much as some would have liked.

So let me stop here and hand it over for hand it over to Greg for the presentation of the draft recommendations from the subteam.

Over to you, Greg. Thank you.

>> GREG SHATAN: Thanks, it's Greg Shatan for the record. Can you hear me?

>> Yes we can hear you all right. Yes, we can hear you all right [echo]

>> GREG SHATAN: So the first slide you see merely notes where we stand with regard to procedure. This is the first reading. And then there will be a second reading, hopefully, at the face to face on the 27th of October. So I don't know if the slides are unsynched, but we can move on to the next.

This comment has been added at the request of one of the participants. I'll just briefly read it:

During the preparation of this recommendation the Subgroup considered an e mail where Registrar declined to do business with a potential reseller based on the Registrars policy of not doing business with people with Iranian passports [Reading]

>> Greg, Greg, we are trying to transcribe.

>> GREG SHATAN: Okay, you can just take it right off the slide afterwards.

The Subgroup has concluded to the extent these instances are related to OFAC, the concerns raised by these instances are adequately covered in the recommendation already without any additional changes. This is not in any way a comment on the validity of these particular concerns. The Subgroup will consider creating "stress tests" based on these scenarios.

Next slide, please.

So the first set of recommendations relates to OFAC sanctions and to licenses. This has been explained, the background of this has been explained in detail in our report, but just very

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briefly, the Office of Foreign asset control, part of the U.S. Department of Treasury, administers certain sanctions that the U.S. Government has in place for national security and other reasons. And some of these sanctions relate to all of the citizens of a particular countries. And licenses are required in order for transactions to take place with those citizens or residents. An individual license is basically applied for almost online and is a relatively lightweight procedure. A general license, which we will get to, is a whole different kettle of fish. It is a regulatory change. In any case, our first recommendation relates to the Registrar accreditation application. And ICANN has terms and conditions that apply to the application to become an accredited Registrar. And that particular says, ICANN is under no obligation to seek OFAC licenses and in any given case, OFAC could decide not to issue a requested license. This uncertainty could discourage residents of sanctioned countries from applying for accreditation. If ICANN is under no obligation to seek a license, an otherwise qualified applicant might not be able to get the license. Therefore, the Subgroup recommends that the above sentence should be amended to require ICANN to apply for and to use best efforts to secure an OFAC license if the other party, that is the applicant, is otherwise qualified to be a Registrar and is not individually subject to sanctions. During the licensing process, ICANN should be helpful and transparent with regard to the licensing process and ICANN's efforts, including on going communication with the potential Registrar.

That is the first recommendation within the OFAC set.

We can move on unless there are any questions or comments.

Next slide, please.

This is our second OFAC recommendation. In the 2012 round of the new gTLD program it was difficult for residents from sanctioned countries to file and make their way through the application process. The applicant guidebook states, quote, in the past when ICANN has been requested to provide services to individuals or entities that are not specially designated nationals, or SDNs, but are residents of sanctioned countries, ICANN has sought and has been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

This raises similar concerns to the first recommendation. Therefore, the Subgroup recommends that ICANN should commit to applying for and using best efforts to secure an OFAC license for all such applicants if the applicant is otherwise qualified and is not on the SDN list. ICANN should also be helpful and transparent with regard to the licensing process, including on going communication with the applicant.

Any questions or comments?

If not, we can go to the next slide. Please. I see I have to say please, let's good, probably part of the standards of behavior.

>> Greg, [indiscernible] [audio echoing]

>> GREG SHATAN: Okay, please go ahead, Kavouss.

>> KAVOUSS ARASTEH: [Indiscernible] recommendation [indiscernible] but otherwise qualified. Who make that is qualification? Which entity? And which criteria is used to make [indiscernible] that qualification? Just a clarification. Thank you.

>> GREG SHATAN: I have to admit that I have not been involved in the registry or Registrar process. I've had some involvement in the new gTLD registry application process, but not in the Registrar process, so I'm certain there is a process that ICANN goes through to determine whether a potential applicant to be a Registrar is qualified to be a Registrar for reasons that have nothing to do with OFAC, but things such as financial stability or technical competence. I'm assuming and this has notes been in place by me, but by the Subgroup as a whole, that there is a standard process, rather than just a rubber stamp on any application and they hand it over and say, now you are a Registrar. If there are Registrars on the call or those who have helped in the Registrar process, if they could add to that comment or if I've covered it, perhaps we can move on.

So we have the third OFAC recommendation. Which is the OFAC limitations by non U.S. Registrars. It appears that some non U.S. based Registrars might be applying OFAC sanctions with registrants and potential registrants based on a mistake assumption that they must do so simply because the Registrar has a contract with ICANN. Non U.S. Registrars may also appear to apply OFAC sanctions if they "cut and paste" Registrars agreements from U.S. based Registrars containing OFAC provisions. While ICANN cannot provide legal advice to the Registrars, it can bring awareness of these issues to Registrars.

The Subgroup recommends that ICANN clarify that Registrars that the mere can existence of their RAA with ICANN does not cause them to be required to comply with OFAC sanctions. ICANN should also explore various tools to remind Registrars to understand the applicable

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laws under which they operate and to accurately reflect those laws in their customer relationships.

I'll pause. I see Steve DelBianco is typing. Steve says, this is an excellent recommendation. Thank you, Steve, I will not disagree.

Let's move on to the next slide. Please. I've got to get that please in. Okay.

General licenses. As I mentioned before, OFAC general licenses cover particular classes of persons and types of transactions. ICANN could pursue general licenses to cover transactions integral to ICANN's role in managing the DNS and contracts for Internet resource are E.G. registers and Registrars entering into RAs/RAAs, privacy, proxy accreditation, support for ICANN funded travelers, etc. This would enable individual transactions to proceed without needing specific licenses. A general license would be developed with the U.S. Department of the Treasury, which must amend OFAC regulations to add the new license. This regulatory process may be a significant undertaking.

Therefore, the Subgroup recommendations that ICANN take steps to pursue one or more OFAC general licenses. ICANN should first prioritize a study of the costs, benefits, timeline and details of the process. ICANN should then pursue general licenses as soon as possible, unless it discovers significant obstacles through the study or otherwise. If so, ICANN should report this to the community, that is report significant obstacles to the community, and seek its advice on how to proceed. If unsuccessful in getting general license, ICANN needs to find other ways to remove friction from transactions between ICANN and residents of sanctioned countries. ICANN should communicate regularly about its progress to raise awareness in the ICANN community and with affected parties:

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I'll pause again to see if there are any comments. Seeing none, we can move on to the next slide, please.

So that completes our set of OFAC recommendations. Then we move on to a set of recommendations relating to Choice of Law provisions and Choice of Venue provisions in certain ICANN contracts.

The first relates to Choice of Law provisions in the registry agreement. The Subgroup identified several alternative approaches for the RA, and these could also apply to the RAA, so we won't discuss that separately in detail. The approaches are the menu approach. The California or fixed law approach. The carve out approach. The bespoke approach. And the status quo approach. These are discussed on the following slides.

Next slide, please.

And here I would like to clarify I think what was one of the questions that was mentioned by Thomas in his introduction. Please note that in discussing the menu approach, here the first sentence says, the Subgroup supports a menu approach. The Subgroup does not say this about any other approach. So perhaps to put more of a point on it, we are recommending that a menu approach be considered, however, there are a number of implementation details that are obviously beyond the scope of our report.

So the Subgroup supports a menu approach, where the governing law would be chosen before the contract is executed from a menu of possible governing laws. The menu needs to be define, and this could be best be left to ICANN and the registries. In other words, the parties to the agreement. The Subgroup discussed a number of possible menus, which could include, first,

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one country from each ICANN geographic region or possibly a small number of countries from each ICANN geographic region. In addition, the menu should also have on it the status quo because some registries may prefer to leave the Choice of Law silent as it currently existing, so they should be allowed to do so, to make that choice.

Next it could include the registries jurisdiction of incorporation, whether or not it's on the short list of countries from that geographic region.

And last, it could also include each of the countries in which ICANN has physical locations, which are in essence additional jurisdictions for ICANN. The Subgroup has not determined what the menu items should be, but believes there should be a balance between the advantages and disadvantages [audio feedback] of having different governing laws apply to the same base registry agreement, which likely suggests having a relatively limited number of choices on the menu. The Subgroup has also not determined how options will be chosen from the menu. For instance, the registry could simply choose from the menu or it could be required to make this a negotiating point with ICANN.

So that is the menu approach and that is the recommended approach of the Subgroup. Let's look now at the other approaches.

Next slide, please.

Before I look at these, are there any questions or comments about the menu approach? Seeing none, I'll move



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>> This is Thomas. Greg, maybe you can [audio echoing] to the point made by [indiscernible] perhaps whether just maintaining the status quo is an option that is perfectly possible outcome.

>> GREG SHATAN: Thank you, Thomas. The Subgroup does not recommend that the status quo should be the outcome for all registry agreements. The Subgroup recommends that in the menu approach, one menu item could be, but we're not recommending that it must be the status quo. Recognizing that the status quo may, indeed, be the preferred choice of both parties. But we have a recommended outcome which is the menu approach, which would not result in the status quo for any agreements other than that where both parties actively choose to do so, if that was on the menu.

>> Thanks very much. I guess that's exactly the clarification that [indiscernible] is looking for. Let's make sure that it's properly noted. Thank you.

>> GREG SHATAN: Thank you. I see a question from Steve DelBianco in the chat. Greg, you said the Subgroup recommends menu. What are the second and third privileges of the Subgroup? We did not discuss fallback positions. The feeling was that the menu approach itself was sufficiently flexible, that in its subsequent implementation it could include anything from a very limited number of countries, say one per region, or be more expansive. It could include or not in the status quo for instance, it could include or not the home country of the Registrar, so we believe that within the menu approach there are enough options and it well got the strong support.

There were, I should say, members of the Subgroup who definitely supported the status quo approach, and I think we may have heard from David McAuley, but there was no preference of the Subgroup for anything other than the menu approach.

So the other possibilities, one is the California or fixed law approach. A second possible option is for all registry agreements to include a Choice of Law clause naming California and U.S. law as the governing law. I should mention that our report goes into the advantages and disadvantages of each of the five possible approaches, but I won't do that here. We don't have time. And it's not on the slides.

Next is the carve out approach. A third possible option would be a carve out approach where parts of the contacts that would benefit from uniform treatment are governed by a uniform law, such as California, and other parts are governed by the law of the registry's jurisdiction or chosen from a menu.

Then there's the bespoke approach, where the governing law of the entire agreement is the governing law of the registry operator. So it's fit in each case to the registry. Hence, bespoke.

Last is the status quo approach which would be simply to retain the status quo, which is to have no governing law clause in any RAA, unless, of course, it's individually negotiated between a registry and ICANN as could happen today.

Any questions here? If not, we can move on to the next slide please.

I see Phil Corwin has a question. Phil, please go ahead

>> Yes, Greg, and for clarification, it's the same question typed into the chat. What's the experience with the status quo approach when legal disputes have risen between ICANN and contracted party. What governing law has actually been applied given nothing was designated in the contract?

>> GREG SHATAN: Thanks, Phil. There are really two or three instances in which this would occur. One is in a formal litigation. Another is just in an interpretation discussion between the parties. And last might be an arbitration. My understanding is that in litigation, in the absence of a Choice of Law provision, you apply the conflicts of laws, rules of the jurisdiction and the court that you're in, which may or may not end up with that with the law of the jurisdiction, depending upon what the conflicts of laws rules say. Given this is mostly, I think in most cases where it has been an issue and it has not necessarily been an issue in most cases, it has resulted in California law determination. I'm not aware of any case where the determination was made that another law besides California would apply.

>> Thank you very much.

>> GREG SHATAN: And David McAuley recalls in the chat that the Subgroup reviewed a lot of litigation, virtually all litigation and this was simply not an issue in most cases.

And as to interpretive discussions in ICANN, your guess is as good as mine is, if you are not in the room, you wouldn't know.

And, again, Choice of Law may or may not make much difference in interpreting a contract. Most of the time it probably doesn't.

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So moving on, we have our next slide. As noted, the options for the RAA in the Choice of Law provision are essentially the same for the RA and should be similarly handled.

Next we have the issue of Choice of Venue provisions in registry agreements. And we focus specifically on the registry agreements because under the RA disputes are resolved by binding arbitration pursuant to ICC rules. The RA contains a Choice of Venue provision stating that the venue is Los Angeles, California, as both the physical place and the seat of the arbitration, which also makes it kind of the law of the arbitration as well, or *lex arbitri*.

When entering into contracts with registries, ICANN could offer a list of possible venues for arbitration rather than imposing Los Angeles, California venue. The registry that enters into a registry agreement with ICANN could then choose from a venue menu which venue it prefers at or before the time of execution of the contract or similarly it could be a negotiating point with ICANN if that's a determination that's made. But the idea is that this would be a menu choice, as with the previous two types of questions or issues.

Anything on this point? Seeing none, we can move on. Please.

This slide notes as Thomas noted that the Government of Brazil and Parminder keep saying have filed dissenting opinions and other comments.

And I think that is the last slide, but let's see the next slide. It's AOB, which is not my slide, so we'll pause here and see if there are questions and comments.

>> Thanks very much, Greg for the [audio echoing] of your report, of your team's report. Maybe you can go on mute because we are getting an echo from you.

I see that both Kavouss as well as Benedicto hands are raised. And before we go to the cue, let me just acknowledge and appreciate and show appreciation for the hard work of the Governmental Representatives in the jurisdiction subteam. I know that the Brazilian Government in particular and Benedicto and his team are troubled with some development in ICANN and so, you know, I guess this must be very challenging days for you.

I would like to confirm though that you are highly respected members of this team and that we really appreciated your hard work. There might be different viewpoints on various substantive issues, I guess that's quite natural in an International and diverse environment such as this, but rest assured that we really appreciate all your input and hard work, high quality work on this team.

Let me also note that we recently saw a quite encouraging development in the Human Rights subteam where changes to the recommendations and improvements to the recommendations have been made between readings. And certainly, there is always the possibility for the subteam and individuals from the subteam and the Plenary to put their heads together and continue the discussion and come up with proposals that ensure broader consensus than what we've heard in the first reading. That is certainly not to introduce more new ideas, but if there's anything that can be done to broaden the consensus in the report, that possibility certainly exists and it exists for the Human Rights subteam and it does exist for the jurisdiction subteam as well.

Let's now move to the cue. Kavouss was first. Kavouss, please.

>> KAVOUSS ARASTEH: Yes, I think we should [indiscernible] our appreciation [indiscernible] that has been carried out by the Rapporteur and the comments or opinions on the

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recommendations and/or on the [indiscernible], these are two different things and we should not mix them up. As far as any opinion regarding the recommendations or regarding [indiscernible] apply to the activity [indiscernible] and time and effort made by the Chairs [indiscernible] and so we have to make this distinction. This is point one.

Point number two, [indiscernible] has been also commented or supported, I will say supported, in [indiscernible] e mail, so perhaps some time should be left aside [indiscernible] some instance people could join this opinion and express their [indiscernible] with respect to that [indiscernible] up to the second review or maybe [indiscernible]. So [indiscernible] to look at the statement [indiscernible] document quite [indiscernible] information read carefully by the people and other people may join that formally. We have to [indiscernible] e mail or [indiscernible] that we [indiscernible] formally so I think time needs to be set aside allowing people to join that [indiscernible]. Thank you.

>> Thanks very much, Kavouss. And next is Benedicto and Thiago, I'm not sure who is going to speak, but the floor is yours.

>> Thank you. This is Benedicto for the record. Can you hear me?

>> Yes, we can hear you all right.

>> Thank you. Well, first of all, thank you, [indiscernible] for your very kind words. I think I should also say that we acknowledge that in spite of difficulties we may that, that acknowledgement of the amount of work that you and your team and Greg and all of the members of the Subgroup [indiscernible] to tell you what we have achieved in spite of, again, some differences we may have.

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At this point I'd like to I have already posted something on the list, but I'd like to state that as of now, in certain context, if this is the report that should be accepted at the end of day, we will oppose the report. We will have minority [indiscernible] from its recommendation. Not exactly because we oppose the ideas that are there, but because they are not partitioned to meet the to address the key concerns that were expressed even from day one, from the first phase of the transition we made clear the concerns we have. So in spite of anything that is taking place now, I'd like just to [indiscernible] opposition of how it relates to the process of [indiscernible] years ago. So we will not see the key concerns addressed in the report in the format in its current format. So those recommendations, both [indiscernible] recommendations taken together, we don't think [indiscernible] and they should not be concerned [indiscernible] adequate response to the call for this group. So for the record, we will, if this is the final report, we will oppose the report, we will oppose the recommendation because they are not sufficient.

With regard to if this is the case, and I say this because when we made we circulated the statement of the draft report, I would like to say draft report [indiscernible] we thought there might still be room for either of the Subgroup or [indiscernible] to further consider some ideas and have a final outline of the report. But I have since received complaints saying that the ideas that we are proposing could not be entertained anymore, so if in is the case that we are [indiscernible], there might be some room to discuss, so if this is the final report of those two sets of recommendations, we certainly object. And we want to avail our right to file a minority [indiscernible] that we understand would be included with the report. Of course, by doing this we understand [indiscernible] fully on Board comments that were made on the list [indiscernible] our statement and our documents, they were not, I think they were not fit for that kind of document for the minority [indiscernible]. We would certainly be happy to get rid

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of everything related to process, anything that can be found to be [indiscernible] or anything of that sort. We want to focus on the substance, but to make clear that the report as such does not address key concerns we have and that, therefore, we avail ourselves to file this minority [indiscernible].

In that regard, I would like to seek your guidance either from Greg or from you, Thomas, with when would be the right time, the deadline we have to issue this minority view. I took from you that maybe the final, final outline of everything would be wrapped up at the face to face meeting. I'm not sure if that would be, let's say, the deadline would have to file the minority views and to have the final outlook or if we should do it before.

And if I can just make a small comment, I think that maybe part of the problem we have here is that we [indiscernible] very, very complex issue, one issue that [indiscernible] maybe the most important issue together in this Work Stream 2 that almost derailed the final stage of the [indiscernible] process. You may recall [indiscernible] and this was postponed. So I think maybe one of the [indiscernible] is that we are trying to address very complex issues within very, I would say, tight deadlines and [indiscernible] artificial deadlines. I do not see why a [indiscernible] discussion or [indiscernible] could not proceed and unfold with the same level of support, with the same level of energy, why we should stop now. I think maybe we could have some kind of [indiscernible], but, again, if this is the final report, that this will respond to the call that was made when Work Stream 2 [indiscernible], we are opposed because we feel it falls short. It is far too short with regard to what we consider to be minimally effective. Thank you.



>> Thanks very much, Benedicto. Great comments you made. And I appreciate your willingness to reconsider procedural aspects and actually focus on substance.

With respect to timing, we had a lot of comments over the last couple of years with respect to artificial timelines and that we should allow for our group to have more time to discuss. What we've done for many months now is actually count backwards from the end date of this project and factor in public consultations at various levels, broad approval that is required, approval from charter and organizations, and extra public comment period for inconsistencies and the like, and as you know, as Co Chairs, we are sort of responsible for making sure that we get tangible results at the end of the process and, therefore, I think, you know, we can try to reassess things with staff, but I think that we have gone as far as we could and the deadlines that we announced to the group were not arbitrary, but they were actually with the intention to giving the subteam and the Plenary as much time as possible, bearing in mind that we need to get this done by next summer. And you will know that we've already gone into overtime, so if we don't get our work finalized, including all of the procedure aspects, we are not certain whether there will be more time, more budget, or more staff support. So I think we need to make sure that we complete this part of the work in a timely fashion [indiscernible], but that does not mean that there is not further room for discussion. I mentioned the example of the Human Rights subteam that has made progress and converged more towards consensus between two readings, so that is one possibility. Another opportunity would be the public comments themselves, where those who are not happy with the report, maybe the actual recommendations or the breadth of the recommendations can be raised and those comments can be analyzed and given an opportunity to actually have further work on the substance of the report. And the third opportunity I excluded to earlier is actually to use the opportunities

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of reviews and continue the discussion and the framework of periodic reviews. So I think that's my immediate response to your question.

I encourage my fellow Co Chairs to chime in if there is another aspect I have not yet spoken to. But before they might come in, let's hear Kavouss whose hand is raised.

>> KAVOUSS ARASTEH: Thank you very much, Thomas. Can you hear me, please? Hello?

>> Yes, we can hear you. Yes, we can hear you.

>> KAVOUSS ARASTEH: Can you hear me?

>> Yes, we can hear you, Kavouss.

>> KAVOUSS ARASTEH: Hello?

>> There seems to be an audio issue. Operator, can you check whether Kavouss's line is working? Kavouss, you tried to speak, we could hear you, but obviously you could not hear us. Let me just ask whether there are any other colleagues on the call that want to speak. We can take their interventions first and then go back to Kavouss.

>> KAVOUSS ARASTEH: Hello.

>> Kavouss, can you hear me? Are you back? Please go ahead.

>> KAVOUSS ARASTEH: I was muted from long distance by somebody and [indiscernible]. Thank you very much for your [indiscernible] and also I take the opportunity, I'm told that the first statement that we appreciate the efforts and devotion of Greg. He made a lot of work and that was [indiscernible]. So I think that the consensus more or less [indiscernible] the Human

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Rights [indiscernible] a lot of efforts made by Jorge and others and so on and so forth did not have any face to face readings, but they were approved in the second reading. So I don't think the 27th or 26 you said 26th or 27, but it doesn't matter, day 26th, 27th of October is not definitive to finish this. It could be extended for one week after, two weeks after, allowing to have more discussions, content [indiscernible] a good reading without any emotion, without any tough words and so on and so forth. I think we have come to this point with all the issues with consensus and perhaps we should be closer to the consensus. We should not put a definitive date for the second reading at the face to face meeting. You try, but it is not definitive. Two weeks more, I don't think that makes the issue [indiscernible] so critical. So please kindly, Co Chairs, consider that. You may not reply right now, but please consider that because I'm sure that Benedicto and others, there are several people supporting this. This is not only [indiscernible], there are several people supporting in the e mail. And we are also considering now [indiscernible] our Government to support that and many others. So perhaps in order not to have this division, I request you kindly to possibly extend the second reading to be not 26th or 27th, but one or two weeks after allowing two or three weeks for further work and the work of Jorge was an example that he finally agreed to get the consensus of the people to get the framework of the Human Rights. Thank you.

>> Thanks very much, Kavouss. And just a general remark that we have introduced the timer so everyone gets an opportunity to speak. So please make sure that your statements are limited to something in the area of 90 seconds if you could.

Benedicto, your hand is raised and we will ask for more interventions and after that I will try to wrap up.

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>> Thank you. I'll be very short. Actually just to further clarify what I said before with regard to the official deadline. I think this issue is very complex and you don't solve complex issues in maybe one or two years, it requires a process for this because it needs to mature, there are political realities that sometimes repeat for a number of years. So what I am saying, I don't think to allow one or two or three more weeks or two months would be enough. I think that there's something that we could maybe entertain would be to see some [indiscernible] action and to acknowledge it's a file that needs to be under constant scrutiny, maybe the object of standing effort on the part of ICANN. And I think what should guide that decision that was [indiscernible] but [indiscernible] International organization that is truly International, not intergovernmental, but [indiscernible] stakeholder [indiscernible] new I understand, I fully concur that [indiscernible] it's not believed that once we [indiscernible] as to load that file. As to a third thing to be concerned with something very limited and say this is the end of it. But that's the emotion I would like to convey. Thank you.

>> Thanks very much, Benedicto. Before we move to Jorge and then to Greg. Let me try to confirm that I understand your message correctly. An idea that you could be would be to include some language in the overall report, not only for the jurisdiction subteam, it can be the jurisdiction subteam's work, but I was thinking something of general nature in the report that constant improvements to ICANN's accountability should be undertaken in order to allow for consideration of topic that is could not be addressed during Work Stream 1 or Work Stream 2 for that matter. We can certainly work on exact language for this, but can you just confirm or clarify what I have outlined is sort of what you were thinking?

>> Well, thank you. It's rather difficult maybe to react right now because it's just something that occurred to me right now. We have not given enough reflection to that. I think maybe if

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we could find a formula that continuous work and proceeding in a very strong way, not something that would be left, this could be something that could be entertained. This is certainly we would like to do. But I would like to be very clear for the record that as of now, for this particular meeting, the context we are discussing, we are opposing both the report and the recommendations [indiscernible] because it does not address adequately the issues it should have addressed.

>> Thank you very much, Benedicto. My takeaways is you object at the moment and you do not see any chance of improvements in the next weeks or even months, but that you would be willing to work with us on language for continuous monitoring or continuous efforts in the area for accountability. And I think is that is certainly something that we should keep an eye on and include in our report if we find language that is agreeable.

Jorge? Jorge, in case you are speaking, you might be talking to a muted microphone.

>> Hello, good evening. Can you hear me okay?

>> Yes, we can hear you.

>> You don't hear me? [Indiscernible] for the record. I think and I'll be very brief [indiscernible] together with Benedicto's comment is we need the room of [indiscernible] we have, perhaps what we need is this extra time to work out a common language that reflects the fact that there are issues of key importance to stakeholders that are part of this community and who have a legitimate interest. And on the other hand, we most possibly cannot be able due to the time to really solve all these issues. We have made some progress on very specific one, the OFAC and the [audio cutting out] applicable law issue, but there are many issues which still give rise to

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concerns to issues, to interests. I think that we should [audio cutting out] use this extra time [audio cutting out] weeks to work out this common agreed [indiscernible] and hopefully [indiscernible] through this acknowledging that [indiscernible] part of a process that may need to go on. So I'll leave it at that. Thank you very much for [audio cutting out] atmosphere I was seeing [audio cutting out].

>> Thanks very much, Jorge, you were slightly breaking up on me, I hope the rest could understand your intervention all right. But I get the message.

We need to close the cue after Kavouss and we have seven minutes left on this call and we have a request for AOB from Alan Greenberg and we still need to enter the first reading of this exercise, so can I please ask the remaining speakers to be very concise.

Greg, over to you.

>> GREG SHATAN: Thanks. I'll try to be as concise as I possibly can be. It strikes me, and I'm listening to what Benedicto said at first that this does require, you know, considerable, further consideration. I think that if we were to try in one or two or a few weeks to go from what is in Thiago's or Brazil's submission, we probably would not have the time for the delicate and nuanced discussion that could lead to consensus on such a complex topic, which would likely lead to a result that many would find unsatisfactory. And, therefore, I think it's best in many ways to view the work of the Subgroup, in part, as groundwork for continuing discussions that are, in essence, bigger than a Subgroup and bigger than enhancing ICANN's accountability working group. I do note that in our final report we contemplate an annex or a supplement where we will preserve and publish all of the non consensus documents, including the list of proposed issue recommendations that did not turn into actual recommendations. So as much

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as possible, along with the Wiki and the e mail list of the group, this hopefully will provide fertile ground for further discussions. And I think finding a way to acknowledge that, that this is an inflection point in consideration of these issues, that work was done that will be valuable in the future, I think is a good way to try to look at this. Thank you.

>> Thanks very much, Greg.

Let's now hear Sebastien.

>> Thank you very much, Thomas. Sebastien speaking. I think that the last speaker viewed I guess a way to go forward. I would like to suggest that we accept this report, the first reading of this report, in that we, at the same time at the level of the CCWG, not of the Subgroup, we do what Thomas suggested, try to find a [indiscernible] to say that we need to continue the enhancement of ICANN accountability. Work Stream 2 will not be the end. And as you say, there are different review teams and [indiscernible] is not meant to be for that, but maybe if Work Stream 2 says that [indiscernible] can under this topic could be one way to go a little bit further. And, therefore, we don't need extra time because we have extra time for the moment. We are dealing with finishing its Subgroup work and we'll have some time to deal with the full package. Therefore, I think with this time, we can find a way to write this about continuing announcement of ICANN accountability it would be a great way to go. Thank you.

>> Thanks very much, Sebastien. And last in line is Kavouss. Kavouss, over to you.

>> KAVOUSS ARASTEH: Yes, I understand Sebastien saying he accepts the first reading with the dissenting opinion to which maybe several others may associate, but I suggest that we postpone the second reading. We should use all possibilities. We should show a degree of

flexibility and not [indiscernible] and so on. It is a good idea that we go out of this thing with some consensus. So I suggest the Chair and Co Chairs to continue the matter to see what are the maximum deadlines that they could provide in order to maintain the timeline and also in order to have some degree of consensus. So I want to go between the two areas, not having many [indiscernible], not [indiscernible] to accept that, but accepting maybe the first reading [indiscernible] to this many people or several people may join, but postpone and allow the time, I don't know how many weeks, but still you can [indiscernible] there is a possibility and we should not be so restrictive and so limited for the deadline that you have [indiscernible] already here, dealing with the critical situation. This is different from any other issue so we prefer to have more time. And we have there in many other areas. Additional time would be useful. Please, Co Chairs, kindly consider that and not close the issue for now. Thank you.

>> Thanks very much, Kavouss. And thanks for all your comments.

We have one minute left on this call for the official time window that we allocated to this call. And we take good note of the proposals that have been made already, as well as those made in the chat by Olga and others, and what I suggest doing is as we have been requested, the Co Chairs will consider the arguments, we will review our plans and timelines and get back with the response to the mailing list in writing. I understand that Greg's suggestion got a lot of traction and there were some good idea that is we will further analyze and then report back to the group.

Rest assured that we're taking these issues, the time issues, very seriously. And we will get back to the mailing list shortly.

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Let me now ask whether there are any objections to call this a successful first reading. We do note [indiscernible] and Benedicto's and Thiago's objection on the record, but are there any further objections to declare that is a successful first reading? I see support [indiscernible], I do not see any other objections so far. Let me pause for a second.

>> Let me also remind you that Parminder has made some very clear objections [indiscernible].

>> Okay, yeah. Let's note Parminder's objection. Kavouss has given an objection.

>> KAVOUSS ARASTEH: No, it's not an objection, but I said that other people may join to Benedicto, leave time, because [indiscernible] intervention or [indiscernible] a few hours ago and we have to consult and so people may join him. So please don't take it only that Benedicto, other people may join. And I don't want to [indiscernible] with this or any other comment, they may join Benedicto's or [indiscernible] comments. Taking that sentence. Thank you.

>> Thanks, Kavouss. Our usual work practice is to see whether there are objections on the call. I understand that Brazil is seeking support for a dissenting opinion and that is perfectly fine, but that is separate from the objections during this phase of making this a successful first reading.

And I'm now happy to declare this is a successful first reading given the low level of objection. And we have an AOB. And before we go to that, and I'm announcing it to give Alan time to unmute his microphone, let me thank Greg and his team again for this excellent piece of work. So kudos to you. And over to Alan for his AOB.

>> Thank you very much. I have a very fast AOB. A very fast unmute on my phone. Just a brief comment that as you all know, Leon is being seated on the Board at the end of the ICANN

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meeting in Abergavenny and Tijani has chosen to replace him effective at that point. And we have appointed Tijani to be the Co Chair representing [indiscernible].

>> And I think if we were all unmuted, we would give both Leon as well as [indiscernible] a big hand, a big round of applause. We already wholeheartedly welcome [indiscernible] to the team and for transparency Tijani is already working with us to allow for a smooth transition, yet another transition, Co Chair transition so you can expect a smooth hand over between Leon and Tijani. Thanks so much for that positive note, Alan.

And we already discussed that the next Plenary is going to be [indiscernible] meeting in Abergavenny. And that leaves me with just declaring this meeting adjourned and thanking everyone, including staff, for their hard work and their patience. This has been a successful meeting. Thank you so much. Bye for today.

>> Thank you.

>> Thank you, bye.

[Meeting concluded]

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