

Transcription ICANN Helsinki
GNSO – Commercial Stakeholder Meeting
Wednesday 29 June 2016

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Chris Wilson: Okay I think we can go ahead and start. Chantelle are we okay to start recording? We okay? Good. Okay if we can go ahead and start. Thank you.
All right, good morning everyone.

Welcome to the CSG open meeting here in Helsinki. My name is Chris Wilson. I'm Chair of the Business Constituency but today serving as sort of moderator for today's discussion.

As you can see up on the screen behind me and in front of you we have a full agenda of topics to discuss. Some maybe will enjoy more discussion than others but we thought it'd be good to get a chance for everyone to get together here in Helsinki, notwithstanding the fact that there's no Constituency Day and other opportunities to chat.

But we'll have a full discussion here today so maybe real quickly we'll just go around the table so everyone can introduce themselves just for a minute, and then we'll go ahead and start the discussion. So Greg why don't I turn to you and we'll go this way?

Greg Shatan: I'm Greg Shatan. I'm a Partner with McCarter and English and the President of the Intellectual Property Constituency.

Tony Holmes: I'm Tony Holmes from BT, Chair of the ISPCP.

Anthony Harris: Tony Harris from CABASE Argentina. I'm with the ISPCP.

Esteban Lescano: I'm Esteban Lescano from CABASE Argentina, ISPCP.

Denise Michel: Denise Michel, Facebook, Business Constituency.

Anne Aikman-Scalese: Anne Aikman-Scalese from Lewis Roca Rothgerber Christie and I'm with the IPC, and I'm sorry I have to duck out for a human rights meeting in 15 minutes so...

Paul Mitchell: Paul Mitchell, Microsoft, Business Constituency.

Cheryl Miller: Cheryl Miller, Verizon, Business Constituency and CSG Representative.

J. Scott Evans: I'm J. Scott Evans from Adobe Systems.

Heather Forrest: Heather Forrest, University of Tasmania, IPC, Councilor on the GNSO Council and Non-Contracted Parties House Vice Chair on the Council.

Lori Schulman: Lori Schulman, Senior Director for Internet Policy for the International Trademark Association and IPC Treasurer.

Griffin Barnett: Griffin Barnett from Mayer Brown in Washington, DC, IPC member.

Charne le Roux: Charne le Roux, Adams & Adams South Africa, IPC member and also a Fellow.

Chantelle Doerksen: Chantelle Doerksen, CSG Secretariat Support.

Andrew Harris: Andrew Harris with Amazon and the BC.

Alain Bidron: Alain Bidron, ISPCP, Orange and ENTO.

Steve DelBianco: Steve DelBianco, the Business Constituency Vice Chair for Policy Coordination.

John Berard: John Berard, a Public Relations Consultant, member of the BC.

Steve Metalitz: Steve Metalitz, Vice President of the IPC and I'm here on behalf of the Coalition for Online Accountability.

Wolf-Ulrich Knoben: Wolf-Ulrich Knoben, ISPCP and on behalf of ECO Association.

Olivier Muron: Olivier Muron, Orange, France, ISPCP.

Chris Wilson: Thank you all very much. And I – just as a housekeeping reminder when you do have an opportunity to speak just make sure you announce yourself again for recording purposes so thanks.

So let's go ahead and get started and this is Chris Wilson speaking. Item Number 1. We thought it'd be good to get a chance for all of us to get together and talk a little bit about at least the three core PDP Working Groups that are underway and obviously that are engaged here in Helsinki, and see if there's an opportunity for policy coordination among the Commercial Stakeholder Group on issues of mutual concern and interest.

So maybe I'll go ahead and turn to Greg real quick and he can provide sort of his thoughts – initial kickoff thoughts and then we can have a discussion.

Greg Shatan: Thanks Chris. Greg Shatan for the record. You know, these three PDPs promise to shape the future of a lot of what we are concerned about at ICANN.

And each of the three groups have from the IPC very robust participation in the two figures, and would be very surprising if we had three figures but that's for some future ICANN.

And however of course, you know, given the fact that the three of us are stronger together as constituencies thought it was a good idea to raise in the stakeholder group context coordination.

We've put together email list for IPC members and one case includes other kind of I – we'll call fellow travelers. We could expand that or add other things but I think we – it'll be helpful if we do coordinate on in the next generation RDS and the RPMs and the subsequent round or procedures for new gTLDs groups on the kind of common goals that we have.

And if there are – if there's kind of significant gaps in our positions we should figure that out too, and when it comes to being influential and to fashioning

consensus we're going to be much more successful if we have common positions.

Obviously a lot of those will develop, you know, organically in the committee but not always, and of at least equal importance there are let's say forces or aid against us.

Not to sound paranoid but obviously there are differences of opinion and for instance on the email list if those opinions are expressed more forcefully and consistently and at length it doesn't help us either, so we all have to kind of bolster these positions by being active in the meetings and in the lists and in producing documents and the like.

So just kind of an overall views and I think a meeting of this length – I don't know you would have time to discuss the substance of the three, but I think we do need to find a way to work in a coordinated fashion on – as we move forward.

Anyone else? I don't know if there's much more we need to say about that at the moment but I think if there are some, you know, we can either open a cross email list or we can just communicate kind of first at the leadership level and then, you know, more broadly on what we see as - Bruce said maybe what we should do as a beginning, and maybe Chantelle can assemble a list for those three groups of who from these three groups participates in those.

We can then, you know, have kind of a super caucus and put together an email list for those three, one for each of those for the CSG participants and we can – that has kind of a major back channel for each of those three groups.

That's what I would suggest as a concrete action item. It's always nice to end a topic with an action item so I will.

Chris Wilson: Any other thoughts or questions about that? Anne?

Anne Aikman-Scalese: Yes thank you. Anne Aikman-Scalese for the transcript. I'd love to get a recruit from the BC to participate in the human rights side of things because, you know, businesses are authors as well and authors' rights are kind of being, you know, the human rights thing is going forward, right.

It's going to be in the – it's in the bylaws that sort of – and the framework – developing the framework for human rights...

Chris Wilson: Are you moving to Item 2?

Anne Aikman-Scalese: No I got to leave in two minutes.

Chris Wilson: Okay so you're still...

Anne Aikman-Scalese: I just was – you were talking about coordination.

Chris Wilson: Oh I was – yes.

Anne Aikman-Scalese: And if we can find...

Chris Wilson: Item 1 was the three PDP Working Groups and Item 2 is coordination of Workstream 2 but...

Anne Aikman-Scalese: Oh.

Chris Wilson: ...if nobody – I don't think anybody else had anything on this one so we're on to Item 2.

Anne Aikman-Scalese: Never mind.

Chris Wilson: No. So – and we are on to Workstream 2 so go ahead Anne.

Anne Aikman-Scalese: Just looking for somebody else to volunteer from the BC or ISPs in relation to authors' rights and the human rights development so that authors are not ignored. Companies are authors as well as we know especially under U.S. law.

Greg Shatan: And this is Greg. I would even go one step further, which is to say that there are certain folks who view the human rights topic and the development of the framework of interpretation for the human rights bylaw as an opportunity to create a viewpoint of human rights as being opposed to intellectual property rights and the rights of businesses.

There are, you know, I've seen discussions on other lists about, you know, IP laws being suggested in the UK that weaken human rights. I mean, that – there are those who view these as somehow opposable or opposing factions.

And the other faction, you know, is focused on cherry picking human rights and on – there are also those who view human rights as a universal concept and are very pro-human rights at – while being pro-IP. So I've got Steve and J. Scott.

((Crosstalk))

Steve Metalitz: Yes first I – this is Steve Metalitz.

((Crosstalk))

Steve Metalitz: I certainly agree with what you just said about the importance of this issue. But I signed up for this subtopic on Workstream 2 as well as another topic and never received any emails.

Do you – does anybody know if those lists have even been activated? Maybe Steve does.

Steve DelBianco: Steve DelBianco, CCWG Representative for the CSG and we spent all day Sunday Steve -- were you there for some of that -- going through each of the topics, continuing to generate both participants and observers and inviting people to give what we called lightning talks, which is supposed to be a five minute presentation on your vision for a particular topic.

And there was a discussion of diversity, SO/AC accountability and human rights. When that happens that's designed to generate even more people to sign up.

So I see your name in there and Anne to your point there are two BC members, Andrew Mack and...

((Crosstalk))

Steve Metalitz: But if those lists have...

((Crosstalk))

Steve DelBianco: ...Phil Corwin and...

Steve Metalitz: No one's ever sent me...

Steve DelBianco: ...and those are sign ups and there are no emails yet to anybody in those lists. The answer is no and we are – this is the key time though to step up as a rapporteur, the penholder.

Consider it a chair really for that working group and it could be a year to year and a half long project with probably the weekly or biweekly calls so it's a lot to ask.

But currently under the human rights we have three people that have stepped up to say they want to work as rapporteurs: Tijani Ben Jemaa, Neils Stenover and Nigel Roberts.

And that's not a – that's a mix of oil and water with respect to the last two names so it could be very difficult to achieve I think progress at drafting unless other people come in and take the pen so that early on if we frame it properly there's a better chance of having it make sense, of having it not cherry picked - to your point and to Greg's point not cherry pick, and keeping in mind that in Workstream 1 we locked in a bylaw that says that these human rights are not enforceable by ICANN or against other parties.

So enforceability – I can't tell you how many times I've quoted that particular bylaw on Capitol Hill where some are seeing potential concerns that the human rights could become enforceable.

Well we share that concern in Workstream 1 and we prevailed over some parties in CCWG who wanted them to be enforceable, but the bylaws say they

shall not be enforceable and we've got to stick with that and get some other BC members, IPC and ISP members to sign up right now.

But I will let you know believe me as soon as the list starts sending, but it's really going to be controlled by who steps up to take charge. So if Tijani, Neils and Nigel work out amongst themselves this week that they're all three going to be rapporteurs they would be the ones to send the first email.

J. Scott Evans: You know, I just think when we tried – when we did the IRT we tried to have a system when we looked at the clearinghouse that would recognize any sort of right and allow the Registries to pick what rights.

So if you were in Germany where they give broader rights to book titles and authors and you were a German Registry you could seek to protect that; not all Registries but a German Registry could and that we would have that database used to take in the same type of information.

And there was a real push against it. You see where we ended up. Only thing that ended up in the database is this. So I want everyone to be very cognizant that I am very worried that this is going to be used as some sort of backdoor way to grossly circumscribe the rights that we're able to protect.

What – even as far as trademarks and copyrights as they exist today I think that we need to pay very close attention. This is something that I think our membership is not paying attention to.

And we not only need to participate but we need to make sure that we're reporting out what the developments are so that our GR people and our organizations can get involved as well if Steve and others need help on the Hill.

So – or in Brussels wherever that may be because – and now I guess in the UK as well. But seriously this is something - I think we talked about this when I was in Buenos Aires last summer.

We sort of looked at it and thought that, you know, all of our companies have human rights perspectives. And I think we need to be able to harness that and have a message that we all are – take human rights very seriously but not to the point that they begin to circumscribe the IP rights that protect the economic development of many countries through their IP whether that be copyright, whether that be trademark, whether that be patent.

Anne Aikman-Scalese: Yes I completely – this is Anne again for the transcript – Aikman-Scalese. I completely agree with J. Scott and I think it's very important. I do also think that authors' rights are very important.

And I was reading the European Union Statement of Human Rights yesterday and there is a very succinct provision in there that says, "Intellectual property rights shall be respected."

So right now I'm headed off to the Human Rights International Working Group because that is where a lot of this policy has been generated over the last year with Neils' leadership.

And so it's not just participating in the Workstream 2 group. I think we have to have a presence in the human rights whatever it is. I don't know what it is.

Greg Shatan: It's the Cross Community – it's called the Cross Community Working Party on Human Rights. It is however chartered by no organization and has no charter.

It is actually a – an activity of the Non-Commercial Stakeholder Group so if we ever feel like forming a Cross Community Working Party we can do so apparently.

And it's important to take pains when it's mentioned to point out that it is not in fact any kind of Cross Community anything. There are a couple of members of – outside of NCSG in it but it has no, you know, balance or legitimacy.

It's basically an Article 19 Working Group NCSG fronted activity and it should be viewed as nothing more than that, which is exactly why I've been hesitant to get involved in it. I've spoken at it but made it clear that I am visiting.

Anne Aikman-Scalese: Steve what's my article on the universal convention for authors? Article 26? Who knows?

Steve Metalitz: Twenty-seven.

Anne Aikman-Scalese: Twenty-seven. Okay thanks.

Greg Shatan: Steve DelBianco.

Steve DelBianco: Hey Anne are you going to the GAC session on human rights at 9:15? Okay. A number of us will drift over there as well. That will reveal that the government representatives in the GAC have – are a mixed mind when it comes to the human rights stuff.

Several didn't want to see ICANN step into implementation or respect for human rights and some do, and of course everyone has their favorite human rights that they want to respect and not.

But I did think it was worth identifying that Workstream 2 has been scoped in the bylaws. It's been scoped and it's to consider which conventions or instruments if any should be used.

And if a convention like the U.N. Declaration on Human Rights is selected as the convention then we – all of us would run to suggest that you couldn't cherry pick.

You would have to take them all or none. The second is to consider any policies and frameworks that ICANN needs to fulfill its commitment to quote unquote respect human rights.

The third was how these frameworks could be discussed and drafted for broad stakeholder involvement. I don't think that's a particularly important one.

This is important though. What effect would the bylaw have in ICANN's consideration of GAC advice? So the notion there is if ICANN's going to respect human rights as defined by a framework and GAC advice comes over the transom even if it were consensus GAC advice – if that advice was in conflict with one or several of human rights we had checked the box on, would that actually give rise to a challenge?

Would the Board be able to suggest we're not going to accept that advice from the GAC? Well none of that's defined right now because there's no enforcement mechanism.

The bylaw doesn't provide for that but that is where we're going to have to see if there's a clash between what the GAC comes up with. And then there's a question as to whether the bylaw on respecting human rights would affect how ICANN's operations are carried out.

Now that could be interesting too because some of those 30 human rights in the U.N. Declaration are things like the right to -- I know -- sick leave and vacation policy.

There are some employment aspects to those human rights. Are those going to be suddenly respected in an explicit way in ICANN's employment practices? Good question.

And then finally how will the implementation of this bylaw interact with future ICANN policies and procedures, and that means PDPs and policies that we develop?

Would they simply consider and check the box on human rights as we're going through a PDP, or is there a more definitive way that human rights will have to shape the conclusions that are drawn?

Is there a checklist we'll have to adhere to? The -- it is a risk and it's going to take a year to year and a half. And I think that the game is not in the GAC where they're working on human rights.

It's not in the NCSG Working Party. I think Workstream 2 is where it's going to happen so I realize there are other groups but I think they're all going to converge on this Workstream 2.

Greg Shatan: One sec. I'll speak briefly and then Cheryl. This is Greg Shatan. I was essentially a co-rapporteur with Neils in the work team that we had that brought forth the human rights bylaw and I felt that was necessary for balance.

And I have contemplated throwing my hat in the rapporteur ring for this one, but there's only so many hours in the day and so many fish in the sea and the jurisdiction group to look at too.

I think I may have put myself forward for that one rather than human rights, but I will be an active participant having kind of been there when the stage was set.

And I would say that on the last point that you mentioned Steve that there are those in there who would very much want this group or I'd say the, you know, the Workstream 2 human rights group to establish a human rights review process for every PDP Working Group, for every policy, a non-PDP for everything that ICANN does and that filter could be set in a number of ways.

And if it's set only to filter for freedom expression and privacy defined as things which are - as opposed to intellectual property rights and the rights of those to, you know, look for bad guys.

That's going to be a problem so it's going to be a long slog. I'll be there to keep them honest but I think I'd rather maintain my non-neutrality than to slog along in a - behind the scenes.

But while you say that Nigel and Neils are oil and water on a personal level, I think on the human rights level they're actually more aligned and not to our benefit.

So anybody else feels like, you know, taking a role in the lion's den, you know, speak up now in the accountability mailing list. Cheryl?

Cheryl Miller: Thanks Greg. Just a question. I unfortunately was not able to be there on Sunday. So the topic of human rights is pretty broad. Are the sort of subtopics within that already definitely defined or is that up for further discussion?

Steve DelBianco: I just read those to you. What I read to you is...

((Crosstalk))

Steve DelBianco: ...in the bylaws as the subtopics on this human rights for that.

Cheryl Miller: So the – there won't be any added then. There's not room to add – to kind of broaden that or is there room to broaden it?

Steve DelBianco: The list I just read you is broad enough.

((Crosstalk))

Cheryl Miller: Oh yes I agree. I agree.

((Crosstalk))

Steve DelBianco: ...the scope of any different conventions of human rights - particular human rights in the list and a - an array of ways that it could impact what we do at ICANN.

Cheryl Miller: Okay.

Steve DelBianco: Yes what I just read is broad enough Cheryl that I wouldn't fear it getting any broader. It's...

Cheryl Miller: Okay.

Greg Shatan: Paul?

Paul McGrady: Paul McGrady. Not to change subjects but I don't know how much time we have allotted for the Workstream 2 topic. And I think the human rights issue is an important one but I think that the jurisdiction issue is the most important one.

There is discussion on that list on that topic already about going out and finding the most friendly jurisdiction for ICANN. That list presupposes that there is a problem with its current jurisdiction.

When asked about those problems where and how the community developed that list of problems it was, you know, silent. But there are a lot of presuppositions that are being baked into that.

People are actually talking about going out and studying a list of jurisdictions. They're your standard North American and Western European exclusion of everybody else jurisdictions, so it's not like we're doing a real global effort here.

But this is, you know, there – this is going to get out of control if it doesn't come into control. And then interestingly because Workstream 1 was based entirely on this very novel idea of a sole designator, which barely exists in California, the idea of changing a jurisdiction means we are talking about undoing Workstream 1 in its entirety.

And so there's two issues here. One is the underlying substantive issue of whether, you know, how we try to get that under control so that we don't end up spending an enormous amount of time in Workstream 2 dealing with that.

But secondly, whether or not we can get some guidance from somebody somewhere, the CCWG or the ICANN Board or somebody who says to us that, "Workstream 2 is lovely but Workstream 2 can't be used to undo Workstream 1," because if we talk about changing ICANN's jurisdiction there's more than – there's – it affects every policy decision across the entire organization.

And so any thoughts from the folks who are more heavily involved in Workstream 1 who pushed off this issue to Workstream 2 in terms of how this should be scoped and organized - I would appreciate it.

I volunteered to be the rapporteur on this topic. So far there are no other volunteers and so it seems like unless somebody else steps up I'm on a collision course with having to do it. But guidance would be great. Thank you.

Greg Shatan: I've got Marilyn then Steve DelBianco then Steve Metalitz.

Marilyn Cade: Thank you. Marilyn Cade speaking. I'm not volunteering but I am going to refer to something that you might think about looking back to for a jurisdiction.

When I was on the President's Strategy Committee for three years we retained Hans Corell, a former Under Secretary of the United Nations in international areas that are definitely related.

And we actually studied various jurisdictions in great detail. So let me speak privately to (J.J.) who did support us. I can't remember who the legal staff person was who supported us but you might want to just circle back.

And just to give people comfort there's that much paper associated with it. It was a really detailed study and it might be something that would help you to kick the can down the road so to say, because it would at least point out that there's been an extensive examination of the various legal jurisdictions.

And, I mean, we actually looked at moving to Switzerland. At Vin Cerf instruction we looked at moving to Addis Ababa. It – let me look into that and get back to you.

Steve DelBianco: Steve DelBianco. Paul is correct and bold and brave for stepping up to chair the jurisdictional element. But I do want to keep reminding you that we actually adopted a report and the report became bylaws.

They're adopted but they're not effective until the transition but the bylaws make it clear about what it is the jurisdiction group looks at. And many are happy to conflate jurisdiction with the question of where is ICANN headquarter located and incorporated?

And those are completely separate topics. All of the bylaws and Articles of Incorporation established that ICANN shall be in California and it is incorporated under the Public Benefit Corporation law of the State of California.

That is all taken as a given and Paul's right. You can't in Workstream 2 casually pick up and change the incorporation of ICANN, much less location

in any casual way without breaking everything we put together in Workstream 1.

So if there are only three bullets in the bylaws of what the jurisdiction Workstream 2 is supposed to look at, confirm and assess the gap analysis about concerns with the multiple layer of jurisdiction, and that jurisdiction has to do with, “Well who’s privacy laws apply to this Registrar when the Registrant’s from Northern Ireland, the Registrar’s in the United States of America and the principle operations are in Romania?”

So that’s jurisdiction? Which laws apply to multi-location activities? Second bullet. Are there potential alternatives and benchmarks for the ability of matching all CCWG requirements using the current framework?

I don’t even know what that means – where that came from. The third and final one was consider potential Workstream 2 recommendations based on the conclusions of the analysis.

This is not an analysis of where is ICANN located. It never was. There are some on this premature list who want to make that the topic. It’s not going to be the topic.

Instead we’ll try to make it clear of which jurisdiction applies and how that affects ICANN’s contracts and activities and policies, and I don’t think that has much to do with where the headquarters is.

So thank you Paul for getting involved. I’ll be watching that. I think there are four BC members who’ve already signed up to be involved in that one as well. Thank you.

Greg Shatan: Steve Metalitz.

Steve Metalitz: Steve Metalitz. Steve DelBianco made a very important point there and I think that topic is very important to us as well about which laws apply. So – and the Articles of Incorporation settled the other question.

Again I would just point out that this just seems like a strange and very un-ICANN-like way to proceed that, you know, rapporteurs are being chosen, topics are being identified including topics that are outside the scope of what they can do without actually involving people who have signed up for it.

So I guess you have to turn up a day early at an ICANN meeting to participate in those discussions. So I hope those who are participating could perhaps remind ICANN Staff that they should activate these mailing lists if they actually want to get this work started. Thank you.

Greg Shatan: Anything else on this? Lori Schulman.

Lori Schulman: It's not directly on the jurisdiction side. I just wanted the group to know I did volunteer as a rapporteur for the last listed Workstream, the conduct while engaging in discussions for Board removal. So if I am chosen we'll have a representative there.

Greg Shatan: Thank you Lori and it's good to see members stepping into these lion's dens. Anything else on this topic? I do expect to be involved in the jurisdiction stream heavily and speaking of jurisdiction I see Phil Corwin has just joined us.

Phil gave one of the lightning talks on jurisdiction at this Sunday festivities.
Steve DelBianco?

Steve DelBianco: And it's one contextual item. It's not a deep dive into substance but of the nine Workstream 2 threads that are in the bylaws six of them involve transparency and accountability, and those six overlap pretty tightly to the ordinary scope of the ATRT, the Accountability and Transparency Review that's called for under the Affirmation of Commitments.

And the next one of those ATRTs is supposed to begin in January 2017. And I identified a significant clash, a clash of coverage because both ATRT and Workstream 2 would at the same time be looking at sweeping, important issues and maybe even coming up with recommendations.

That's a recipe for disaster and not only volunteer for the team but conflicts. So we undertook about a 40-minute discussion on Sunday afternoon with Board members present and how to resolve that.

And we're going to be recommending that ATRT 3 simply assess the implementation of ATRT 2 recommendations, and it's a good bit of work with a lot of Staff research to assist it.

They may come up with a conclusion that some of ATRT 2's recommendations have yet to be finished and ought to be implemented. But we don't want ATRT 3 to overlap with the work that's in Workstream 2.

Workstream 2 is open to all whereas ATRTs are limited to 21 individuals selected by the – either by the community leaders or in this case by the GAC and the ICANN Chair under the old AOC.

More importantly Workstream 2 in the bylaws carries a much stronger stick for implementation. In other words Workstream 2 recommendations have to

be accepted by the Board unless the Board can site a rationale that it's against the public interest and vote by 2/3 not to implement it.

And then there's a whole consultation process with the CCWG where the Board has to a second time by 2/3 vote say that it's against the public interest to implement it.

That's a very high bar for the Board to reject a Workstream 2 recommendation on a tough thing like transparency of documents and Board meeting minutes and accountability.

So we have much more leverage using Workstream 2 than the ATRT, and for those reasons that recommendation will probably go to the Board from the CCWG chairs later this week.

So I did want to solicit CSG comments on that. I support this plan and was initiating it by trying to avoid the conflict and to increase our leverage. Is there – are there any points back on that? Any agree or support or opposition or questions?

Greg Shatan: Well this is Greg Shatan. I do support the way/path forward that Steve DelBianco mentioned. I know, you know, just me and not the IPC speaking I would hope that the IPC would come to the same conclusion in Toto -- that is not a Wizard of Oz reference -- and that we could move forward with this because I think it is right.

And I think rolling on from that a bit those are equally – those are important in many ways; not quite the, you know, lions and Romans and coliseum show that we're going to get in the jurisdiction and the human rights.

But SO/AC accountability, you know, dovetails in many ways with the weaknesses of the GNSO review and with the effort that Paul McGrady has put forth on behalf of the IPC to have the GNSO in the empowered community, in post-transition ICANN, you know, looked at as a – as something that has to, you know, grow and change and not just become a, you know, an extension of, you know, the Council's list of activities.

There's also Staff accountability, which in an alternate universe might have been the primary focus of Workstream 1. Instead we ended up focusing on the Board in many ways.

So those are important. I think it's important that we have folks in these groups and that we have, you know, again kind of coordination and many lists and back channels and appropriate ways to coordinate even if we don't necessarily agree, but important that we don't kind of all just act as like free floating atoms in these groups or worse yet, you know, leave a group kind of unpopulated.

There may be some where we could afford to be unpopulated at the IDP group or something like that but, you know, it's probably – and of course these workstreams will still come back into the plenary of the CCWG, which means that there is – while things are going to come out of those ovens fairly baked it doesn't mean that they're not going to get chopped when they're looked at by the full plenary which means that it's important to be on the plenary mailing list and not just wait are kind of concentrate on a sub team or a work stream list because things will move there. So, you know, kind of a call again for both population and coordination of efforts in those groups. Thanks.

Chris Wilson: So this is Chris. I - maybe just - because I know we've got only about 30 minutes left, but I would say with regard to the first two item - agenda items,

you know, I think going forward I think obviously I expect that the CSG excomm, if you will, will probably have a call, at least one or two calls before ICANN 57 in Hyderabad

And I suggest we probably keep these two topics on the next CSG agenda, the open meeting agenda in Hyderabad, as well, because it obviously will be a little bit - slightly further down the road on the Bellman of some of these ideas and I'm sure future ICANN meetings as well.

So these may be sort of semi-permanent topic items for us to discuss in the future interactions. So why do we go ahead and move off of those. That was some good discussion.

You know, quickly, there's - again, we've got a few things here. I know item three is with regard to auction proceeds. I think the thought was that we would have sort of this initial brainstorming session about sort of where we are collectively, potentially on that issue.

Tony Holmes: Chris...

Chris Wilson: I don't know that anyone in particular that has any thoughts of the top - Tony, why don't you go ahead.

Tony Holmes: Oh, does this window mention that Tony Harris wanted to be here but he's just walked in, so that's fine.

Chris Wilson: Did Tony - did you want to speak about the auction proceeds issue?

Tony Harris: Yes.

Chris Wilson: Okay, why don't you go ahead? Yes.

Tony Harris: Good 40 everyone. Tony Harris for the record. Catching my breath. I just went back (from the next gen). I'm on the auction proceeds drafting team. I just wanted to comment. We made quite a lot of progress.

There's an almost finished draft ready. The draft will have to be approved, the charter, the draft charter - sorry, and then there will be a call for the cross constituency working group which will be the actual group of people who will start to define how the auction proceeds money will be used.

I just wanted to raise one simple point from - at least from our perspective. We discussed this in the ISP constituency. There is a tendency within the - this drafting of the charter group.

It's coming basically from Alan Greenberg, to steer away from the original intent which was that these funds be used in a manner consistent with ICANN's mission.

And now there's wording been introduced, and the meeting that we had, I think it was yesterday - no, Monday, sorry - on this yesterday afternoon, it's now - the wording has been changed to say it's not - use the funds in a manner which would not be inconsistent with ICANN's mission.

Basically, the objective of changing that wording is to make it more flexible. This is something which has come up and has some measure of support. And having heard from two board members who participated on our team who are (Asha) and (Erica Mann), who brought concerns to do with our fiduciary and tax issues which could - let's say if the funds are not properly allocated and

distributed in a manner which they should be, they could evolve into a situation where tax competitions arise on ICANN's tax status.

So I think, is the CSG, I'm suggesting we should pay attention to keeping this on course. I think we should insist on these funds being used in a manner definitely consistent with ICANN's mission.

And the second point is we have a meeting today with the contracted party house. And I heard some of them at this meeting on the drafting team, our auction proceeds, bringing up something which I think is pretty pertinent, and that is how will these funds be used to ensure that the new gTLD program is successful?

And some of you may have issues with new TLDs and what may come from that as far as intellectual property infringement and so forth which is understandable. But the objective of, let's say, the universal acceptance group activities is to get these things to work properly.

So I think basically that sometime in - but say the process of when the cross constituency working group actually begins to function, at least from my perspective, we should give some support as a suggestion that part of these funds be used in a manner which would ensure the proper functioning of new gTLDs. It would save at least the (IFCs) a lot of headaches. Thank you.

Chris Wilson: Marilyn raised her hand and then Phil after Marilyn.

Marilyn Cade: I may need to go back - Marilyn Cade speaking - I may need to go back and clip my long dissertation speech yesterday during this meeting. During the study, during the GNSO council when the council had a working group on release of second letter, single letter names - second level, single letter names.

I spent two years on that working group and at the time was representing Overstock. And we became counsel to look at many of these issues. There are a lot of complications here that, when I was sitting in that room, I heard a lot of aspirational hopes from people that I think, first and foremost, need to be framed under a really thorough legal and financial analysis of some of the points that Tony just made.

And they've done a lot. There is a good summary, about an eight page paper. but my suggestion very strongly is that we do, within our individual constituencies, need to look at this but - and having a responsibility about the overall health and survivability of the organization, there's a real problem with making sure that members of the community who have interest in how the funds are spent understand what the legal implications are for ICANN's not for profit tax status and also for sessions of self-dealing.

There are people, perhaps portfolio gTLD providers, who would like to be able to be recipients of the funding and one way or another which would put ICANN in a very, very difficult, not just hack situation but perhaps even antitrust situation.

So I'm very interested in this working group. I do have a lot of background from that two years, but within our constituencies, I think we might want to distribute the page paper, and you know, think about it from the business side of ICANN (aside) from the political implications and risks of some of these decisions.

I also made a suggestion that we not rely on a standard SOI but because of the financial implications of these decisions, that we have a specialized conflict of

interest declaration. (Erica) suggested that no one should be allowed to be on the working group if they were ever going to be expected to benefit.

I think that's unrealistic. But I did also suggest that ICANN might need to seriously consider not allocating the funds themselves but establishing a framework and even a not-for-profit that would then allocate the funds so that there would be more independence. But there are a lot of ideas floating around.

Phil Corwin: Thank you. Phil Corwin for the record, and pretty much - all the thoughts, Marilyn. It's very supportive what you said. I'm happy to hear, Tony, that tax considerations may limit the ways in which these funds can be used and keep them consistent with ICANN's purpose because I'm concerned that we'll get a vast number of suggestions that go way outside of ICANN's remit.

So far as the universal acceptance, I don't have, personally, big problem with that. I feel that's a narrow technical issue. I would be very concerned about using these to market new TLDs overall, because one, that could have tax and legal implications, and two, marketing is extremely expensive and all the money could go really fast for that.

And three, again, personal view, I would hope that it would be consistent with setting up a nonprofit entity to administer this, that these funds would be viewed as an endowment that if used judiciously can - and we don't know when or if there will be a next round or whether there will be more last resort options.

But we have \$100 million and if that's you do something they can give out \$5 - say 5 million a year in grants, they can last a very long time particularly - even if it's invested conservatively.

By concern that there will be a lot of proposals and when you add them all up, they'll add up to more than \$100 million and they'll be pressured to just give it all away in one big squash and then it will all be gone and a lot of it will be wasted.

So I really hope that we view this as a great opportunity to set up something enduring that can benefit the community over a long time. And it will make everyone happy has ideas for how to spend it all at once. But he can prove something of lasting value. Thank you.

Chris Wilson: Paul.

Paul McGrady: Paul McGrady. A couple of things - one, am afraid to speak because I've been told if I have any input into how this turns out that, you know, I'll be disqualified and I assume that everybody will take it even further and say that every client that I represent will be disqualified.

I think - and their children, in perpetuity, forever. To me it's anti-ICANN to have a close working group where people are excluded just because they think they might bring some good idea to the table, right?

What if I wanted to participate because I wanted to tell you about a charity in Ohio that's doing amazing work on anti-Alzheimer memory, nonmedicinal that actually brings people back from where they were?

But I can't do that because, you know, I maybe somehow interested because I sit on their board or whatever, right? So I think that message number one is that the gag order needs to come of this. This is anti-ICANN. It's nonsensical to me.

Message number two is, if there's any possibility that these funds could be used to promote the industry rather than for charitable purpose, I really think that this (team) needs to go back and look at how did all these funds come into this pot, right?

Because I'll tell you, some of these funds came into this pot over objections from brand owners who had a bid on their own trademark because I can failed to have an applicant guidebook that recognized prior rights and put forward a dispute mechanism that made sense.

The dispute mechanism was based on an infringement analysis and everybody in this room knows you can't have infringement if you don't have use, right. So we need to have at least some reserve for some way to separate out the old on gains from the gotten gains before we start pumping this thing back into the new gTLD industry.

And so I think that this group - and I'm afraid to say that because I don't want anybody to be disqualified that knows me or used to go to college with me from be able to be involved in this.

But I think that this team needs to look at that issue. I think it's an important one. I think it will be a pure disaster if we take money from these folks to help these folks' business.

And lastly, and again, this is just as I'm listening this week, one of our major issues in work stream two is diversity. And nobody can seem to figure out how to solve that problem.

And it seems to me that if I were ICANN and I were looking for a problem to solve, I might be thinking that these funds would be a good - maybe something to think about in that space rather than just sort of wringing our hands and sing we wish we could reach people. We wish we could get people here to these meetings. This is a lot of money and it could be used for really good purposes if it's used for good purposes. Thank you.

Chris Wilson: Andrew Mack, and then we have 20 minutes left so I may have to close the loop on this topic. But Andrew Mack, when you go ahead.

((Crosstalk))

Andrew Mack: A couple things. First of all, I was in the same meeting with Marilyn yesterday. And it was really pretty striking how big the question this is, how widely diverse expectations and hopes are for this.

And secondly, how complicated this is. I've come out of a development background, not software development but international development. Worked with the World Banks for a while. I know how complex this is.

One hundred million dollars is a hell of a lot of money, no question, but by the same token, with this many people in these many diverse expectations, I think we will go through it conceivably very quickly.

I like Phil's idea of using this as a catalytic longer-term kind of thing. I like the idea of using this to promote diversity and especially geographic diversity (unintelligible) from the (global south) and things of that nature.

I do think that we're going to put ourselves in a terrible bind if we break the rules in such a way that people who have experience working with this kind of thing would be disqualified for participating.

Those people in the ICANN community haven't done this. This is actually very, very complex, thinking about how do we create accountability for the community with money that's being pushed out if people send us back, for example, report about the work that they are doing and we don't have the experience to really look at that, analyze it, understand it and related back to the community?

I think that will be - that won't solve the problem. I would suggest that we probably want to kind of keep these funds and some big proximity to what we're doing here in a sense that there may be real opportunity for us to take the work that we do - that we're doing around things like diversity and use these funds to amplify those.

If we get to the very worthwhile charity about Alzheimer's in Ohio, we may be a couple standard deviations too far away from ICANN's core mission and my concern would be that that literally everybody would have a claim. And that might be - so that we need to write this closely enough so that we're close to ICANN, I think.

The last thing I would suggest is that managing a portfolio of grants is its own art. And what we may very well end up with is a push to try to do a very small number of larger grants just because it is so difficult to manage this and any expectations around it and the accountability around it.

And that's fine but we've got to be worried about them (capturing) from a few large organizations and lack of impact as a result. So I think it's a complex question.

Chris Wilson: Denise, did you have a quick comment?

Denise Michel: I'm sorry if I missed that - missed this, but what's the inflection point for this issue? Where does this (auction) proceeds process stand? The timing has - have decisions been made on what the conflicts are and what people will be chosen for the working group and how it will operate? I'm just curious as to where we are in this.

(Tony Harris): Well, actually what was shown yesterday was the first, let's say, consensus draft of the charter because that's all we're working on now, the charter for the - to be able to set up a cross constituency working group.

The actual definition of how the funds will be used and how this will be structured will come from the working group which hasn't even been convened yet.

Now, the timing would be we should have the drafting process finished before Hyderabad and then - because it has to go out for public comment and so by Hyderabad, I think that we would probably be in the stage where it will be a call for volunteers for the cross constituency working group and we expect a lot of volunteers for that, of course.

Chris Wilson: Thank you, Tony, for raising that issue and we look forward to talk - Marilyn, okay.

Marilyn Cade: I'm going to make one other quick comment. So, I think the three substantive points that I made, and I will pull out the comments I made because they are fairly lengthy, one, I think that the - what's in the charter, draft charter right now, proposes no more than five members from each chartering organization and I raise the very strong objection and concern about that, noting that there would not even be one per constituency and the diversity.

Two, I also pointed out that the working group should have a very strong set of advisors with expertise on tax implications, antitrust implications for the organization and would possibly need outside expert advisors.

And I want to point to (Andy)'s comment, I now support two organizations - one commercially focused and the other an NGO that we see grants or they have - it's a really - it's both a science and an art but also a management nightmare.

So I think there is something that we should do between - early. We should look at that draft charter within each constituency and think about what our top priorities are about trying to improve before a gets chartered.

Otherwise, I think we're going to find ourselves, because money is involved, and a very difficult and almost personality and opinion driven situation that's even a challenging as the accountability working group.

Chris Wilson: Okay, final comment and then we have to move on. Sorry. Go ahead.

Ellen Shankman: Ellen Shankman. I'm working on the NomCom. I will say that that was a very big issue for the people as we were looking at board members and being concerned about how the issue of what was going to be happening with the auction proceeds.

And what I can say is that I was surprised by the various constituencies in the room that there were many more shared concerns than arguments about what might be done with it, and shared concerns about how do you decide what should be.

And so I think that this group might well be worth having conversations with some other constituencies because I believe that there are surprising natural allies on this that we should be exploring.

Chris Wilson: That's a good point. This is Chris. Thank you. Thank you, Tony, for raising it and thank - I think will continue to have to discuss this I am sure as the charter gets finalized and beyond.

Well, when we go ahead and turn to any of the item - item four. I'm looking at Steve Metalitz. I may only have - unfortunately, I only have about ten or so minutes left.

But maybe, Steve, you can tee up the issue now and we can, you know, talk about it in future opportunities, but at least tee up the idea that you're talking about with regard to GNSO fit for purpose and how you see things and we can move from there.

Steve Metalitz: Thank you. Steve Metalitz. We've talked many times in this group about the GNSO structure and how it marginalizes the concerns of the constituencies in this room.

I think we have a potential for dealing with at least part of that due to the fact that the GNSO has been given literally hundreds of new roles to play under the revised bylaws, rules that are in many cases distinct from the only role that

the GNSO council now has under the bylaws which is to manage the policy development process.

So the staff - the ICANN staff prepared a paper on this or chart on this which I think is very well organized and has some good information in it. I circulated it to the leadership of this stakeholder - this CSG.

Our document, which is less well-organized but poses 101 questions about these new roles and who will carry them out, but it's clear that - and the result of that - or as - following on from that, I think there will be a motion, as I understand it before the GNSO council this week to set up a drafting team to work on this.

So, in other words, I think there are a lot of - the only GNSO-wide structure that we have is the GNSO council, but many of these issues don't involve policy development, and therefore, there may well be a need for new structures.

I'll just add to that that looking at the framework that's been proposed for cross community working groups in the future, the cross community working group on cross community working groups, or whatever it is, that supposed to set the ground rules for this in the future, it's exactly the same question.

That document emphasizes several times that CCWGs are inappropriate for policy development and so a CCWG should only be set up where there's not primarily a policy development focus.

And so the question of how the GNSO would participate, choose its participants, decide whether to approve a charter, decide whether to accept the results are endorsed the results of the charter and so - of the CCWG, none of

those are tasks that are properly assigned to the GNSO council under the current bylaws.

So, as I said, I think this is a big challenge for the GNSO. It also, I think, is potentially a big opportunity for those of us who feel that the current structure, which was set up only to create a voting system within the GNSO council on policy development matters, disadvantages are - (sort of) marginalizes our views.

So I'll just - I'm happy to, you know, if you haven't seen either the staff paper or the 101 questions paper, I would be happy to take those available, and as I think Paul has offered, the motion that will be brought up, I think, tomorrow and I would encourage your counselors to support it. You know, it's just the first step, I think, but this is an important issue for us going forward. Thank you.

Chris Wilson: I see, Phil - and I think that's an old hand for Phil, so I think Paul, I see your hand up. Yes.

Paul McGrady: Thank you, Steve. I think there is definitely going to be a tug-of-war on this issue and there's going to be resistance to setting up additional structures within the GNSO.

So we need, first of all, the motion to (second), so anyone who's a counselor around the table that would like to do that, that would be nice because right now I'm looking like the lone wolf here.

And secondly, we're going to need some volunteers. Those have to be identified quickly to be on this drafting team. There's no limit, at least, as the motion is written now, how many people can participate.

But we need some people who are prepared to get into the weeds on this. And Heather and I are already at 250% capacity, and I hate saying that because it drives my wife crazy because his own 100%. But we're full up, so that means that if people have an interest in this topic, they're going to have to get their pans out. Thank you.

Chris Wilson: John.

John Berard: Thank you, Chris. John Berard. As co-chair with Becky Burr of the cross community working group on cross community working groups, I would encourage those who have an interest, particularly in light of the distinctions that Steve has made to attend the session where having today at 5:00.

It is not the intention of our recommendations to supplant the policymaking responsibilities of any as SO or AC but it's pretty clear since our - being commissioned in 2014, that there is an increasing reliance on cross community working groups for the business of ICANN.

And the objective is to set a set of recommendations - guidelines, really, setting the rails between which cross committee working group drafting teams can establish themselves and operate effectively. But the policymaking, ultimately, is the responsibility of the SO or AC that participates in the cross community working group.

Chris Wilson: Other thoughts, questions about this? I think I'll certainly circulate Steve's material to the BC list if I haven't already. If I haven't, I apologize. And, you know, obviously this is - I guess detecting a theme here, these are agenda items that I think will be continuing on further discussions, further meetings.

But I appreciate Steve teeing it up now. We can talk about it, of course, in Hyderabad and beyond. We have seven minutes left. I'm open to maybe turning to Tony Holmes if you want to provide a quick update on the GNSO teachers issue and then closing up from there.

Tony Holmes: Okay, thanks, Chris. Just a very quick update because there is a session on this today at 13:30 in Veranda One. I just to say that as far as this group is concerned, there is a linkage with the last issue and the work of the futures group.

And the focus of that group really is to recognize that there is a common problem space, get some dimensions around that had to focus on possible scenarios that could help address that, not to come up with a solution.

But I think it comes back to what Steve was saying earlier, to try and get some momentum to actually work on this, we need to pull out all stops and I see this GNSO futures group as part of that. So I won't take any more time on that but with suggest people come along to the session (today). Thanks.

Chris Wilson: Thanks. Any thoughts on - any questions, comments on that? Good. Okay, well, then I guess last item on the agenda, real quick, and again, we only have, unfortunately, five minutes left, but I know there was some - I should say controversy or concern about the processes in regard to the GNSO GAC liaison.

We thought maybe it was something that we could tee up for the discussion from all of us and coordinate perhaps thinking on the process, at least the process issues on that.

I'm happy to bring it up now. We can at least bring up initial concerns and then, you know, have off-line discussions or additional discussions down the road. But perhaps, just flagging the issues. So if there's - I don't know, Greg, if you want to flag it or Paul or somebody else, perhaps just like the issue for folks that don't - may not be privy to exactly what the issue is. Paul.

Paul McGrady: So this is, I think, frankly a communication bump in the road more than anything else. We asked for volunteers for GAC liaison role. The IPC put forward something that we think was imminently qualified.

In fact, he's the chair of the subcommittee for GAC issues within INTA. He leads a team of about 30 or 40 people. And nobody else put anybody forward. And so instead of saying, gee whiz, nobody put anybody else forward, would you guys mind if we extended this thing out, what - and collect more people which is, you know, that is legit.

What hit (the council list) was, well, we're not ready to you applied but we don't - you know, the message was that we don't think he's qualified and so we need to push this thing out.

Well, there's a difference between not being qualified and you didn't get enough people, right? And so I took umbrage with that and so there was some controversy on the list about that.

The bottom line is, at the end of the day, the decision was made to try again and so they're pushing it out with the goal of getting more applicants. That will be sometime in the fall.

Mason Cole is doing a great job and has graciously agreed to continue on until we can get that sorted. So I would just say that the take away from this is that

we should put everybody in - all of us should put somebody forward so that we have at least somebody that's, you know, not necessarily from the contracted party's house, at least been considered for the role.

And I think that procedurally, and from a TR standpoint, the message has already been - there's no point in repeating the message. I don't think we'll see this kind of bump - speedbump again. I think it's handled.

So the takeaway is, think about whether or not you would like to be in that role and let your leadership know sooner rather than later. That's get some good, robust applications in. Thank you.

Chris Wilson: Wolf-Ulrich and then Susan.

Wolf-Ulrich Knoben: Thank you. Wolf-Ulrich, ISPCP. Well, I was following the (Paul said on counselors), as well, and I would say it was not the best way it was started and the best timing it turned out.

So I didn't know who was applying or how many people were applying for that job. I had personally some background talks to people where I was thinking they might be appropriate for that job so they would bring the skills for the job.

And it turned out for some of them that the timing was not the best one because, as usual, volunteers are asked for and there are not too many volunteers. People who have the skills, they're loaded with other work and with other applications in other working groups, and so.

And it turned out it might be better (but from those told) if this call would happen at the end of the - at the time of the AGM in Hyderabad because there

will be a change of people were around (the counter) who are (now the) working group and so on.

That might be better. And they gave me the impression and that's where I accepted what was decided from the council, well, to move that: to repeat that call them when we are in Hyderabad. So I do hope that we will have more (resonance) then at that time and I'm confident we will have, and that's the case, so that's my impression. Thanks.

Chris Wilson: Susan.

Susan Kawaguchi Just really quickly, in Marrakesh when we were - the GNSO council was discussing this and it was - and I realized that it was a closed process and there cannot be transparency about the candidates, I pushed back vigorously.

Didn't win that argument, but there is no reason that this should not be transparent and we shouldn't know who is up for the roles and he was interested.

Maybe if we had known, we might have come to the same result right now. Maybe we would decide that we should wait and get a bigger pool of candidates but it seems a little mysterious that, A, the GNSO council doesn't really get to weigh in on - it's a very important role, in my opinion.

And there's no transparency to the candidates that, you know, the argument was, oh, it might - may deter people from applying and it's, like, every other review team, you know who has applied.

So I'm hoping that the GNSO council will work on a standard process that for every special role, because there will be more of them, that it's transparent,

there's a committee that reports back and we know exactly what the candidates are. So that's my initiative to - well, not my initiative, but I would like to move that forward.

Chris Wilson: Thanks, Susan. So it is - it's 9:15. This is Chris, and now we have the non-commercial stakeholder group that wants to start their meeting and I respect that. So why don't we go ahead and wrap up?

I'll just lastly say, there is a letter that the BC has drafted with regard to asking a series of quick questions. Andrew Mack drafted it regarding questions regarding moving locations of ICANN meetings and the impact it has on the community, et cetera.

I'll be circulate that to the CSG Excomm so they so they could circulated to their constituencies and we would love to get the entire Commercial Stakeholder Group to sign on of that letter if possible. So just look out for that in the future. Anyway, thank you all very much and we can stop recording. Thank you.

END