

BEIJING – Accountability and Transparency Review Team 2 (ATRT 2)

Friday, April 05, 2013 – 08:30 to 17:30

ICANN – Beijing, People’s Republic of China

SPEAKER: Good morning. This is the Accountability and Transparency Review Team 2 Meeting. It is approximately 8.30 in the morning on Friday, April 5th 2013 and we are in Function Room 11 of the International Beijing Hotel. Please start your meeting.

BRIAN CUTE: Ni hao. Greetings. This is the Accountability and Transparency Review Team, the second one. This is Brian Cute, Chair of the ATRT 2. Greetings to all in the room and online. Before we get started I’d like to, on behalf of the Review Team, thank Mr. [Jang?] for the warm welcome last night; the wonderful dinner and a very nice beginning to our work in Beijing. We will start the meeting by noting some housekeeping items.

For the Members of the Review Team, when you are making interventions, if you would kindly state your names before you do so for purposes of the record. I’ll do my best to refer to you by name but please, let’s make that a habit for the transcript and for the folks listening in. We are being streamed live, there will be a recording that is posted to the ATRT 2 site within the ICANN website and a transcript to follow the proceedings. So with that, let’s begin the work.

The first Item on the Agenda is to review the Agenda. If you could pull that up, Alice? And everyone in the room should have a hard copy. So

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the Agenda is now in front of us for today and tomorrow. Any suggested additions or changes to the proposed Agenda? Just to confirm, do I have Demi and Carlos online as well? Are you...?

DEMI GETSCHKO: Yeah, this is Demi [online? 00:02:25].

BRIAN CUTE: Okay. Okay, hearing no proposed changes to the Agenda, the Agenda is adopted. The next Item on the Agenda is to adopt Preliminary Reports. We will make it an ongoing practice to have a Report of each meeting of the ATRT 2, a Summary Report written and then adopted by the Team to become part of our record. We have three Preliminary Reports identified on the Agenda, in fact we have call number one from 22nd February and the Preliminary Report from the Los Angeles meeting of 14th to 15th March to review and adopt.

We do not yet have the third report, call two. That still needs to be circulated through the Chair and Vice Chair. So we have Preliminary Report from call one on the 22nd February on the screen. This was circulated to the Team. Do we have any suggested changes, edits to the Preliminary Report? Hearing none. Do we have a move to adopt?

UM: I move.

BRIAN CUTE: We'll have a motion in a second. Okay.

UM: I second.

BRIAN CUTE: Okay. All in favor? Okay, the Report is adopted. Second Report from Los Angeles, 14th - 15th March 2013. Any suggested changes, edits to the Preliminary Report from the Los Angeles meeting? Seeing none, hearing none. A motion to adopt the Report? Alan, second, David? All in favor? The Report is adopted and as noted the third Report will be circulated to the Team shortly and will be reviewed and approved at our following call.

Agenda Item #4 – Conflict of Interest Policy and Statement of Interest. We have three Items here. One, to adopt the Conflict of Interest Policy of ATRT 2, two, to adopt the Statement of Interest template and three, to proceed to signature and completion at this meeting for each Member on their Statement of Interest. In Los Angeles we decided to ask ICANN Legal to look at the Conflict of Interest Policy from ATRT 1 and inform ATRT 2 whether there were any changes or differences between that Policy and ICANN's current Policy.

Sam Eisner did review the Conflict of Interest Policy and has made some suggested additions to the Policy, for us to review and discuss. If you could pull that up on the board? I think it's under 2.1 – Duty to Disclose. Oh no, there's some other ones, hold on. C – Financial Interest, are those additions by Sam or are those edits that we made? I don't see the margin notes. I don't think we made any so anything here would be from Sam, correct? Any red line?

Okay, so let's go back up to A. everyone. Okay, so the edit from Sam is the deletion of the word 'disclosed'. It determines that a covered person has a potential conflict. A conflict of interest arises when the RT, following the procedure set forth in this policy determines that a covered person has a potential conflict. Any discussion? Everyone comfortable?

Okay, let's go to C. The red lines again are from Sam Eisner, ICANN Legal, as proposed modifications of the policy. A financial interest exists whenever a covered person has, or should be, is engaged in discussions to have, directly or indirectly, through business, investment or family. i) an ownership or investment interest in any entity which ICANN has. An existing or proposed transaction, contract, dispute or other arrangement which shall include any New gTLD applicant or entity related to a New gTLD applicant.

ii) A compensation arrangement with any entity or individual with which ICANN has a transaction, contract, dispute or other arrangement, which shall include any New gTLD applicant or entity related to a New gTLD applicant. So that's the new... That's the add. The substantive addition is in each of those additions' specific reference to being a New gTLD applicant or related to a New gTLD applicant. Any discussion? Any concerns? Alan? State your name.

ALAN GREENBERG:

I don't have a personal concern. I'm a little bit uncomfortable with saying anyone who has engaged in, if it didn't come to fruition now that the applications are in, sort of have a red mark on their forehead, but

I'm not sure it particularly matters. It just seems to be a little bit of a super [set? 00:08:35]. But I'm not sure how to change it to exclude that particular case either...

BRIAN CUTE: So you're context is where someone was engaged in discussions to be involved, directly or indirectly, with a New gTLD applicant but that didn't come to fruition. So I think that maybe the misspelling here, as I read it, whenever a covered person has or is engaged in discussions. If that's the proper correction then that changes the context that you're drawing out.

ALAN GREENBERG: No, it still says 'has'. 'Has engaged in discussion'. If I, three years ago engaged in discussions, it fell apart, I still would be subject to that, so... As I said, it doesn't affect me personally. I'm not sure it will affect anyone [substantately? 00:09:18], I'm just pointing it out.

BRIAN CUTE: It's a question. Avri?

AVRI DORIA: Avri Doria speaking. Actually, I think it's probably just as relevant because as opposed to trying to curry favor you may be currying revenge. So it's just as viable a reason... [laughter]

ALAN GREENBERG: Touché.

BRIAN CUTE: Any other discussions? Larry?

LAWRENCE STRICKLING: Apart from the Policy question I think there is a sentence construction problem here because I think the ‘has’ was intended to imply meaning you currently have an ownership or investment interest, and then he’s added the issue about also being in discussions, and I think technically the reading is that the ‘has’ also applies to ‘has engaged in discussions’ is true because of the way the sentence is written. But I don’t think that was what was intended to be captured there, so I don’t know. If the Policy changes laid out by Avri is we want to capture those, it doesn’t matter, but I do think it’s a drafting problem that created Alan’s concern. It wasn’t intended that way.

BRIAN CUTE: Yeah, so two questions there. Do we want to capture the scenarios as Avri framed them? That is, someone who had been engaged in discussions to be involved in a New gTLD application, they didn’t come to fruition. Do we want this Policy to cover that individual as well? Any discussion. Larry?

LAWRENCE STRICKLING: Well, I will just point out that I think even if the Policy covers that, that implicates the Duty to Disclose. It doesn’t mean that the RT would find that there is an actual conflict that has to be dealt with, so it really comes down to if people feel there ought to be a disclosure of that.

BRIAN CUTE: Any opinion? Discussion? David?

DAVID CONRAD: It's slightly orthogonal to the discussion about the specific text, but I'm a little disconcerted about the focus specifically on the New gTLD Program. There are other issues that ICANN are involved with that ATRT is going to be reviewing that may require some disclosure; things like dealing with IP addressing and the IP addressing markets and the various parties involved in that. I just find it a little disconcerting to focus specifically on the New TLDs within this and not more generally into the areas that ATRT has a duty to review.

BRIAN CUTE: Thank you. I'm looking at the language too and it says 'an ownership or investment interest in any entity with which ICANN has an existing or proposed transaction, contract, dispute or other arrangement.' Does that cover a New TLD application? Is that broad enough? To David's point, if there's a broader universe. Larry?

LAWRENCE STRICKLING: The language clearly picks up the broader universe. The question is, do you want to make specific reference to the gTLD issue as a subset of that. It's the elephant in the room. I don't have a problem with putting it out there in terms of the specificity of it at this point in time, but the language is intended to capture everything.

BRIAN CUTE: Any other discussion? Alan?

ALAN GREENBERG: Yeah, I agree with Larry. We know why it's there in the current ICANN Disclosure Documents for the Board. It's an exclusive subset of it doesn't restrict the rest of the words so I don't see a problem in using it. The next ATRT around probably, it may not be as relevant but at this point it still is a big thing, so...

BRIAN CUTE: And is there a consensus that ATRT 2 would take an expanse of interpretation of the broader language? I'm seeing nodding heads. That's how we will approach the Policy. Is that the right fix, the 'or is engaged'? I think we agree on that so can we change it to 'is'? All right. Let's move on.

Okay. J. A potential conflict. It's up on the screen. I won't bore you by reading it but everyone if you'd read through it for the next few minutes and let's have discussion. So it looks like J. The purpose of the edit is to bring in members of the covered person's family, primarily, if I'm reading that correctly. Avri?

AVRI DORIA: Avri speaking. Perhaps it's a term of art I don't understand but 'duality of interest', does that have special meaning that makes it different than potential conflict? I don't understand the specific terminology.

BRIAN CUTE: Thank you. I'm not sure I have an interpretation to offer yet myself. Any other discussion on J. i) or J. ii)? Alan?

ALAN GREENBERG: I think before we get to the point of signing it, it would be nice if someone told us what the words mean. I don't think I've ever felt I had to call a lawyer in before signing a Conflict of Interest Statement before. I'm starting to get the feeling now.

BRIAN CUTE: Yeah. And C. A close personal relationship between the covered person or member of the covered person's family, with which... Within an individual who is directly or indirectly, through business, investment or family, a party to a transaction, contract, arrangement involving or being concerned by ICANN. I see some good intent but some gray there. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you very much. It's Olivier for the transcript. That third point looks as though we need to just give the list of ICANN participants, since we know a lot of the people quite well. [laughter and overtalking]

BRIAN CUTE: I have two thoughts here. One, it would be obviously useful to hear context from Sam and the question in my mind is, I'm assuming that these provisions exist somewhere in ICANN's Conflict of Interest Policy,

because the ask of ICANN Legal was ‘here’s the ATRT 1’s Policy, does it differ from ICANN’s, if ICANN’s is stronger or different in some ways maybe we should synch them up.’ I don’t know that with certainty though. Absent hearing from Sam. And I also feel that ATRT 2 has its own latitude to frame the Conflict of Interest Policy as it sees appropriate as well. David?

DAVID CONRAD: Given we have questions that need to be answered by Sam, should we perhaps table this until we can get Sam into the room? I know she’s here, I saw her this morning at breakfast.

BRIAN CUTE: That’s a good idea. Alan?

ALAN GREENBERG: Reading this I suspect ‘close personal relationship’ is what we would in other circles call a significant other. But it’s uncapitalized and sufficiently vague that I wouldn’t want to have to defend that in a court of law.

BRIAN CUTE: Thank you Alan. Steve?

STEVE CROCKER: Just a couple of quick points. We’re laboring over all of this and the time we’re using for this is taking away from actually digging into what we’re here for. The overarching, overriding principle here is are any of us likely

to be, or potentially, or have the appearance of being affected away from our exclusive duty here? And all of these details are in the service of that simple principle and could be stated in a sentence or two as opposed to several pages?

And then finally, maybe I'm the only one but in... For serving on the Board and I think the Staff as well will fill out a very explicit Statement of Interest and Conflict of Interest document, and my plan is to go and dredge up the one I submitted – if I can find it, which I hope I can – and hope that the answers I provided there match up with the slots that are provided here so that there's no discrepancy. And I don't actually see anything here that is fundamentally different from what we've already done with the standard form that I can't use this.

BRIAN CUTE:

Thank you Steve. Yeah, Larry?

LAWRENCE STRICKLING:

So I do agree with David, that we ought to get the lawyer in to explain these terms, but we're the Accountability and Transparency Review Team. We ought to set the standard in terms of this issues, so it doesn't bother me to subscribe to these points, if these are the issues on which senior officials and employees of ICANN must also conduct their business – there's no reason why we shouldn't do the same. But let's understand what the terms are.

I will point out though that the actual Disclosure Form attached to this doesn't include all these issues that the [finer? 00:19:34] Potential

Conflict so somehow we've got to get that squared up too. But at the end of the day we ought to be holding ourselves to the same standard that Steve is to hold himself to as a Board Member, even though this is a temporary group brought together, but the issue we're looking at is important enough, we ought to demand the highest standards for ourselves.

BRIAN CUTE:

Thank you Larry. Sam's on her way? Terrific. Is she in the building or is she...? Okay, very good. Why don't we... Will she be here momentarily? We'll pick that up in a few minutes. Do you want to just keep walking through the documents so that we can engage with her if we have any other live questions? If you keep scrolling. So 2.1. Duty to Disclose. Here are the suggested edits or additions. Okay. Is there anything in here that raises an issue we want to engage with Sam or is it looking pretty straightforward to everyone? For me the important thing here is the change in circumstances as I noted to the Team in Los Angeles, want to make it a habit that we regularly address this issue each time we come together and that we're very proactive. Is it Sam?

UF:

Yeah.

BRIAN CUTE:

Hey, how are you?

SAMANTHA EISNER: Good. No problem.

BRIAN CUTE: Sam Eisner's joined us and if you don't mind we were just going through the proposed modifications of the Conflict of Interest Policy and had a few questions. Just to frame it, again, the question from the Review Team was here's the Policy from ATRT 1, is ICANN's Conflict of Interest Policy different substantially. Would you make any suggestions or modifications to make it consistent with that? If you could go back up to... Well, this is where we were right? This is where the questions came in.

We had gone through... Pardon me, Sam. Go back up if you would, Alice? We'd gone through C. Financial Interest and the sense of the group was understanding why New TLD applicant is being called out specifically because of what's going on, but a sense from the Team that the language of i) is broad and would be interpreted broadly by the Review Team, in terms of any transactions that could trigger a duty to disclose or potential conflict.

So, comfort level with calling out explicitly but feeling as though it's covered in the general language as well. If you would scroll down to J. Alice. This is where we've got some questions. One question under J. Potential Conflict. Looking at i) and ii). One question was duality of interest. Could we start there and what is intended by that or the meaning of that phrase?

SAMANTHA EISNER:

Sorry, thank you for having me and we did appreciate the opportunity to take a look and everything that we've provided are recommendations for your consideration. So we understand that this is a Policy that you are putting forward so... So as ICANN has been really taking a more intensive focus, particularly on its internal Staff conflicts of interest, we've done a lot of work within our Staff Conflicts of Interest Policy to really flesh out multiple areas where conflicts of interest could occur.

So we've made it more robust internally to identify a duality of interest, and that's really where you could owe... You have an interest in multiple areas that... It's not extremely different from a direct conflict of interest but it could be that you feel that there are multiple places where you owe a duty and so you have a duality of interest. Through it... If this language causes an issue I would encourage you to strip it back. We wanted to provide it so that we could help...

We could show you what it is that we were looking at internally, within ICANN, but our initial sense was that the language that you already had there was fairly robust and so we don't want to cause undue burden on you guys to try to figure out 'do I have a duality or do I just have a regular conflict of interest?' The base purpose of this is to identify 'do I have a conflict of interest or not? Or a potential?'

BRIAN CUTE:

Thank you. Actually a couple of thoughts there, first of all from the Review Team's perspective all of these suggestions are very welcome. We, as a Review Team operating in isolation, would want to set our bar very, very high on this issue. So anything that ICANN is doing that

strengthens our baseline Policy is welcome as suggestions. Also useful to see how ICANN is thinking through this is real-time. Very useful.

I think what we're really asking for is just some clarification on the phrase. It's not any resistance to adopting it it's just needing to understand what's the intention, what does it mean and then if we're comfortable baking it into our Policy. So maybe just one more description of the duality of interest concept?

SAMANTHA EISNER:

It is a difficult one because it's very hard to discern between what would be your direct conflict of interest versus duality of interest and sorry... I know I'm not really... I don't really have an example that I can give so... This language here, I provided some of the edits to this document and then Amy Stathos actually helped provide some additional edits and so this is one that she put in. She's the master of our internal Conflicts Policy and so I don't have the good example of what it is that she had in mind, so... We can get that information for you and send it over later today if that would be helpful?

BRIAN CUTE:

Well, I've got Avri first and then Larry. Avri?

AVRI DORIA:

Thank you. I was the one that had the curiosity about the language. To me it sounds like, for example, if someone was participating in two things that they felt were complementary and that they weren't in conflict, and an example I would give would be if somebody were

participating in this and also the CSTD Working Group on enhanced cooperation that among other things would be looking at ICANN. It's not a conflict of interest because there's not business, but there's a duality in terms of two things; one would... Is that the kind of thing?

SAMANTHA EISNER: That could be the kind of thing to consider and I... If you look at the exact language of the potential conflict where here it's really tied to transactions, contracts or arrangements and so it doesn't... What you're identifying Avri really is that type of complimentary interest that could be there. It doesn't sound like something that would actually fall within the purview of this exact language, though it might be something that would be worth disclosing to the ATRT 2 Team, so that everyone could consider if there were potential conflicts between the two in terms of information availability, etc.

BRIAN CUTE: Thank you. Larry?

LAWRENCE STRICKLING: Thank you. Steve may have already shown me; I just want to know is... Given the lack of clarity around this, is this currently a requirement of the ICANN Policy, 'duality of interest'? In terms of a required disclosure?

SAMANTHA EISNER: I would have to go back and check that.

LAWRENCE STRICKLING: And then Sub C. which probably had to be Sub 3. is close personal relationship in the current Policy?

SAMANTHA EISNER: Yes it is.

LAWRENCE STRICKLING: Okay, thank you.

BRIAN CUTE: Stephen?

STEPHEN CONROY: Sorry, thanks. I think the definitions here in the Conflict of Interest Policy are ICANN so if I could perhaps read out their definition and it might help or not. 'A duality of interest arises when with respect to a transaction, contract, arrangement, program, policy, or other matter, a covered person or a member of a covered person's family has a fiduciary relationship with another party to a proposed transaction, contract or arrangement, which gives rise to a circumstance in which the fiduciary duties of the covered person to ICANN and the fiduciary duties of the covered person, or the fiduciary duties of the family member of the covered person, to the other party may be in conflict. A duality of interest does not constitute a conflict of interest if ICANN and all other parties to the transaction, contract or arrangement being in possession of all material facts waive the conflict in writing.' Well, that cleared it up for me; I'm not sure about... (laughter)

SAMANTHA EISNER: It actually did clear it up for me. (laughter) So...

STEPHEN CONROY: Could you interpret it for us then?

BRIAN CUTE: Well, I think we might have enough to be dangerous at this point. But let's move through the rest of the document and identify for Sam any specific questions that we have. Yeah, Alan?

ALAN GREENBERG: There was one in what is now point C. Point iii) of define close personal relationship.

SAMANTHA EISNER: Actually, close personal relationship is defined within the ICANN Policy, so one of the things that we could do to assist you would be to provide you with those definitions, to put it in. The close personal relationship, I'm going from memory here, I don't have it in front of me here, is broadly defined within the Policy about people that you might cohabit with or other relationships of that type.

BRIAN CUTE: Okay. Let's move through the rest of the document, smartly, and identify other issues for clarification or questions for Sam. This is 2.1.

Anybody have any questions on the proposed language from ICANN Staff? Is this clear for our consideration? Okay, Larry?

LAWRENCE STRICKLING: This seems to suggest that simply signing the disclosure isn't enough; that there's a second step you have to take to affirmatively conclude you've got a potential conflict that you... So why isn't signing the Disclosure Statement enough in terms of identifying what the potential issues could be?

SAMANTHA EISNER: When you sign a Disclosure of Interest, from the way I understand how the process works, when you identify what your interests are in items it doesn't necessarily mean that each one of those interests gives rise to a potential conflict of interest. If you take a view of it from the way that we handle conflicts of interest, interest issues with the Board, one of the things that we do is we post a Statement of Interest from each of the Board Members. That's very much like your Declaration of Interest Form here.

We don't presume that each one of those interests identified on the Statement of Interest or Declaration of Interest Form actually is a potential conflict of interest, but it's there for transparency of information, to assist both the person who is the covered person under the Policy, as well as their colleagues; to help identify if one of those declared interests could give rise to a potential conflict of interest. They really are complementary documents.

BRIAN CUTE: Okay. Any other questions on 2.1? Okay, Alice, could you scroll further? That was it, okay. We have... Yeah. Well, I think this is the old Statement, right?

SAMANTHA EISNER: So you wanted me to describe...?

BRIAN CUTE: Yes please.

SAMANTHA EISNER: So you might have seen the Note above in the Declaration of Interest language that we added. One of the things I noted was that there was already a Declaration of Interest process for the ATRT and that it included the Affirmation of the Conflict of Interest Policy, but one of the things that the Conflict of Interest Policy did not do was reference the Declaration of Interest. The fact that there is an Affirmation of the Policy in two places seemed a bit strange. Also, because the information is being sought here is really a truncated Form of the Declaration of Interest; it almost gave rise to the ability to have competing interests identified between the two documents.

It gave rise to a potential inconsistency between the two and so if you were comfortable that your Declaration of Interest captured all the types of interest that you wanted to be captured for consideration of the Conflict of Interest Policy, it didn't really seem necessary to me as I was

reading it cold to have an Affirmation in the listing in two places. If you have the reference over to the Declaration of Interest Policy, that was above, that could be sufficient to take care of this separate Affirmation because if you scroll down you'll see that there are lines to fill in the information again. And so that way you could have two documents that you know would never be inconsistent. The other thing that we did was we added the language here regarding the same language that you saw above, in the event that you wanted to keep this in here.

BRIAN CUTE:

Okay, so it was more of a housekeeping in terms of interrelationship between the different parts of the Policy and the Declaration. So you have also provided us with a proposed draft, Declaration of Interest document, and I think in trying to keep it simple in my mind it's good to have an Affirmation that you received the Policy, that's a good statement to have on record, we should be able to keep that. And then this would be the sole potential Declaration. Would that make sense, from your perspective?

SAMANTHA EISNER:

When I saw the two documents together that did make sense to me and so the other part of the change to the... When I added in Declaration of Interest the other thing that I included there was an Obligation to Update it in the even that things changed. So your Declaration of Interest document would be your changing document and your Conflict of Interest Policy would always remain the same.

BRIAN CUTE: Okay, so that's clear to me. The other thing we observed before you came in the room is taking a quick look at this proposed Declaration of Interest Statement that... Actually, the issues identified on this Statement are narrower than what is in the Policy so we would just seek to coordinate or reconcile those two before finalizing it. Does anybody have any other outstanding issues for Sam? I think clearly we'd like the chance to go over any of the context you've provided and if you have any other material you can provide to us that we can review before we finalize the Policy, I think we still need to do that as outstanding items, right?

SAMANTHA EISNER: Within the next couple of hours what I can do is get Alice the definitions from the Conflict of Interest Policy that might help make each of those two issues; the duality of interest and the close family or close personal relationship language clearer. I'll also try to send over an example of duality of interest just to help make that a little bit clearer.

BRIAN CUTE: Larry?

LAWRENCE STRICKLING: But then as you pointed out, somehow that's got to be reflected in the Disclosure Statements because right now no one has asked to disclose either a duality of interest or a close personal relationship. We'll need to pull that language into the Disclosure.

SAMANTHA EISNER: Is that something that you want me to take a hand at?

BRIAN CUTE: If you don't mind. And maybe if you could do that by this afternoon, terrific, if that means... We're meeting tomorrow too. We would like to approve this Policy in final form. We would all like to have our Statements of Interests signed and Declarations before we finish our face-to-face meetings, if that's possible, Sam?

SAMANTHA EISNER: Sure.

BRIAN CUTE: Okay, terrific. And thanks very much for coming so quickly. That was great. Thanks. All right then, we'll table that until we hear back from Sam and pick it up when ready. So the next Item on the Agenda... Is there any closing points on that? Okay. Next Item on the Agenda is the Terms of Reference and Methodology of ATRT 2. If you could pull that up Alice? Okay. So this is a proposed document for ATRT 2. We're going to walk through it and discuss it. It is based largely on the same document that ATRT 1 used.

I've made some suggested changes as has Alan Greenberg and Lise. So we have in front of us, at the outset of the document, just essentially lifting from paragraph 9.1 of the Affirmation of Commitments, the Terms of Reference for ATRT 2, which is the 9.1 language; A, B, C, D and E. No suggested changes there. If you'd scroll down? Okay and this language

is again directly lifted from the AOC. It's the language which speaks to the follow-on Review Teams and their tasks, which is us.

So that is verbatim; no need for change there. If you'd scroll down? Okay, stop there. So this is important for us to consider. ATRT 1 put forward some notions of accountability and notions of transparency. I hope you've had the chance to review them and reflect on them. This is an opportunity if ATRT 2 felt it wanted to refine or add to these notions of accountability.

Accountability is not only a means by which individuals and organizations are held responsible for their actions; it is also a means by which organizations can take internal responsibility for shaping their organizational mission and values, for opening themselves to external and independent scrutiny for assessing performance in relation to its goals. Any thoughts? David?

DAVID CONRAD: I just noticed that you inserted 'its' there and that might be a useful... It says 'relation to goals' and you said 'its'...

BRIAN CUTE: Thank you.

DAVID CONRAD: 'Its' might work also.

BRIAN CUTE:

Thank you. Scroll down. Okay, and here's where I added some suggested language too. ATRT 1, as you can see on the paragraph at the top of the page, spent some time trying to frame what ICANN is and what its role is and how its role affects parties to whom ICANN must be accountable. That was one concept that the first team felt it was important to give its work some orientation. In looking at this document myself, the language that I've proposed here actually goes to what ICANN does and that was not clearly a part of the first ATRT 1's Terms of Reference and Methodology document.

But I want to put this forward to the Group for discussion and consideration. This is listed from ICANN's website and it speaks to the specific functions. One of the things that triggered this from me was a discussion about IP addresses that we had in Los Angeles. Some of the Team Members feel very strongly that that's an area we should focus on, but this is offered as a potential addition to the document. Any discussion, questions, concerns? Larry?

LAWRENCE STRICKLING:

Fiona informs me we should take the last two sentences out as not being accurate. I mean, the [Inner Functions Contract? 00:41:39] is a piece of all this but its not... Doesn't capture all of those activities which were listed, so I guess we need to talk to ICANN about its website to and we'll start with here. (laughs)

BRIAN CUTE:

Okay. Yeah, Alan?

ALAN GREENBERG: You know, I'll go back up to this change I suggested in the first sentence of what ICANN is. It says in the DNS eco-system and I would suggest Internet. DNS is the names part, not the numbers part.

BRIAN CUTE: Thank you David.

DAVID CONRAD: Yes, back when the AOC was originally being drafted this was one of the comments I made internally within ICANN because the AOC specifically reference DNS and that grated on my background. And I was informed that within the AOC context the term DNS was redefined to incorporate all of the things ICANN interacts with and you all can [inaudible 00:42:44]. So the intent was to redefine the DNS to incorporate all of those things, at least in the context of the AOC, both the naming and addressing aspects of ICANN.

BRIAN CUTE: Alan? Sorry, Alan and Steve.

ALAN GREENBERG: I would simply say in a document that's supposed to make things crystal clear to the public, redefining common terms is probably not the best way of doing things.

BRIAN CUTE: Steve?

STEVE CROCKER: Yeah, David’s comment reminds me that I too was present for some discussions sitting on the Board’s side. We had a distributed conversation which David was in Staff, I was on the Board, Fiona was over on the government side and I suspect that there may have been some communication issues back and forth, and so this would be a very good opportunity to undo whatever misinterpretation there was of that terminology, so I’m in strong agreement with David and with Alan. Fiona you haven’t spoken yet to this but you can... But it would be helpful to straighten this out and declare the previous interpretation inoperative.

FIONA ASONGA: Yes, I think our understanding in all of this is that the domain name system includes domain names, IP numbers – you need both for the system to work – so whenever we’ve negotiated agreements with ICANN over the years and any of our foundational documents pre-ICANN, it referred to the domain name system and it included both. So maybe if you want to say the domain name system which includes domain names and IP numbers, that’s always been our interpretation of the text. And all of our years of agreements for 12 years.

BRIAN CUTE: Steve.

STEVE CROCKER: So I take your point, I understand that having domain names without IP addresses is incomplete, but the effect is to have it sound pretty odd to the people that have been working throughout the community, in the field, for 30 years as opposed to a mere 12 years, if I may. Meow. I'll take the opportunity on this, which I do very often, to disagree with [vent? 00:45:15] in this case.

BRIAN CUTE: This is just starting to get interesting, I hate to try to reconcile it so quickly but let me offer something; good conversation around domain names system and the appropriateness of that phrase within the context of the Affirmation of Commitments, and clearly our work is bounded by the Affirmation of Commitments but in terms of accountability and transparency, more broadly, I would say this Review Team recognizes that ICANN also operates in the Internet's eco-system and that for us to not consider ICANN's accountability and transparency in the context of the Internet eco-system might be short-sighted too, so perhaps we can incorporate both references in some way to keep the accuracy of the original spirit and letter and keep the broader scope that we should have in mind? Thoughts? Okay, so we will take the pen to this paragraph and try to accomplish that; incorporating both domain names system specifically and Internet as well. David. Sorry, then Olivier.

DAVID CONRAD: Well, are we done with the first paragraph?

BRIAN CUTE: No, no.

DAVID CONRAD: Okay.

BRIAN CUTE: Olivier? We're just finishing up on the first. So on the second my intent was just, should we incorporate just the basis 'what does ICANN do?' as opposed to what it is and grab some language that needs some working discussion? David?

DAVID CONRAD: So I think this is actually quite valuable. The only edit that I might make is I believe ICANN references, in various documents, coordinates at the highest level or at the top level. The wording as it is written implies it coordinates across all the levels or it could be taken to imply across all the levels and that's not where anyone wants to go.

BRIAN CUTE: Thank you David. Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you Mr. Chairman. What is space allocation? Because at the moment it reads as ICANN coordinates space allocation. I think some would disagree.

BRIAN CUTE: David.

DAVID CONRAD: I think it's an [extra tarma address face? 00:47:38], yeah.

UM: It doesn't read well.

BRIAN CUTE: Steve?

STEVE CROCKER: Yeah, right.

BRIAN CUTE: Okay? Any other discussion on this point? But general agreement that this is a useful statement, let's get it clarified and correct with respect to what ICANN does and that also is a point of orientation of our work. Okay. Yeah. David.

DAVID CONRAD: I'm really hesitant to raise it but the last part of the first sentence, with regards to the root server management, I'm not entirely sure the people involved would agree with the assertion that ICANN coordinates so...

BRIAN CUTE: Thank you. There's a drafting task here. We'll take that offline. Okay, keep moving through the document. (laughter) Avri?

AVRI DORIA: I didn't understand... Sorry, I didn't understand the last point?

DAVID CONRAD: At least historically the root server operators strongly disagreed with any assertion that ICANN coordinates them.

BRIAN CUTE: Coordinates from the beginning of the second sentence, tying down to root server?

DAVID CONRAD: Yeah.

BRIAN CUTE: Okay, in the next paragraph, just to call out, there is a, in brackets, link to framework, and the ATRT 1 had a framework of reviewed document which really spoke to how does the Review Team go about collecting and analyzing data to develop its recommendations. That's what that reference is and we will get to that discussion in our face-to-face meetings today. Now, these are suggested edits by Lise, so this review accountability is defined as... Unfortunately she's not with us until noon so I can't offer context around that edit. Yeah?

UM: Just defer until she gets here.

BRIAN CUTE: Yeah. We'll keep going. Okay. Number 1, 2 and 3. Again, ATRT 1 developed some concepts about accountability, the public sphere, which is the broader public. Number 2, the corporate and legal accountability, which covers ICANN's obligations to the legal system and its bylaws; and 3, participating community accountability that ensures that the Board executives perform functions in line with the wishes and expectations of the ICANN Community. Are we all comfortable with adopting these concepts for ATRT 2? Any discussion or suggested changes? Denise?

DENISE MICHEL: This is Denise Michel. So I recall in the first ATRT that defining the public interest and grappling with that issues was a challenge, as it would be for anyone, and in particular the public comment forums that the ATRT 1 ran, a clear definition and responsibility for public interest was raised I think several times, and so I would just note that I would expect how you define public interests; what it means and how ICANN fulfills that responsibility will likely, again, be raised by some Community Members as an important vocal point for this Team. And I'm not quite sure that you've... I don't think you've captured public interest in the 1, 2, 3 definitions you have listed there and I find it a little bit confusing when you talk about the participating ICANN Community and the public sphere accountability and it's a challenging area.

BRIAN CUTE: Thank you, no, points well taken and those from ATRT 1 do recall the challenge of defining the public interest and in fact ATRT 1 deferred and didn't feel it was appropriate to come up with a definition of public

interest. Public sphere accountability certainly implies public interest, without a doubt. In a 2D way, trying to define spheres where ICANN is accountable, you can distinguish it a bit but there is a link. I think the question here at the end is an interesting one too; the difference between the ICANN Community and the public. Is there a material difference? Avri?

AVRI DORIA:

This is Avri speaking. That's one of the problems that I've had with this is we speak... It's almost like there's a category problem. We speak of ICANN, we speak of ICANN Community, we never speak of ICANN Staff. Is that what we mean by ICANN, or is ICANN the two together. And one of the definitions that various people come up with, public interest, is almost a process definition that, within an ICANN context, we define public interest by the community's processes. And so therefore we're reviewing the processes in light of the public interest, but that public interest is defined by the Multi-Stakeholder processes that we're reviewing.

I think that's part of what makes it difficult, is there is no definition of public interest, outside of our Multi-Stakeholder process that defines that interest and so how we capture that reflexive definition is difficult, and as I say, I always have a problem when I'm reading these; of we speak of ICANN... Do we just mean the Staff or do we mean ICANN Staff plus community? And then we say ICANN Community here, so are we saying that ICANN Community is just Staff? Which I don't think it is. And I think we somehow have to deal with that category issue and somehow deal with the 'public interest is defined by our process'.

BRIAN CUTE: I think the Review Team has to make recommendations to ICANN about ICANN’s accountability and transparency, which means the Board and the Staff. And in hearing you, so on number 3, if it were changed in this way that it’s ensuring that the Board and executives and Board and Staff functions in line with ICANN processes, which would include the Multi-Stakeholder, bottom-up creative processes. Is that going more in the direction of addressing your points? Denise.

DENISE MICHEL: I guess I would disagree that when you talk about ICANN accountability your just talking about the Board and Staff. And in fact, ATRT 1 spent a good deal of time and made recommendations that went directly to the accountability and transparency of the NomCom, for example, or the accountability and transparency of the GAC; recommending many improvements there, so I see it as a much broader set of issues.

BRIAN CUTE: Thank you. Alan?

ALAN GREENBERG: Thank you. If you look at E. in the AOC – assessing the Policy development process to facilitate and enhance community, cross-community deliberations and effective and timely policy development. A process that is largely volunteer-based with Staff support. I don’t think we can use such a narrow definition.

BRIAN CUTE: Thank you. Other points? Avri, was that suggestion addressing your points?

AVRI DORIA: I'd have to see how the words worked out because it's really losing that category error and that category ambiguity is one of the things that I'm looking for and such, so I'm not sure how the words work out. I think so but...

BRIAN CUTE: Are people still... Sorry, taking the points of the broader scope of the Review Team, beyond Staff and the Board, into account, are people still comfortable with this concept of three spheres? Does it make sense if we revise number 3 appropriately? Stephen.

STEPHEN CONROY: Look, I am concerned that the last part of the sentence saying 'and expectations of the ICANN Community' I agree with everything, to a degree, what is that to define? To me part of the reasons why there is so much interest in what we're doing is because a much broader range of people are taking and addressing this that just the ICANN Community. So if the final test is the expectations of the ICANN Community, I think we're letting down a whole range of people who are watching us very closely thinking this is about more than just whatever has been a traditional definition of ICANN Community, even three years ago, and

some of the external debates that are impacting would probably say that's just a little too narrow if that's your test of a tick at the end.

BRIAN CUTE: Larry?

LAWRENCE STRICKLING: Why... I just had asked Stephen the extent to which some of these broader issues in the broader community that's watching this is captured already in the first paragraph, on public sphere accountability. That was...

STEPHEN CONROY: Sorry, I think I agree with Avri; it's what the final words look like rather than anything wrong individually with each of the points.

BRIAN CUTE: Thank you. Alan?

ALAN GREENBERG: Yeah, I'm going to say something similar to what was just said, but in a more generic way, and I'm not trying to wordsmith the actual statements. I think something was mentioned before – I'm not sure if it was you Brian or someone else – is the ICANN Community equivalent to the public and the answer is hell no. The ICANN Community are the people who know how to spell ICANN or occasionally go to meetings, care about the decisions. The public is that vast group of people that

have never heard of ICANN but get influenced; get affected by the decisions we make.

BRIAN CUTE:

And thank goodness for that. Okay, I think the thoughts are well captured. We'll take pen to paper here and make some modifications and come back to the Team and see if we hit the mark. Alice? Okay, here's additional suggestions from Lise, let's wait until she's back. Oops, sorry. Alan?

ALAN GREENBERG:

I think Lise made some comments on my original comment. We talk about accountability in some great depth here and then we immediately revert into work method... Into transparency of our work methodology. We don't talk at all about transparency of ICANN or for that matter, what the public interest means in some non-definition, perhaps, but some vague way, and I think we need to because it's the other two components. There are those who say ICANN, if you corner them will be accountable and explain why they did something, but they're far from transparent in how they did it, and I don't think it's an issue... A part of the aspect that we can ignore here. So I think we need to go right in and say what we mean by transparency and what we mean, in some vague way, by public interest.

BRIAN CUTE:

So it sounds like you'll have some edits to offer?

ALAN GREENBERG: Should the Chair ask, I could. I'm not sure I can address the public interest given the difficulty we've had but I certainly think we can put, perhaps, examples to it, to give people an idea of what we mean, even though I don't think we want to ever define public interest in some rigid way. But we need to have a connotation of what it means and I think the onus is on us to at least try.

BRIAN CUTE: Thank you. Actually, a question; does Staff have a working definition of transparency in any documents, Denise?

DENISE MICHEL: Sorry?

BRIAN CUTE: Does Staff have a working definition of transparency or a working definitions in any documentation? If it does we could start there.

DENISE MICHEL: I'll check historic documents but we have the Affirmation of Commitments and the ATRT 1 and the work that's done under there, but I don't recall any off the top of my head.

BRIAN CUTE: Okay. Let's check. If there's something there we can start that as a starting point and then... Okay, thank you. Okay, work methodology. I'm sorry, Avri?

AVRI DORIA: Just one question... Not question, a comment. As a Member of the Coordinating Team that did not do an edit I do volunteer to help with the text editing as penance.

BRIAN CUTE: Wonderful. Thank you. Okay, work methodology. Let's... For the record. A. The ATRT 2 will operate with maximum transparency as a general matter; that is our... Whatever that means, when we define it. (laughs) Oh boy.

UM: We did have a team that did this, right? Three years ago? I find it amusing that somehow we skirted all these difficult issues and still managed to put out recommendations.

UM: Maybe the critics were right.

BRIAN CUTE: Okay, work methodology. This is where we get to the nuts and bolts. Could you just scroll down a little bit? Obviously we're going to have teleconferences. They're going to be recorded, there'll be transcripts we discussed and there will be reports; Summary Reports that we'll review and adopt that become part of the public record. We talked in Los Angeles about going off the record and using Chatham House rules, when we do that – if you could slow... Scroll down. David?

DAVID CONRAD: I'm curious how logistically that would actually work in the context of relatively open meetings and open teleconferences, if we wish to take something off the record. Would that imply kicking people out of the room, disconnecting the teleconference...? Did you all do that in ATRT 1?

BRIAN CUTE: Yes, yes we did and yes it would imply those things, that it would become a private meeting. I think a general summary that doesn't assign explicit quotes to individuals would be prepared to provide as much transparency on the content of the meeting as possible, would be the general approach. Okay, so ii) is a summary of minutes – (sneezing) God bless you – that we have streaming. iii) Maintaining a public website, which is found on the ICANN website with all the documentation for the public to review. Email communications; those are open and just to note, we have two email lists. I'm sure you're all aware that one is the general ATRT 2 list and one is the coordinating list so the Chair and Vice Chairs along with ICANN Staff, when we need to do the ministerial, administrative stuff that the rest of the Members of the Team don't need to get bogged down in.

We have a separate list but that also is viewable by all the Team Members and the public. Keep scrolling. Let's see. Now, scroll down a little bit more just so I can get the sense of this entire section. I think this is... Okay. So what we have here is a modification of what ATRT 1 put into its Terms of Reference and Methodology document that we will, over the course of our work, get input from ICANN Staff. There's a

specific mention here of the interaction we had with Staff in Los Angeles – that we will meet with Staff as needed. It really is, effectively, just a statement to the effect that there’s going to be ongoing interaction with ICANN Staff, and that will be also transparent as we move forward. Any questions or concerns here? Alan?

ALAN GREENBERG: Just a note to our good Chair that it is 2013 this year, not 2012.

BRIAN CUTE: Thank you sir, it just feels like 2012. Any other discussion on this section?

STEPHEN CONROY: Brian?

BRIAN CUTE: Yes, Stephen?

STEPHEN CONROY: I was just wondering, when we say streaming is this an audio stream, is it possible, given the jumps forward to have a visual stream of any sort? A Skype, a FaceTime, anything at all like that that people could hook in? I’m not sure if Adobe and Apple had fallen out three years ago but I had a difficulty with an iPad using Adobe, whereas it was a fairly common application back then, it’s not anymore. In terms of what we did three years ago the world has moved on a little bit in terms of what’s

available. I was just wondering if, from the Staff, if it's possible to do things a little differently.

BRIAN CUTE: Yes, to your suggestion anything is possible. We can provide any sort of technology or platform for people to participate or view what we're doing. Alice is that... Is video something we could do?

ALICE JANSEN: Yes, for meetings we could arrange this certainly.

BRIAN CUTE: Okay, so for those willing to watch the paint dry we will absolutely accommodate them. (laughter) No doubt. Alan.

ALAN GREENBERG: I think the issue on visuals is not so much watching us talk but the documents... That people are remotely seeing the documents that we're looking at.

BRIAN CUTE: We can provide the full gamut too so I'm happy to look into that and in the next meeting set that up. Yes, Alice?

ALICE JANSEN: Yes, and [inaudible 01:07:31] discuss the availability of documents on the Wiki. There was discussion whether on the final documents to be

posted on the Wiki or documents in progress, so I wanted to come back to you on this and...

BRIAN CUTE:

Do we have availability of documents on this, [Board? 01:08:04] input, GAC... Okay, no, I'll just bring that up now. Alice raised a point; in Los Angeles we talked about in terms of visibility and transparency, using a Wiki and posting documents there that were documents in draft; working documents. And there was a discussion around whether we would post drafts and have them visible throughout the entire drafting process or whether we would post only final documents that had been fully edited. I think there was some difference of opinion as to which way to go there. Without burning too much time could we have a brief discussion on that and come to a conclusion? Alan?

ALAN GREENBERG:

Thank you, I think the decision was that it may be up to the individual drafters but that we shouldn't be compelled to, if for no other reason than the Wiki is not the best tool for doing the actual drafting of a group of people, and to have to take every version you have – every intermediate version – at midnight and post it onto Wiki, which is something I've done for other projects, is a real pain in the butt. Plus, there's the possibility for people misunderstanding it because it really is words that are in transit; in change. I don't think we forbid anyone from doing it but I don't think we want to compel everyone to do it either.

BRIAN CUTE: Thank you. David? Or... I'm sorry, Avri.

AVRI DORIA: Avri speaking. Yeah, I think the other thing we had gone to was that it was enough if somebody was doing it on Google Docs that they posted the URL for it. If they were doing it live they sent copies to the list as it was going on and people could find them there and that once they were to the state of what we call 'working drafts' then the Wiki would be a longer-term home. I think this goes along with what Alan was saying. It was loose, but there was this notion of posting the draft to the mailing list so that it was there and it was findable and if somebody like me preferred to work on a Google Drive as opposed to Word, that would work too, as long as the URL was posted.

BRIAN CUTE: That's right. I think that's one of the places we may have landed, which is drafts are attached to the emails that go back and forth between Team Members who are drafting, but more final drafts or cleaner drafts will be posted to the Wiki. But they could be not final drafts just... Is there any strong objection to that approach? Does that sound like a sensible approach? Okay, then let's take that on as our practice. Drafts in any state attached to emails, open to the public, findable. Wiki drafts posted, let's do our best to make sure they're as clean as possible so we don't post something that has the public interpreting improper context or creating some kind of tempest in a teapot. Alan?

ALAN GREENBERG: I just want to make sure that our words don't set unreasonable expectations. If Avri and I are collaborating on that paragraph that's missing here and we decide to exchange it in private emails, back and forth, we shouldn't be forbidden from doing that because those aren't archived anywhere. As long as when it comes to some reasonable semi-final state, it does appear in a private... In a public [law? 01:11:32].

BRIAN CUTE: Well, let me ask that because I think our default operating procedure is open and transparent for everything we do unless we call a private meeting, so... Avri?

AVRI DORIA: I tend to agree with you. I think if we're sending it back and forth we would CC. it to one of the lists. It might be the coordination list as opposed to the full list but that's visible also. Obviously, if we're sitting down over coffee and we're sitting with the thing between us and we're going... That's not going to be recorded but if we're sending something on email, that... Because anything that's sent on email is in a sense almost public and so copying the list just when we're doing that would be a good practice. I would recommend that for us, but obviously if you and I sit down over coffee on this paragraph, we don't need to turn the recorder on.

ALAN GREENBERG: That does mean we'll need lists for each of the streams.

BRIAN CUTE: I think the default is open, the coffee exception is noted but our default is open so let's act in that way. Okay, moving on. Meetings, just the statement that we will hold face-to-face meetings. We know that we're going to have meetings concurrent with the three ICANN meetings here. In Los Angeles we also agreed that we're very likely to have another face-to-face, maybe two, over the course of the year. We'll have to discuss that while we're here in Beijing. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you very much Mr. Chairman. You might need to add a month to the Durban... Sorry to the Buenos Aires meeting.

BRIAN CUTE: That would be November. Okay. Telephonic meetings? Now, C – Reporting. This is something I've heard some discussion offline. Members of the ATRT 2 are, as a general matter, free to report back to their constituencies and others with respect to the ATRT 2 while the ATRT 2 will strive to conduct its business on-the-record to the maximum extent possible. Members must be able to have frank exchanges. This is where we go to the necessity, potentially, for closed sessions or at least implicitly. Maybe this isn't the paragraph. Back at the top about going through AC's and SO's Members are free to report back and that was what we did last time. I, for example would go to the Registry Stakeholder Meetings, on occasion and just give the Registry Stakeholders an update on what's going on in the ATRT in terms of the ongoing work. I don't think there's any controversy in that.

There was one provision in here that spoke about ACs and SOs providing input through the Members of the Review Team who come from their community that was a bit restrictive, but that's not here, we'll get to that later. Was that earlier? Yeah, let's get back to that because I think that's a bit restrictive.

UM: Section D.

BRIAN CUTE: Thank you. Okay, this was it. So it says... The way it's written is it says 'each SO and AC is invited to submit its own set of recommendations and/or observations through its representative on the Review Team. The ATRT 2 will contact each SO and AC to offer a meeting with Members of the RT in Durban and will provide a list of discussion topics for that meeting.' I think that first sentence is too narrow, personally. I think ACs and SOs are going to provide inputs in response to our request for public comments – they don't have to do that through the Member of their AC or SO who happens to sit on the Review Team. Do we all agree that that can be loosened, that language? That ACs and SOs should be able to provide input through other means? Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Mr. Chair. If I could just... I agree in some ways that yes, there will be other avenues such as the public comment. However I do wish to make sure we don't lose track of the actual process for obtaining this input. In our case, for example, in At-Large's case, we have a variety

of views and I wish to be able to consolidate views before them then being presented to you, rather than having individuals pertaining to be providing you with a view of the ALAC or a view of our Members, when it really is an individual view.

BRIAN CUTE: Thank you. Larry?

LAWRENCE STRICKLING: I think this is a drafting issues, that people are interpreting this language to be more restrictive. It seems to me, adding to Olivier’s comment, this is an additional opportunity we want to extend at least to SOs and ACs – we can come back as to whether or not we want to do it with other groups – but if you simply start this paragraph with saying ‘in addition to all of the other avenues for providing public input, each SO and AC is invited to submit their own recommendations through their rep’, it seems to me we can accommodate both concerns.

BRIAN CUTE: Thank you Larry, that sounds like a potential cure. Olivier?

OLIVIER CRÉPIN-LEBLOND: I was just saying yes.

BRIAN CUTE: Okay, let’s make that addition. ‘In addition to...’ Larry, if you would? In real-time?

LAWRENCE STRICKLING: 'In addition to all the other opportunities for providing input, as set forth in this document...' Something to that effect, then you go onto 'each SO and AC is invited to...' and then continue on with the language.

BRIAN CUTE: Alan?

ALAN GREENBERG: I was just going to point out that this one is D, which follows an A, B, C. C is the... If I remember correctly is the Community Stakeholders and the public. You can't get much wider than that so... ACs and SOs come after that so I'm not even sure we need to elaborate if... We have more of a problem with indentation than anything else here. (laughter) I couldn't find A for the longest time.

BRIAN CUTE: Thank you. Yes, Larry?

LAWRENCE STRICKLING: We jumped through these pages fairly quickly and gotten deeper into the document but if we're done with this paragraph I would like to raise the issues of the GAC on the next page in the fact that certainly, Jørgen has suggested – and I agree with him – the idea that perhaps we want to have something more specific in terms of outreach to governments over and above outreach to the GAC. And maybe this is an opportunity to talk on that. I know you've got it on the Agenda for later but if we were

going to do something in that regard, it would seem you'd want to capture it in this document at this point.

BRIAN CUTE: Thank you Larry. Jørgen?

JØRGEN ANDERSEN: Thank you Brian, Jørgen speaking. I had exactly the same point as Larry has just raised, and when I looked into the document my idea would be that under Item G there might be the possibility of adding a couple of words, making the sentence 'the ATRT would explore other avenues for outreach to the public, including to governments, to engage and collect'. So that might address what Larry has just said. Thank you.

BRIAN CUTE: Thank you. Alice, if you could put that... Larry?

LAWRENCE STRICKLING: I would just ask if you were going to consider a friendly amendment, perhaps bringing it up within the paragraph on the GAC preceding that would indicating we'll talk to the GAC but then we'll also consider outreach to governments above and beyond that. Maybe if it's better there?

BRIAN CUTE: Jørgen?

JØRGEN ANDERSEN: Yes, I can agree with this.

BRIAN CUTE: Yes, so GAC, which comes above F, that should become F, standalone? And then we add a sentence to the effect in the new F that we will also explore ways to reach out to governments. (coughing) Okay, Alan?

ALAN GREENBERG: If that's under the title of GAC, is that going to be construed as we will reach out to governments through the GAC? Which I don't think was the intent. I'm just wondering if the title overrides the...

BRIAN CUTE: Jørgen?

JØRGEN ANDERSEN: I think Alan has a point here. Could you replace GAC with governments? Governments include GAC as well as governments.

BRIAN CUTE: I'm seeing nodding heads. Thank you. It's okay, yeah, we'll clean it up. That's going to be F and then GAC Working Group becomes G. Right. Then outreach... And this is outreach to the public, just exploring other avenues for outreach... Can you scroll down a little bit? Just see the rest of it. Okay. Yes, Jørgen?

JØRGEN ANDERSEN: Just a question on Item G; the last sentence. What is the added value of that sentence? I think I understand the concept but what is the added value? Oh, it has become H now. Outreach. The sentence ‘this means that the ATRT will explore if [other four? 01:22:31] can be contacted in order to collect input.’ What is the added value?

BRIAN CUTE: I’m... That was Lise. I’m not sure; I didn’t offer it. We were discussing the IGF in Los Angeles, I think that’s probably targeted towards the [Afora? 01:22:49] but we’ll ask her for certainty on what she intended. Okay. Now, Management Review. This may not be the best title, but... So ATRT 1... Ultimately ATRT 1 engaged the Berkman Center as an independent expert and the Berkman Center conducted some focus case studies and provided its own analysis and report to ATRT 1. This paragraph really speaks to that and Management Consultant may not be the right word, but under the AOC there is the possibility of independent experts. We did have individuals who are Members of this Team, who offer themselves applied as independent experts. They are now Members of the ATRT 2 and treated indistinguishably from the other Members in terms of our working, presently. The question we need to ask ourselves is in identifying the issues that we know we want to review and we’ll have a fuller discussion about that; do we think we’re going to want to engage a third party in any capacity to support our work? And that’s what this paragraph goes to. So I think maybe changing Management Review to Independent Expert is more in keeping with the AOC, that’s one potential edit. Any thoughts, discussion? Initial thoughts? Larry?

LAWRENCE STRICKLING: It just seems kind of premature to be trying to draft this language before we've had the real discussion. Is it accurate that you have appointed a Working Group on this?

BRIAN CUTE: No, we haven't taken any such action.

LAWRENCE STRICKLING: Okay, so everything in here is up for change, but until you have a real meaningful discussion on why we would want an independent expert and what they would do, it seems hard to draft language now – even if all you want to do is capture for now, as a placeholder, the possibility that we might do that, I think that's fine.

BRIAN CUTE: That's the intent; a placeholder for the possibility. David?

DAVID CONRAD: Changing the word 'has' appointed to 'may appoint'.

BRIAN CUTE: In the first sentence 'ATRT 2 may appoint', instead of 'has'. 'May appoint'. Yes. The Working Group to consider that no... Yeah, there you go.

LAWRENCE STRICKLING: I'm told 'independent expert' is a term we already use for this Group, for some of our Members, so we'd need a different term.

BRIAN CUTE: External expert? External expert... To consider... I'd just lose 'issue of a request for proposals'. Just strike that. Yeah, and I'd say 'consider engaging an external expert to assist the ATRT 2'. Yep. Then you can strike the rest of it. Okay. Now moving on we have... Are we taking a break at 10.30? Yeah, so we've got a half hour to keep plodding through this.

#4 – Work of the Review Team decision making within the ATRT 2. The core of this is the ATRT 2 will seek but will not require consensus with respect to recommendations, to the extent that the ATRT 2 is unable to achieve consensus with respect to any such recommendations. Its reports and recommendations will reflect the variety and nature of the ATRT 2 Members' views. Any conflicts of interest that may affect the views of an ATRT 2 Member will be disclosed and addressed in the course of the Conflict of Interest Policy. Discuss below.

Everyone comfortable with this approach? Consensus will be our... Yes, Avri?

AVRI DORIA: Comfortable with the approach. One of the things that's often a practice though is to make sure that there's consensus on the document. In other words that everyone is able to say 'yes, the document accurately reflects what was discussed and my opinion is...'

etc. So that's a check on the notion of we don't need full consensus on the points but we do need full consensus on the documents accurately reflecting the discussions.

BRIAN CUTE: Sounds reasonable. So if we can add a couple of words there? Ah, well... Do we have it captured? Do we have it captured? No, back up, sorry. 'ATRT 2 will seek but will not require consensus with respect to such recommendations.' Where do we tuck that it Avri? You've got the pen.

AVRI DORIA: I think at the very end. The ATRT 2 will ensure that all documents have consensus... All documents are consensus documents. Does that say it or does that need to be more specific? If it needs to be more specific you could go 'i.e. it accurately reflects the discussions held'.

BRIAN CUTE: All comfortable? Okay?

AVRI DORIA: Yes, except that I said it wrong. It would be 'they accurately reflect', since the documents was plural.

BRIAN CUTE: Thank you. Okay? Let's move on. Okay, meeting, telephonic meetings, keep going... We've been through here once already. Reporting... Okay and this is where we had jumped back up. So iii)... The specific reference

to the ability to hold closed sessions using Chatham House Rules and that Chatham House Rules were invoked. Members are expected to refrain from public reporting – could you scroll down? – regarding the discussion conducted under these rules. Olivier, please?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. That's not what Chatham House Rules are. Chatham House Rules allow you to report what has been said but not to allocate the ownership of what's been said.

BRIAN CUTE: So the last sentence is heading in that direction but not completely. 'Whenever Chatham House Rules are invoked, however the record will reflect that as well as the general nature of the issue discussed under such Rules.' Yes, Stephen?

STEPHEN CONROY: If I could just clarify from Chatham House. When a [meeting of pop? 01:31:04] is held under the Chatham House Rule, participants are free to use the information received but neither the identity nor the affiliation of the speaker, nor that of any other participant may be revealed.' So it's the identity rather than [inaudible 01:31:17]. That's it.

BRIAN CUTE: So why don't we just copy and paste from Chatham House Rule, when we get a moment. Take care of that. Alan?

ALAN GREENBERG: Is it possible that we might want confidentiality in a different form? If we are, for instance, interviewing a specific Member of one of the past Teams, it would be rather blatantly obvious who it was who said something, if we report what was said. And yet they may have important things to say but don't want to have it attributed to them.

BRIAN CUTE: Discussion. Avri then David.

AVRI DORIA: It's Avri speaking. I tend to think not. I think if we're getting opinions that we intend to use then we should be able to state what the opinions are. We can certainly do our best to anonymize it but to say 'well, we heard stuff and we're therefore basing our decision on stuff but we can't tell you what the stuff was' would be an unwise thing, so I would say that the Chatham House Rule does indeed cover it because you're not listing person or affiliation.

BRIAN CUTE: Alan then David.

ALAN GREENBERG: It certainly covers it if the overall period covers a whole bunch of interviews. If we are meeting with Sharon Langdon-Orr tomorrow morning and we had a session in Chatham House Rules and then we close and do the summary, it becomes obvious. If we consolidate a whole bunch of them I've not problem with that at all. The question is

that pragmatically we may not be able to do that and I'm just wondering if we want the option of being able to get candid view where we can't easily anonymize them if we try to report on a period-by-period basis.

BRIAN CUTE: David.

DAVID CONRAD: I think I agree with Avri. I think we don't want to be in a position where we're reporting something with accountability and transparency without being able to characterize, accurately, what that stuff is, potentially without attribution. I just don't... It would feel odd if we had a section of the text where we said somebody said something but we're not going to tell you exactly what was said because then you could figure it out, but we agree with it. It just seems a little odd.

BRIAN CUTE: Thank you David. Actually, this discussion just provoked a recollection that Alice provided to me. ATRT 1 actually did maintain an email list that would allow any Member to provide input, confidentially, completely. I had not recalled that but we in fact did stand a list like that up and there may have been some contributions? Yeah. And the Community could post in that list too, to provide comments, but it would be effectively allowing an avenue if somebody felt that they needed to present information to ATRT 1 that was important to the Review but they didn't want to be association with. And we had discussions about the risks

involved and the validity of putting stock and those types of input, but that was something they did. Avri?

AVRI DORIA: Avri speaking. Can I ask a question about that? Was this list where everybody could...? The public could read those mails, it's just the name of the sender was blanked out? Or was it only the ATRT could read it?

BRIAN CUTE: I think only the ATRT could read it. Right? I hadn't either but we did it apparently. I think we did. How many... Did we get contributions Alice?

ALICE JANSEN: Well some were [inaudible 01:35:25]...

BRIAN CUTE: Alice's recollection is that we got two or three inputs on that list. Yeah. Any strong feeling? I'm hearing the lean towards open, use Chatham House Rules exclusively. Avri?

AVRI DORIA: I actually... Even though I tend to be the poster child for alter-transparency, I do think the ability for – I mean this is the whistle-blower out – that the ability to have something visible – and that's why I was looking – if it's visible to all it's a transparent, anonymous comment. I think transparent, anonymous comments are okay. I think that non-transparent, attributable comments are problematic. So I think everything we see, people should be able to see, but I think if someone

wants to anonymize themselves to do something, to report something, they should be able to. How we do that I'm not quite sure but that's where I'm... Because the whistle-blower does have a very important usage and a very important role to play in accountability and transparency. But there may be people that don't want to lose their job when they tell us stuff and so there's got to be a way to get that but I don't think it should be... That has to be transparent.

BRIAN CUTE: Thank you Avri. Alan?

ALAN GREENBERG: Yeah, I think we have to be careful. There are often whistle-blowers who don't have to sign anything but anyone involved will know who they are because there is a very small number of people who would be privy to that information. I think what we're doing is... If we insist on complete openness in these kinds of situations, we're simply changing the dynamic. People will not talk to the group, they'll talk to one of us and one of us will say 'I was told'. Hopefully the same information would come out, not with the same impact because not everyone on the Group would hear it and be able to look into their eyes.

BRIAN CUTE: Can I get a reaction to Avri's suggestion about a whistle-blower type email that can be anonymously provided but is open to us and the public? Utility? Strong opposition?

ALAN GREENBERG: I don't oppose it but I don't think it will get used much because such things... You don't always have to sign your name to be clearly visible who you are.

BRIAN CUTE: David?

DAVID CONRAD: Yeah, I guess I agree with Alan. Given free email services, you can anonymize yourself pretty trivially so having... I'm not sure that a special facility needs to be created to allow for someone to post something anonymously. The whole question of whistle-blower type input is more complicated than simply – at least in my mind – is more complicated than simply providing a way that people can provide input anonymously and also it imposes a duty on the part of the receiver to verify the accusations made within the whistle-blowing are valid, are worth wasting your time on. I'm not... How did you all deal with this in ATRT 1? The whole whistle-blower side of things?

BRIAN CUTE: We had the list that was not visible and Alice reminds me that we had two or three contributions and Cheryl Langdon-Orr is online and confirming that as much. Let's take this in two pieces because if we were to set this up, of course we'd have to then think about how we would handle the inputs and dispatch the inputs, ultimately. But the first question is should the Team set up a type of email? Asking for views now. David?

DAVID CONRAD: Define this ‘type’.

BRIAN CUTE: We’re using the phrase whistle-blower because it gives us all context, but an email list where anonymized inputs could be provided to ATRT 2 and that input would be visible to the public. Correct? Yeah. Asking for opinions. Avri?

AVRI DORIA: This is Avri. To respond to the... But verifying it – by having it be visible to the public you allow anyone to say ‘that wasn’t true’ and to counter that with their name or not with their name, that’s one of the reasons for making it public. One of the reasons for not doing a list that, for example, is only seen by Staff, and this is not to make any accusations against anyone – if you’re a whistle-blower within Staff, you wouldn’t want anybody within Staff to see your mail so therefore that’s the reason for anonymizing it. But I think the public display of it does give the ability for others to say ‘this whistle-blowing is nonsense, that’s not what happened’ and to produce an argument to that case.

BRIAN CUTE: Steve?

STEVE CROCKER: We’re discussion whistle-blowing in the context, I think, of the ATRT process. It might be helpful to bring to the surface the whistle-blowing

process that has been implemented and tested and labored over within ICANN. There's very extensive work put into that and as I mentioned, not only defined but my understanding was that it has actually been tested. I don't know what the schedule is, how often it's tested, but to David's point, there is a required response process and all of that and a huge amount of concern about making sure that it's handled very confidentially so that it doesn't blow back on the person who did it. So that's just factual information, which is available and we could ask Staff to provide the details of that.

BRIAN CUTE:

It sounds like a fine suggestion. I don't think we're at a decision point yet on this question. Let's take those inputs and think it through a bit. Yeah, Steve?

STEVE CROCKER:

Let me just follow-up. Let me recommend that that might be a useful piece of background information to have as part of the deliberations here, irrespective of whether or not we adopt something, because that is an element of accountability and transparency in its own right, of the way that ICANN works.

BRIAN CUTE:

Accepted on both points. Thank you. Let's move... This is an open question, we'll keep moving forward and come back to it. Can you scroll back Alice to where we were in the document? And we are 13 minutes away from a coffee break so bear with us. Ah! iii)... Yes, Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you very much Brian. Actually we're still on iii) because that paragraph still doesn't make sense. Sorry, but it still has 'refrain from public reporting regarding the discussion collected under these Rules' and we've established that's not the case.

BRIAN CUTE: We had agreed we were going to copy and paste from Chatham House their definition of the Rule.

OLIVIER CRÉPIN-LEBLOND: It's at the bottom of that page; it's already a footnote so...

BRIAN CUTE: Shall we...? Can we copy and paste? Thank you. Yeah. Verbatim. Okay, thank you. Yes, Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian, but if we're going to copy and paste, not just append to that, replace that part. Highlight the part that is to be replaced so that we don't have to go through it again.

BRIAN CUTE: Starting with the word 'where Chatham House Rule...' right? We agree that an interaction will be held under the Rule... Delete everything that follows. Copy and past in the rule. Okay, correct? Okay, thank you Olivier.

Okay, #4 – Members of the ATRT 2 are volunteers and each will assume a fair share of the work of the Team. Where appropriate and with the consensus of ATRT 2, ICANN Staff will be used to provide administrative support services related to travel, meeting logistics and technology to preserve the independence and integrity of the ATRT 2, however ICANN Staff will not be asked to perform substantive tasks, report drafting etc., with respect to the work of the ATRT 2. Staff does provide terrific support to the Team already and will do so, I’m sure. Everyone is very keenly aware of the balance between the independence of this Review Team’s work and its output and I’m sure that we’ll all manage that line very carefully. Any discussion? Can we move on?

Okay. Yes, this is a task for the Chair and the Vice Chairs. I think my own observations so far is that I think that Denise and Alice and the team have already become a very well-oiled machine through their work of the first Review Team, but if there’s anything that we’re not currently getting, the Chair and the Vice Chairs will put some thought to that and make recommendations by 1 May. Is there anything that Review Team Members see as lacking in terms of support? Just while we’re here? Okay, Alan?

ALAN GREENBERG:

I’m not answering that question I’m just not sure I see the need for an absolute deadline, if in July we realized there’s something we really need I don’t think we should be prohibited from asking for it.

BRIAN CUTE:

Fine. Period after... Yep.

ALAN GREENBERG: We can certainly have an internal target of trying to think through it before then, but I don't think we should limit ourselves.

BRIAN CUTE: Yes, I think that we should have a discussion here in Beijing, offline, just to make sure there's nothing that shouldn't be in place in the short term. Okay, D – Participation. Or is it E? Are we missing text? We'll have to... Let's check back and make sure we're not missing text under D. E. This is with respect to... The Members of the ATRT were selected in a process and our volunteers are not participating in the process. This is a notion of assistance to Members. So what we said in ATRT 1 was that Members could be assisted when necessary, for example translation purposes, although the emphasis much remain on direct interaction between the named Members.

Assistants should not intervene themselves, nor should they be able to substitute for a Member who is unable to participate. This applies to conference calls as well as face-to-face meetings. In ATRT 1 there were a few assistants to a Member of the ATRT. There were times when the primary Member of the ATRT could not attend a face-to-face meeting or even sometimes a call, and the assistant was there. I think though, the intent of the rule is as stated. I know that assistants in the past actually intervened and provided some inputs. They did so with the guidance of the Member. I think we don't have to be hard and fast here but we want to be loyal to the spirit that the Members are the ones who are participating here. Any discussion or concerns? Alan?

ALAN GREENBERG: I don't know whether we need to institutionalize it, but the Group should be able to call upon one of the assistants if we think that person can provide valid input, without them explicitly intervening themselves.

BRIAN CUTE: Any disagreement with that notion? And we called on Fiona today, I think, yeah; we've done it in the past. Okay, can we move on? Okay. The Chair and Vice Chairs coordinate the work, service for participants and substantive deliberations in the development of the deliverables and all Members of the ATRT 2 will have equal voting rights, where votes are necessary. Discussion? Okay, move on. Oh, external experts. Is this a mix of means of communications tools and external experts? I'm not sure what this... I think there's a mix... Yeah, two separate items, Alice. Strike external experts, and this is just tools and means of communication.

STEPHEN CONROY: Sorry...

BRIAN CUTE: Yes, Stephen?

STEPHEN CONROY: It just comes to the issue around Adobe only. As I said, when I was at home I'd just have an iPad and it doesn't accept simply... Is there an

alternate as well as this one? That's all, without wanting to put the people doing to hard work to too much trouble.

ALICE JANSEN: I think there is an app you can use with your iPad.

STEPHEN CONROY: We found something called Puffin in the end, so we're working our way through using something called Puffin.

ALICE JANSEN: Yes, that's what I...

BRIAN CUTE: Have you tried it yet?

STEPHEN CONROY: We tried it off a telephone hook-up, it worked.

ALICE JANSEN: It worked, yeah, okay.

BRIAN CUTE: Okay, do let us know if you have any difficulties. Alan?

ALAN GREENBERG: During the emails, prior to the first face-to-face meeting, we decided that the people added to the Team as external experts, once here would

be treated as Team Members, and if indeed that's what we're doing we should institutionalize it. So under Members we should be clear that this includes the people that are placed on it as external experts.

BRIAN CUTE: Are we in iii)?

ALAN GREENBERG: No, iv).

BRIAN CUTE: Oh, we haven't gotten through iii) yet.

ALAN GREENBERG: Oh, I'm sorry. No, no. i) I think...

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND: Yes, thank you Brian. We were in iii) we just deleted external experts but it was actually a legitimate subcategory. If we want to integrate it into i) then that's fine, but we need to mention it in i), otherwise we would need to keep it iii) and define the external experts, and then move the 'tools and means of communication' to iv).

BRIAN CUTE: What's the easiest fix?

ALAN GREENBERG: External experts are deemed to be Members of the ATRT 2.

BRIAN CUTE: Yes, independent experts. That's the term of the AOC; independent experts.

ALAN GREENBERG: Full Members of the ATRT 2.

BRIAN CUTE: Minor point of clarification then; we have independent experts who applied and who are sitting as Members of the ATRT 2, we may engage external experts. So that different phrase is now important because the external experts will not be full Members. Okay, that's cleared up. iii) Tool and Means of Communications. Yes, Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you very much Brian, it's Olivier again. So you've just mentioned that, so we've moved from a subcategory which was iii) External Experts. That was defining the external experts to independent experts, which are the integral parts of the ATRT. Are we going to define what external experts are, or not?

BRIAN CUTE: We adopted the phrase external experts, effectively to distinguish third part, independent experts that we might engage from Members of this

Team who applied as an independent expert, to become full Members.
Is that helpful or still confusing?

OLIVIER CRÉPIN-LEBLOND: No, it's not confusing but it's not there anymore because we've just deleted external experts.

BRIAN CUTE: Okay, thank you.

ALAN GREENBERG: But we still have a reference to them in that we may employ them.

BRIAN CUTE: Earlier in the document. So let's put that in here. Let's check back... We may have that covered earlier in the document and we can reconcile that on the coffee break. 'Third parties that may be engaged by the ATRT 2 to support its work'. Two minutes. (laughs) Okay. Now, Tools and Means of Communications, if you could scroll through. Keep going. Keep going. Okay, this is materials available in these settings will be made available to the public in keeping with the Policies articulated in this methodology. That's non-controversial. And before we launch into indicators, this would be a very good time to take our coffee break. So we'll take 15 minutes? 15 minutes for break and then we'll reconvene. Thanks everyone.

[coffee break until 02:15:55]

BRIAN CUTE:

We're going to reconvene shortly folks, if you could take your seats? If you could please take your seats before we recommence? Okay, we're going to reconvene. My understanding is there is a problem with the Skype Bridge, but Adobe is up, so our apologies to those out there who are using the Skype tool for the moment. We're working our way through the Terms of Reference and Methodology document and getting toward the end of this. The next paragraph that we were to look at is F. i) Indicators. Now, the word is indicators and it reads identification of reliable indicators of progress, with respect to accountability and transparency is likely to be complex. That ATRT 1 who were working up that document had tasked a Working Group to identify potential indicators to assist the Team in its work. And the initial recommendations are available here at a link.

Members of the ICANN Community will be invited to submit suggestions for such indicators as well. If I'm remembering correctly, the word indicators is really translated to the word metrics and we, in the first ATRT, that Team, in its recommendations, other than suggesting some implementation dates, did not provide ICANN's Board with recommended metrics. In our discussion in Los Angeles last month this issue came up as part of the discussion – and correct me if I don't properly characterize this, Denise – but Fadi in his remarks, as we were discussing metrics, made a commitment to the Team that for implementation of recommendations of ATRT 1, to the extent that they were not metrics developed by ICANN, that that would happen and would be communicated to the ATRT 2.

Metrics is an important issue. In the first ATRT work, I believe the sense of the Review Team was that it was really not for ATRT 1 to develop specific metrics for ICANN the Organization, in making recommendations. That it was more for the Organization that's closer to the work; to develop meaningful metrics to measure progress and accountability and transparency. The being said, specific metrics have not to-date been developed. We have Fadi's commitment to do so and that's very welcome but I'd like to open the discussion to this Team as to whether we think this Team should engage in the development of suggested metrics to the Organization at some level or not. A question for the Members. David?

DAVID CONRAD: Yes.

BRIAN CUTE: Pithy, thank you. Alan?

ALAN GREENBERG: Qualified yes, to the extent that they become obvious and perhaps, I won't use the word intuitive but if it comes up in the discussion we shouldn't be afraid of giving them, but I don't believe we should require it as a necessary part of making a recommendation.

BRIAN CUTE: Thank you. David?

DAVID CONRAD: I actually believe that we probably need to document a set of – a minimal set – of metrics that can be used to build a baseline and a time series to show improvement over time, and if the only way to really be able to do that is to actually document them within the context of the ATRT.

BRIAN CUTE: Thank you. Any other comment of discussion? Should we edit this paragraph a bit to capture that sentiment? And I understand Skype is back online, thankfully. Yes, David?

DAVID CONRAD: I will actually take as an Action Item; revising this today and sending it out. I don't think it's worthwhile to sit here and wordsmith this particular paragraph. I'll write up something and send it out around lunchtime.

BRIAN CUTE: Terrific. Thank you David. Okay, during the break I added E – Implementation, for this purpose. Well, implementability was actually what I should have put. I want... Yeah. If... Shouldn't it be E, F, G, H, I? Where are we in the alphabet? (laughs) No I didn't. E, F, G, H... Okay. This should be H – Implementability. (laughs) Okay, so what I wanted to have us discuss here was the discussion that came up in Los Angeles and one of Fadi's remarks to us was that asking this Review Team to think carefully about implementability of recommendations and we have a good, frank exchange on that point.

I think where we came out was a sense of the Review Team that that was an important issue; that recommendations should be implementable in real terms and that we should endeavor, as part of our work, to work with ICANN Staff to get feedback from ICANN Staff along the way about resource issues or other issues that might affect the ability to implement, in full, a recommendation. Do we want to put some clearer definition around that aspect of our work or is that just an agreed-upon sense that we will take forward? David?

DAVID CONRAD:

I would agree that we probably should have some wording in there with regards to striking a balance between the needs of the Review Team and also, simply, the implementability of whatever it is that we're asking the Staff to do. Because they're often... If we come out with a requirement that Staff implements something next week, they're not going to be able to do it. So we have to balance the resource requirements for whatever it is that we're asking them to do. That's all I'm saying. Larry?

LAWRENCE STRICKLING:

It seems like our responsibility is to deliver recommendations that can be implemented. Now, if it's the question of the timeframe, that's different, in some respects. But in part of the enquiry we started to have in Los Angeles – and I hope, again, there will be an opportunity to continue the discussion – is to really understand where the Board and the Staff had problems understanding what ATRT 1 and the other Teams actually recommended. I haven't really heard that yet. I understand the idea of being asked to do something in a week is a problem, but it is in

all of our interests to make sure that the recommendations delivered are ones that make sense and can be understood by the people to whom they're directed.

That's why I don't see that there's competing interest in terms of balancing one against the other. We all ought to be on the same page in terms of that is our goal. If the issue of implementability is the question of how fast things take then maybe... That to me is not implementability, that's a question of the reasonableness of the implementation schedule and we ought to talk about that separately.

BRIAN CUTE:

So I take your comments in the of the course of doing our Review and asking ICANN Staff to inform us as to where there were implementation challenges. We'll garner the understanding that we need going forward for the recommendations of this Team. Steve?

STEVE CROCKER:

I appreciate Larry's remarks. Let me expand a little bit, if I might. In addition to whether things are implementable or how long they take, we also have the open question of did the recommendations of ATRT 1 get implemented? And we have the representations, the presentations from Staff saying 'we did all these things' and so forth, but as we've discussed I think there's a burden on us to take a fresh look, to take our look at it, to match up our perceptions against what's been said, and out of that there is an entanglement with what was intended versus what ATRT 1 was intended versus what was understood.

There may be some interactions, some interplay there in terms of implementability and so forth. So we may want to handle that collection of things together and then tease apart how much was implemented versus what the level of understanding was, versus whether there were any stumbling blocks, issues, among all that. And try to get a holistic view of all that. Normally I like to try to tear things apart but here I think there might be some value in seeing what that interaction might be.

BRIAN CUTE:

Thank you Steve. So what I'm hearing is from a practical perspective we may not need a separate paragraph on implementability. There seems to be a fairly good understanding between the Review Team and ICANN Staff of what the task is, looking backwards, that should inform how we formulate our recommendations. Denise?

DENISE MICHEL:

Quickly. Keep in mind that some of the recommendations are not just Staff implementing, of course, it involved the GAC making decisions and implementing, so if you decide to take on the Policy Development process, you're asking the GNSO to implement, potentially, some significant items and so keep in mind this is not just Staff implementation, I expect you'll be involving other entities as well.

BRIAN CUTE:

Excellent point, thank you. Any other discussion on this? My suggestion is to strike the paragraph. We seem to have a good working understanding of the issue. Okay? All right, moving on; deliverables.

Final recommendations to ICANN, this is our deliverable: ‘That we will endeavor to post draft recommendations...’ – ah, draft recommendations, again – ‘working the calendar to provide sufficient time to the community for both a comment period and reply comment period, and provide the Review Team enough time to take on board those comments and integrate them into a final set of recommendations. So we’re going to target October to post our draft final recommendations that go into a comment cycle, reply comment cycle and back to the Team for finalization.

‘Recommendations should be clear, concise, concrete, implementable and where appropriate, offer metrics to ICANN to measure implementation and improvements.’ Everyone comfortable with those adds? Okay. ii) Those recommendations should aim at building greater trust among Members of the ICANN Community, establishing an open, candid debate on enhanced accountability, (which is necessarily an ongoing process) and building a partnership that includes ICAN Staff, Board and Stakeholder Community commitment to working as a Team to improve the Organization. I think we left out transparency, again. (laughs) Right Alan? And I wonder whether, clearly, the ICANN Community, as we speak to it in this context, is an important partner here but also the limiting definition between ICANN Community and public... I’m not sure I have a fix here, but just something as an observation. Any discussion on this paragraph? Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. I was going to go back to the previous paragraph, which bothers... Well it doesn’t bother me but we are looking at the last

word; to ‘measure implementation and improvements’. Of course we’re looking for improvements but it would really be measuring effects – whether it might be an improvement or whether it might be detrimental, who know. So a negative improvement, yeah.

BRIAN CUTE: So ‘effects’ captures both the negative and the positive. Sounds reasonable. Could you make that change? Thanks. So strike improvements and put ‘effects’. E... ‘Effects’. Yeah, thanks. Okay, back to ii). Any discussion? Avri?

AVRI DORIA: Avri speaking. Yeah, I’m in my category error problem again. We’re talking about building... In the first paragraph... I mean in the first sentence we’re talking about building greater trust among Members of the ICANN Community and then we’re talking later about a partnership that includes ICANN Staff, Board and Stakeholder Community. Now, what we’re actually trying to institute is greater trust among participants in ICANN Staff or Community. We’ve been sometime differentiating between ICANN Staff, ICANN Community and here we’re saying among the ICANN Community but not the Staff and Community that we refer to later. So again I’m in that category error space.

BRIAN CUTE: David?

DAVID CONRAD: I'd actually say that we're attempting to build greater trust among the Internet-using Community as a whole, not just the ICANN Community or... I mean it's everybody. We're trying to promote ICANN's accountability and transparency in order to drive trust in ICANN as an entity, globally.

BRIAN CUTE: We could put a comma after 'trust' and then strike 'among Members of the ICANN Community'. We're not saying Internet-users, we're not saying the Internet Community, but maybe this captures it. Avri?

AVRI DORIA: It sort of does, but then I'm not sure if that would also add with what David was talking about; the list down at the bottom 'Staff, Board, Stakeholder Community', now, he made a differentiation before between the Stakeholders that were here and not, and I'm wondering if this general statement is enough to cover both of those for you or whether you'd need a 'next' or a thingy after the comment. Or is that good enough? Okay.

BRIAN CUTE: Any other... Alan?

ALAN GREENBERG: I'm just not 100% sure if it's enough for us, it's enough for the people who are reading it. In general, when we talk about ICANN Stakeholders it is the Stakeholders who participate. So we may want to make it more

explicit. The public at large may include the – forgive the expression – the ‘great unwashed’ but it also includes governments and a whole bunch of other entities who know about ICANN and don’t necessarily think we’re doing a good job. So we may want to distinguish between them.

BRIAN CUTE: Suggested edit. ICANN Staff, Board and... Larry, please?

LAWRENCE STRICKLING: Well, this just breaks the rule of three. I’m wondering if we want to add a fourth point at the end of this that captures an issue that you’re going to introduce in our first meeting which was the overall legitimacy in the eyes of the Global Internet Community. Maybe that’s the theme... I think that picks up on what David said and maybe that’s a fourth aspect of this that we want to try and capture in the recommendations. But like I say, that breaks the rule of three.

BRIAN CUTE: That’s okay. I’m ‘four’ that. Sorry. Okay, well we could add Stakeholder Community and the public? Sorry? What was your suggestion?

LAWRENCE STRICKLING: I would just say the issue of building the partnership, to me that strikes me as there you are talking about the ICANN Community as defined by Alan; that’s the Group that participates, and that’s important; continuing to build that partnership. What I’m suggesting is a fourth phrase to

come on the heels of what's already up here, that talks about enhancing the legitimacy of ICANN in the eyes of the Global Internet Community. Something like that; which then picks up every Internet Stakeholder, whoever they are.

BRIAN CUTE: At the end there? Okay. Do you want to repeat that? It sounded good first time around, sorry...?

LAWRENCE STRICKLING: '...and enhance the legitimacy of ICANN in the eyes or to the Global Internet Community'. Something like that. My drafting module isn't fully engaged yet after the jetlag, so...

BRIAN CUTE: That's all right. Okay. Okay, so those recommendations should aim... Jørgen?

JØRGEN ANDERSEN: Yes, Jørgen speaking. Thank you Brian. I support the thinking behind Larry's proposal. I just wonder, the 'Global Internet Community', will that include also the governments? Are governments part of the Global Internet Community? If yes, I can support that.

BRIAN CUTE: I'm seeing a lot of nodding heads. Any disagreement on that point? Any concern about clarity on that point? That is deemed to include governments. So just in terms of grammar and maybe run-on sentence;

those recommendations should aim at building greater trust, establishing an open, candid debate on enhanced accountability and transparency, (which is necessarily an ongoing process), building a process that includes... What? Okay, put a comma after the parentheses and lose 'and'. After the parentheses? Ongoing process, put a comma after the parentheses. See 'process'? Go to 'process'. Keep going to the right. It's in the parentheses. The brackets. No, go to the end, put a comma right after the parentheses, right after the bracket... After... Yeah, you're okay. No problem. Then delete 'and'.

Okay. 'Building a partnership that includes the ICANN Staff, Board and Stakeholder Community commitment to working as a Team to improve the Organization and enhancing legitimacy of ICANN in the eyes of the Global Internet Community.' It's a little bit... Yeah, it's a little bit run-on. Yeah, somebody jump in. ...Staff, Board and Stakeholder Community commitment to work as a Team... To 'work' as a Team. Make it 'work as a Team' and enhance the legitimacy. All right, it's a little cleaner, it's still long. Okay. What's the first bullet? Building greater trust. Okay. These recommendations should aim at:' Okay, and then bullet point; 'building greater trust', 'establishing' is the next bullet point, 'candid' is the next bullet point.

No, I'm sorry, I'm sorry. Whoops. Going too fast. 'Building' is the next one and then, yeah, break after 'Organization'. After 'Organization' you make the next bullet and lose 'and' and make it 'enhancing'. Yeah. Sorry, Alice, thank you for jumping as fast as we're going. Okay, thank you. Yeah, that makes sense. 'Should aim at building greater trust,

establishing an open... Building a partnership, enhancing legitimacy.’
Okay. Everyone good with that? Nodding heads. Moving forward.

Okay, iii) The Team will need to demonstrate the rationale it has employed for any individual recommendation but focusing on recommendations rather than on a lengthy report of proceedings. Aspirational. Good. (laughs) Aspirational. Any adds? Will endeavor... Yes, strike ‘need’, ‘endeavor’. That’s all we can do, right? (laughs)

Okay, iv) Oh, now this has already come and gone. ‘Prior to the first face-to-face meeting, circulate their views on various issues. Once an issue has been [inaudible 02:41:35] between Members to gauge a level of interest.’ Which we did in Los Angeles; we built our list of issues. ‘[inaudible 02:41:43] take responsibility for developing and exchanging views, with a view to developing a recommendation.’ Is this even necessary at this point? Let’s just strike the whole thing. Goodbye. Yes, just strike the whole paragraph. Yes. Okay.

And I guess this is... No, this was in ATRT 1’s Terms of Reference but it was the first Team. I think we’re in a uniquely different position because we will be reviewing the prior Review Teams. In so doing we will be taking a look at how they were conducted as part of our substantive Reviews, so ATRT 2 will provide recommendations regarding the procedures and conduct of future Reviews, as called for in the AOC. I think that’s perfectly appropriate. Avri?

AVRI DORIA:

Avri speaking. You may want to add what you just said, based on the Reviews, ‘based on the substantive Reviews the ATRT will...’.

BRIAN CUTE:

Thank you. Open with 'based on the substantive Review's... 'Substantive Review. Yes. Anything else here? Yeah, 'the three previous Teams'. 'Of the three previous Review Teams'. 'Based on substantive Review of the three previous Review Teams.' Capital 'R', capital 'T'. Okay. Anything else? Okay. Conflicts of Interest. We have an outstanding item here. ICANN Staff, Legal Staff is going to come back to us with some context and clarification of suggested modifications of our Conflicts of Interest Policy. And we will, before this meeting is out, sign a Declaration. Okay. Next one.

Timeline. Nothing there? So I think... Yeah, that's right. What this was in the prior version was literally just a recitation of each of the meetings we were going to have; the face-to-face – where they were happening, when they were happening. We have the conference call schedule already in place and agreed to, but at this time I think we should talk a little bit more about additional meetings? We know that we're going to have the three here in Beijing? In July in Durban. In November in Buenos Aires.

Let's come to some consensus about additional face-to-face meetings and I think also it would be appropriate to talk about... No, we'll get to outreach after this. Hold that thought. I'm just going to offer that again, for ATRT 1 we had the three meetings concurrent with ICANN meetings. We had a standalone meeting towards the end of August, in Beijing and then we had another standalone meeting in Boston with Berkman – and remember, Berkman was doing a significant amount of substantive work for us and the purpose of that meeting was to sit down with him and go

through their draft, effectively, and fine-tune it, if you will – so there was a focused element of the work there.

I think, generally speaking, in terms of gathering the inputs that we need, having the substantive discussions that we need to have, the analysis that we undertake, the ability to face-to-face review draft recommendations and provide, as an entire Team, guidance to a Working Stream Group, I certainly see four meetings as being probably needed. I'm not sure about a fifth but I'd like to put that on the table and get thoughts. I'm not sure we're going to need the same type of inputs from an independent expert. I think that's also part of the conversation. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. Two questions. The first one is with regards to Berkman. Is it the view of this Group that Berkman should get involved again? That's the first question. The second one is actually not a question but a suggestion that since we are going to be dealing with outreach as well, we might actually stage a meeting during the time when we might be doing the outreach. That would be killing two birds with one stone.

BRIAN CUTE: Thank you. To Olivier's question, any sense from Team Members about whether we would engage Berkman again, specifically? Larry?

LAWRENCE STRICKLING: The choice to select Berkman came after first identifying what we thought our problem was that we needed expert help on, and then we had a beauty contest where a number of firms presented proposals as to how they would approach the problem and then a selection at Berkman is presenting the best value and the best approach to solving our problem. Until we've identifying what it is we think we need help on, I think it's entirely premature to think whether or not Berkman would be appropriate.

And none of us should approach this with the idea of hiring Berkman without going through the kind of beauty contest we went through last time; where a number of firms were given the opportunity to try to capture what it was they thought we needed and propose how they would go about tackling the problem. We haven't even started on the road of identifying what the problem or the issue is we want help on.

BRIAN CUTE: Thank you Larry, and completely agree to it with respect to a specific vendor, we wouldn't prejudge that in any way, shape or form. Just an observation; I think what Berkman ended up doing for the first Review Team was pretty much three, significant case studies. Did I miss something in that? Larry, the rest of the Report? Larry, they took on three issues. They did three or four and did in-depth case studies, their own research. Provided their own observations with the guidance of the Review Team...

LAWRENCE STRICKLING: Yeah... I... There's a tremendous amount of work to collect information that the Review Team, in 2010, felt they couldn't do on their own. We were helped by the fact that there was Berkman who could evoke the staff resources to collecting and synthesizing – a tremendous amount of material. I think the challenge we face here may be similar in terms of the size of the challenge we have – plus we're dealing now with three separate Review Teams and all of the work that they did and how that's been implemented.

So we may well need help just capturing this because they conducted interviews with individual Staff Members and Board Members and I don't think everyone around this table fully appreciates how much work there really is to do here, in terms of just getting to the point where you can start making assessments about how well things were done the last time. So we may well need that help, but until we sit down and really talk through the issues it's hard to tell.

BRIAN CUTE: Thank you, and I concur with that. Back to the issue of meetings. I certainly see the need for a fourth face-to-face. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. Yes, I think if there is that much work to do and an external organization is used for that, a face-to-face with that external organization would obviously need to be scheduled as well.

BRIAN CUTE: Thank you. Stephen?

STEPHEN CONROY: I think I indicated on the phone at the last face-to-face. If we do decide to have a fourth, Australia would love to host it. I appreciate it's a long way away and might not work within the budget that we've got set, but if people are interested... It may be other venues... It may be that we need to go with the expert but we'd have... If the timing was late August, if that fitted in, that would be fine.

BRIAN CUTE: Thank you very much. Warmly received. Alan?

ALAN GREENBERG: Just for clarity for people who may be listening and not looking at what we're looking at, we're talking about a fourth face-to-face, counting this one but not counting the Los Angeles one we've already had. Is this correct?

BRIAN CUTE: You are correct. That would be a fifth face-to-face.

ALAN GREENBERG: It will be our fifth face-to-face, total.

BRIAN CUTE: Thank you Alan. Okay. Jørgen?

JØRGEN ANDERSEN:

Well, as I indicated at our meeting in Los Angeles, I'm a strong believer in face-to-face meetings because I think it is much more productive to have two full days together, sitting next to each other, than 90 minutes on the phone where you have difficulties in finding the right time within the 24 hours of the day of meeting. So I would strongly support that an additional meeting is set up. Last night I talked – at the table where I sat – with Olivier about WTPF meeting, which I think is in May? In Geneva.

And I wonder whether colleagues in this Team will be in Geneva already. That might be an excellent opportunity for an additional meeting if we want to have another one. There's a long time gap between this meeting and Durban, and I have the problem myself; I'm prevented in participating in Durban so that's another good reason – for me at least – to support an additional meeting before the Durban meeting, so...

BRIAN CUTE:

Thank you Jørgen. Let's expand on this conversation. It's a good suggestion. We also need to think about the arc of the work and whether getting together face-to-face, be it May or early June, there would be enough work for us to progress substantively to justify the time getting together. I also think that we should talk about a couple of things; smaller teams, smaller groups within the ATRT getting together. Whether it's IGF, which we've discussed before...

And I don't want to get too scattershot here but depending on how well we organize our work and work streams at the outset, to your point about conference calls it could be that the calls breakdown to the respective Working Stream Groups who can self-organize and we could

gain more working efficiencies on that side. I know I've thrown a lot out there but let's think this through a bit. Larry?

LAWRENCE STRICKLING:

Well, there's no doubt there's going to be a need to sit down face-to-face at the end of August, beginning of September, because however many Working Groups you have, there's going to need to be a synthesis of all that work into a standard format, so that each Team's reporting out according to a template that we've all agreed upon. Now, when we're in Durban we're still going to be in collection mode. We're going to be listening to people; we're still going to be identifying issues.

It'll be way premature at that point to know exactly what the recommendations are going to be put people ought to have some thought in terms of what the areas of inquiry need to be. So then you have an opportunity to collect a tremendous amount of information through the various sessions that will be scheduled in Durban, with all of the – presumably we'll be sitting down with any of SOs and ACs that want to talk to us, with the GAC; that's our opportunity to really talk to the Board about what we are understanding – but there's going to be a lot of give and take at that point, in terms of input.

Then you figure August and early September is when you really sit down and collect and do your investigation, to the extent that you need to sit down and start talking in-depth with people, either as Members of this Team or through some engagement that we might do. That all has to be done in that timeframe, so that by the time you sit down at the end of August, beginning of September, you really have to have a pretty good

sense of where you want to take this if you're going to be issuing recommendations in October.

So there's a very short period of time to do this, but almost certainly that we're going to need a face-to-face opportunity in that end of August, beginning of September timeframe to really assess things. The advantage of the conference calls is that it forces a certain amount of accountability on Members of this Team; in terms of reporting out; 'so what have you done in the last two weeks?' Because as with any project there's always a tendency, if it's not urgent, right in front of you, you've got other things that are more urgent and that isn't going to work with this group because of the size of the challenge in front of us.

So I still like the idea of the full Team conference calls every two weeks; if only to ensure that there's progress being made over the course of the spring and summer.

BRIAN CUTE:

Points all very well taken. And I think back to what you're focusing on, which is the 'arc' of the work and you're quite right; July is too early, but the August/September timeframe is where things get very concentrated, so agree to meeting probably toward the end of August, beginning of September at the latest is the right target for us. With that arc of work in mind then I'd come back to... The first phase is the data collection phase, and we're just beginning that. We've put questions out for public comment. We will interact with all of the entities that participate in the ICANN structure in Durban and we will create structured questions to pull data from them in advance.

I think the question for Jørgen, with respect to the May timeframe in WTPF is what could we concretely achieve there in terms of data collection and/or the work of an independent or external expert? Because that's another important work stream. And I don't have easy answers here but I think that's what we need to think about. Avri?

AVRI DORIA:

When I look at the... Sorry, it's Avri speaking. When I look at the WTPF timeframe, that also looks like a very good one for the wider outreach that we've talked about. That's when the whole WSIS, ITU, IGF Community is congregating in a place at the same time. So I always view that if we did anything in that timeframe, that was the best possible option, because the next option you have is too late; it's October.

IGF is also a good time for that broader outreach, and probably worth doing but that's at the other end of... That's reporting and getting feedback on what we've done. So the WTPF timeframe is a fine time for the Working Teams to work, but it is – and I'm not sure how we'd do that – but it is an optimal point for the broader, At-Large, Internet Community outreach.

BRIAN CUTE:

Thank you Avri, and points very well taken. IGF is after we will have issued our draft recommendations; so really not an opportunity to take input or before we form our recommendations. What is the timing of the WTPF? Yes, Fiona?

FIONA ASONGA: Just logistically, so the Monday is actually an IT meeting on strategic dialogue. Tuesday, Wednesday, Thursday is WTPF, Friday is the WSIS Forum and the following week is the MAG. All of this is already scheduled, so if people are already going to be in meetings for this week and a half, so I don't know when you all would actually be able to meet, nor would anybody else be able to meet with you, because we're already going to be in meetings.

BRIAN CUTE: Okay, a practical question. If the point is to interact with the attendees. Avri?

AVRI DORIA: Yes, I guess if weekends are out then there's always looking at if it's even early enough now to schedule it a day after the IGF has ended? I know it's one more day and [too longer? 02:59:28] two weeks but... I don't know.

BRIAN CUTE: Are we talking IGF or WTPF?

AVRI DORIA: The whole thing. There's an IGF consultation, the last thing that Fiona mentioned was an IGF consultation that's part of that whole two-week circus.

BRIAN CUTE: So we'd be day 15. Or the weekend. The weekend in-between the two weeks? Larry?

LAWRENCE STRICKLING: It still, I think, comes down to what do you hope to accomplish? We have however many dozen of very specific recommendation. We have to assess how well they've been implemented. We're off to a great start with the questions that are going out to the Community but that's the work we have to do. I'm a little bit concerned about... I've no problem with outreach but if we're talking about trying to find a time-slot in the middle of everything that's going on in Geneva... What are you asking people? People aren't going to be showing up at that armed to give you the detailed responses to every one of these recommendations that we've got.

So what exactly is the format of the meeting and what do you get out of it that then becomes actionable to us as a Review Team? I'm not saying it can't happen but until we answer that question it seems premature to start trying to find where on the schedule you have a meeting. We need to find out why do we want the meeting and what would we accomplish with it that we aren't already accomplishing through the other things we've put into place?

BRIAN CUTE: Thank you. Outreach is one thing. Advance the substantive work is a separate thing too. Jørgen?

JØRGEN ANDERSEN: Thank you Brian, Jørgen speaking. As I was the one raising the WTPF idea I maybe should add an additional comment which supports what has ben said about that we shouldn't have a meeting if we don't know exactly why we want this meeting and what we want to achieve at the meeting. And if we consider that the time schedule of our work; it doesn't justify a face-to-face meeting at that particular time – until the end of this year – I would abstain from proposing that we have that meeting and instead support that a meeting be scheduled for late August, early September. Thank you.

BRIAN CUTE: Thank you Jørgen. And something just occurred to me as you were making your intervention; last time we selected Berkman from a number of other candidates in June, in Brussels. And as I recall, Berkman did not have a lot of time to do the amount of work that they had to do. Very time... Yeah.

UM: [inaudible 03:02:23].

BRIAN CUTE: Yes, but June didn't leave a wide window for the independent expert to prepare their work, so if we were to wait until July, that's too late for them. So maybe if we decide that we need a third party to assist us, that May meeting could be focused on that piece of the work as well – in addition to moving any other substantive work streams forward that we have. Just a thought. Is the May timeframe otherwise convenient for

Members of the ATR Team? Is it something we could pull together?
Alan?

ALAN GREENBERG:

I don't know how convenient it is, I'll point out though that by the time people get back from this meeting, we'll spend a couple of days recovering, there's not a lot of time between then and the middle of May.

BRIAN CUTE:

Okay. Well, we're going to get to a more substantive discussion about the issues and perhaps the independent expert, or need for one today. Any other thoughts with respect to the calendar? David?

DAVID CONRAD:

I'm just wondering if we can actually nail down the Durban... When we're going to meet in Durban, to facilitate getting airplane reservations early.

BRIAN CUTE:

Certainly. We... Yeah, please Alice.

ALICE JANSEN:

Well, do you find this [calendar? 03:04:00] useful? Before the meeting starts?

BRIAN CUTE: Is the front-end of an ICANN meeting preferred? Shake, nodding heads. As opposed to doing it after the ICANN meeting when we're all wiped out and run like a wet rag? David?

DAVID CONRAD: It could be a whole lot more entertaining at the end of the week. [laughter] Food fights... But no, I think the beginning of the meeting is preferable.

BRIAN CUTE: Okay, so what does that map out to Alice?

ALICE JANSEN: July 12th and 13th.

BRIAN CUTE: Okay, so July 12th and 13th, is that Friday and Saturday on the calendar? Okay. Those are the proposed dates. No objections? Let's put those in. In pen. David?

DAVID CONRAD: This probably is directed more toward Staff... It would be helpful if the travel allowance did not end on the last day of the meeting, because the return reservation ended up causing me to not be able to actually attend some meetings that were somewhat relevant to ATRT, so returning on Friday as opposed to Thursday, in terms of the travel allowance, would be appreciated.

BRIAN CUTE:

Okay, so we have our dates for Durban. We have proposed dates for Buenos Aires. Is that the Friday and Saturday on the front-end? Okay. Shall we put those in pen? Okay. And I think given the conversation we just had, we should probably think a bit more about the IGF, the utility of the IGF, one way or another and come back to that? Okay, let's... How are we doing on time? What time is it? Another 40, okay, then we're breaking at 12.30? Okay. All right. Any other points on the calendar for right now? I think we all need to think a bit about that May timeframe and expert and we'll get back to that.

Okay, moving onto Item #7. Actually, we're jumping ahead, making good time. This is outreach. A – Defining the approach and B – Interacting with governments. I'd like to have an open conversation. We've talked about doing outreach in ways the other Review Teams haven't. There's been a specific focus on how to interact with governments. That's not the GAC but governments. I'm opening the floor now to discussion on how this Group might do outreach and specifically interact with governments in a meaningful way that informs our work and the recommendations. Anybody want to kick this off? Jørgen? Not to put you on the spot but interacting with governments is a theme that you've raised...?

JØRGEN ANDERSEN:

I was just about to raise my hand so it's clearly understood that I should be the one to take the floor first. I think the background for me raising this particular issue was my experience in Dubai at the WCIT, which was

very interesting to use that [ground? 03:07:44]. I'm looking at Olivier who had the same experience. And what I see now is that it should not be taken for granted that all governments, all over the world, supports the Multi-Stakeholder model. That's clear; the majority does not support it when looking at the results from WCIT.

This means that we should consider, I think, in this Group, how we could enhance the legitimacy of ICANN and by doing so I think it's important that we consider which outreach activities could contribute to doing so. I have not a clear idea about how to do it but some ideas might be... And I think that it is, to me, very clear that GAC isn't the only way forward in that respect. GAC is composed by governments from all over the world but the number of participants in GAC, in theory, right now, is only about... I think it's about 120 countries and I think that in total we have 190 countries in the world so there are a lot of countries that are not active, in theory.

But in looking at these 120 Member Countries in GAC, it very often is the case that only around 50 countries are showing up, actually, at GAC meetings. We heard Heather say last night at the dinner that it seems that an increasing number of countries have participated this time, but she didn't give a number of countries participating. But what I noted from talking to Heather last night was that it seems that Fadi's outreach activities have been successful, in the sense that Bahrain actually showed up at this meeting.

This brought me to the idea that I think we should consider finding a way of contacting, more directly, ministers or top-level civil servants in the different countries around the world; drawing their attention to the

existence of ICANN as a very important means of disseminating the virtues of, and all the benefits of the Internet to all countries all over the world as a contributor for innovation, growth and jobs in all countries. I think that the absence of appropriate outreach activities, so far, can be seen also when you look at the number of gTLD applications, where the majority of gTLD applications comes from North America, some from Europe, almost none from Africa and Latin America.

This could be seen, in my view, as a reflection of the fact that there's too little attention on the way the Internet has been managed so far, has been governed so far. And we should do something. And I think that outreaching to governments might be a very, very important means in that respect. Also to – as I said before – to demonstrate to governments that being a part of this whole Internet Community, governed by ICANN, can bring about tremendous positive effects to the individual countries in these parts of the world as well; I'm talking about innovation, I'm talking about growth, I'm talking about jobs.

So this is the background, for me, in raising the importance of finding ways of enhancing the outreach activities, or introducing outreach activities from this Team. These would be my initial remarks. Thank you.

BRIAN CUTE:

Thank you very much Jørgen. Other comments? Yes, Stephen.

STEPHEN CONROY:

Stephen. I just wanted to endorse and support Jørgen’s comments. For those who went to WCIT in Dubai in December, there was a point in time where I think only four countries, or five countries, were not going to sign the Treaty that was being proposed. So people should understand that we must – ICANN, us... I’ve supported strongly the... Including the legitimacy issue around ICANN because a whole range of governments which you would have thought weren’t interested in expanding the scope of the ITU, were on the verge of doing just that.

And in the end probably a process issue led to the major split that occurred, rather than substantive debate. But it could have been, literally, as few as five nations saying they weren’t going to sign the ITU Treaty. So there is a real question about wanting to reach out so that governments become aware of this as an issue. It’s much larger than just the people who can explain what ICANN stands for, that we must reach on this issue. So I would endorse Jørgen’s comments.

BRIAN CUTE:

Thank you Stephen. Steve?

STEVE CROCKER:

Steve Crocker. It’s a very interesting sequence of comments from Jørgen and from Stephen. As I listen to them I divided things up into three buckets. This is an Accountability and Transparency Review Team in respect to ICANN’s mission. That’s a reasonably narrow and focused scope. The force of your two comments, to me, have to do with the very large topic of the Internet as a whole and the interaction with economies and governments around the world.

And I think just so there's not mistake about where I'm coming from, I think there is compelling evidence that good participation and insightful participation in the Internet is a very positive thing for every country and that, for example, getting involved with how do we restore the settlements that we were getting tends to run counter to how do you expand the gross domestic product for the country. Those things are extraordinarily far outside – not just by a little bit, by a lot – outside the Mandate for ICANN.

There is a intermediate topic of defending ICANN's existence and how do you support the ICANN model and making ICANN survive; and that has to do with this ongoing interaction with the ITU and what the ITU needs for its own purposes, and so forth. Just to recap, there's the mission that we have, as ICANN and the mission that ATRT 2 has, with respect to looking at accountability and transparency of ICANN's mission.

There's the protection of ICANN from the predilections of governments, in general, and ITU in particular, and then there's the broader question of how do we all participate in helping expand the positive impact and control the negative impact of the Internet, across the globe. And I'd hate to see us get confused about these things, I think we need to keep the [three men? 03:16:09]. I think we're all quite empathetic, probably everybody in this room is empathetic with all three of those, but I don't view them as the same and I think we can slide rapidly down a very slippery slope if we just take all that on in this room.

BRIAN CUTE: Avri?

AVRI DORIA: Avri speaking. I'd like to add one other thing to that – and I sort of agree with the notion of really being careful and looking at our mission – is that if we start to reach out too much to governments and too much to governments in relation to ITU and WCIT and all that, we then open ourselves up to 'and what about the civil society that's excluded from WCIT and ITU, and are you, in trying to sell to governments and appeal to governments very hard, neglecting the other part?'

And because there's very much a... When civil society looks at what happened at WCIT and ITU they have a very different perspective in some cases. So I do worry about going to the broader, the legitimacy of ICANN issue to governments, without taking the broader context into view.

BRIAN CUTE: If I may, and thank you everyone for their comments. The thing that strikes me is Steve's comments about the scope of the task of this Team, which is clear, and just to put it back for discussion I think the way here is not to look from the outside in. What are the issues that are of concern? How do we work towards...? From those back into the framework and mission of this Group, but what is the framework mission of this Group?

Part of what we have to do is data collection, outreach to the broader Internet Community and is there, from an inside out way, defining

something we could do to interact with governments in a meaningful way? Not as clear as I'd have liked that to come out but I hope that triggers something. Alan?

ALAN GREENBERG:

It strikes me, as I'm listening to all of this, that it's a great goal, but given our timeframe, the context we have, the amount of time we can devote to this and the effort it will take to get interest and involvement from any given government, it's almost an impossible task – unless some serendipitously drop into our laps.

BRIAN CUTE:

Olivier?

OLIVIER CRÉPIN-LEBLOND:

Thank you very much Brian. I differ in view with my friend and colleague Alan, and I just wanted to respond to Steve's position with regards to the scope of ICANN. What we heard at – and this is just a forum among many other forums that are out there – was the lack of the exact thing that this team is looking at: transparency and accountability from ICANN. Accusations of no transparency and of no accountability to anyone.

And so in reaching out to these governments that are saying that, I think that rather than just getting this through other ways or hearing about it in the press or whatever other avenues there are, I would see some worth in actually having the direct input and saying 'well, what is it that you don't think is accountable at ICANN? What is it that you don't think is transparent about ICANN? If you're going to make such accusations

then you'd better show us what the accusations are and engage directly in the dialogue with those that are doing that.'

And in fact, by the very nature that they don't recognize ICANN's legitimacy, they're not present in the GAC and they've never been to an ICANN meeting.

BRIAN CUTE: Thank you Olivier. Jørgen?

JØRGEN ANDERSEN: Yes, well, Olivier phrased it much better than I did in my initial remarks. My intention was not to have a broad outreach activities bringing up discussions about the ITU and WCIT and so on; my intention was to raise the awareness of governments on what is going on in ICANN, what is going on around this Team, in order exactly to obtain what Olivier phrased so elegantly. I think this is a vital purpose and I want to remind you about what Fadi said in his intervention at the Los Angeles meeting.

I think he met the Minister of Uganda; a woman who didn't really know anything about ICANN and the governance issues and the work of GAC. She didn't know that she had a representative in GAC and what was going on there. And I think this is part of the dilemma, that the top government level there is no awareness about what is going on here, and exactly as Olivier said; this brings basis for these accusations about lack of transparency, lack of accountability.

Why don't we address that directly and do something? A letter from you, as Chair, or from, I think, somebody else, indicating... For example,

submitting the questions that have been raised towards the Community and ask whether somebody wants to contribute? That would be a direct proposal. You could even do it tomorrow. How many GAC representatives or representatives at the GAC meeting knows exactly what we have been doing in drafting these questions? Why don't we make paper copies for distribution at the meeting Sunday morning, then ask all GAC Members to go back into their home countries and consider which replies they would give for this? That would be a proposal.

And in parallel, for example you, Brian, write a letter to ministers or to governments in all the Member Countries of the United Nations, with the initial remarks as Olivier phrased: 'It has sometimes been mentioned that the ICANN lacks transparency and accountability. We have taken this very seriously and we want to remind you about Article 9.1 in the AOC, and we are carrying out the second review and this and this is going on, this has resulted in these questions. Please come back to us with your view on that.' That would be a direct way of reaching out to governments and seeking for their support. Thank you.

BRIAN CUTE:

And within scope. Other suggestions, Larry?

LAWRENCE STRICKLING:

I think there is something here for us. Under the Affirmation of Commitments we are to evaluate the extent to which ICANN is adequately assessing the role and effectiveness of the Government Advisory Committee and its interaction with the Board. So certainly I think we would all agree that a GAC that has robust participation of

more governments, if not all governments, has a direct relationship to the effectiveness of the GAC.

Where I'm a little nervous is the extent to which we transcend our role as a Review Committee and inject ourselves into making this more effective itself. In other words, we're supposed to assess how ICANN's doing it. So the point that Jørgen makes about requesting input from governments to our questions, I like that a lot but I'm concerned if the letter's coming from you as opposed to perhaps from Steve and/or Fadi, because at that point it shows that ICANN is worried about the effectiveness of the GAC in seeking this input to help the overall process. I realize these are very nuanced issues that we have to be careful about, but we all agree on the goal.

But I do think we, as a Review Team have to really keep ourselves within the specific remit of the Affirmations, that we're not treading into space where we're potentially interfering with or deluding a message that really ought to be coming directly from ICANN, and which to all appearances Fadi is doing a very good job at right now, in terms of the engagement. He's achieving with a lot of governments that traditionally haven't been that involved here before. We don't want to do anything to interfere or slow that down.

The question is how do we assess that as a Review Team in a way that's productive?

BRIAN CUTE:

Thank you Larry, and the word that springs to mind for me is not just the scope of the work of this Team, but what should the posture of this

Review Team be? Our job to assess and provide recommendations to ICANN. So I would concur. At the same time one thing I've been thinking about, it's slightly off target here, but in terms of an independent expert, a notion that came to my mind was should we have a professional survey organization that can get questions from the Review Team out to a much broader audience?

We publish questions for public comment but I think we all would admit that we do not get feedback from the broader public that we would like to see. I think it's within the remit of this Team to do as much outreach, and as broadly as we can, to garner input to analyze. And if we are raising awareness along the way, to the broader public, including governments, then that's something that we should undertake as well. Alan?

ALAN GREENBERG:

It strikes me that the people we really want the input from, the people that Olivier met who said 'ICANN is not transparent and ICANN is not accountable to anyone' are not going to be filling in our surveys. I think that's a simple truth. Some of them will perhaps, but it's going to be hard to target and get real results from that group. I think perhaps we're focusing too much on solving the problem rather than identifying it.

If we can state, concisely, the kind of thing that Olivier and other people have said, and the recommendation is that ICANN needs to look at how to address this and take its head out of the proverbial sand – if its indeed there – that there are groups that were not... We don't have credibility

from and we need to face that. That's part of our job even if we cannot make a simple recommendation on how to fix it. So...

BRIAN CUTE: Other discussion, David?

DAVID CONRAD: I actually... Sort of gleaned off your suggestion actually; looking into getting a professional survey research firm involved, I think that would... If we actually move forward with that approach I think that would be interpreted somewhat differently that ICANN doing the survey. If we actually hired a professional survey research firm to go out and canvas the appropriate individuals within governments as to their view of ICANN's accountability and transparency and legitimacy, presumably they would formulate the questions in such a way that it would generate the kind of information that would actually help us understand where it is ICANN needs to apply thrust to move forward.

I definitely would agree that ICANN should not do the survey. No one is going to both listening to it, but having a professional survey research firm do it, I think it could potentially have some positive input.

BRIAN CUTE: Discussion? Thoughts? Jørgen?

JØRGEN ANDERSEN: I can support David's idea. I think it's a good idea.

BRIAN CUTE:

Steve?

STEVE CROCKER:

(coughs) Sorry, I like the idea but I want to take a moment to discuss it a bit. I have actually spent some time with high-powered survey firms, polling firms and so forth. There are subtleties involved in this process. You don't just go out and do a survey of men on the street across the board and get the answer that you want. The touchstone here – and again I apologise if I misunderstood you earlier, Jørgen, but a key point of what you said – is the right levels of attention within governments.

In some sense you can imagine trying to survey the proper ministers, the appropriate minister in each country as the population that you want to go after, and ignore everybody else, and that might actually be the ideal of what you want. But let me state all of that in a slightly more neutral way. In constructing such a survey, what would the ideal answer be that you would hope for? 100% support. You'd have to ask 100% support by whom? And if it's the appropriate ministers, that's fine, if it's a different set of people, that's fine. If it's the man in the street, that's a whole different sort of thing.

And so in constructing such a survey you have to have in mind the rest of the picture; who should be involved and what does that mean? So as to not just get a number on a randomly constructed survey. That is a delicate and complicated business; not quick. And you have to get the right people to do it and you have to have a discussion about what it is you're trying to accomplish.

The other complication that comes up in these kinds of polling efforts is that you have a very strong Heisenberg effect in that the poll affects the results, and that's used often in a deliberate way of what's called 'push-pulling' and you're really trying to get a message out to those people, not just sample what they think. So I'm not suggesting we don't go down that path, but I am suggesting that it is a rather more substantive and weighty task than it might seem on the surface here. I like the idea, basically, I like the idea of having an independent group do it but I think we should go into it eyes open and with the appropriate planning and energy and consultation about that.

BRIAN CUTE:

Jørgen then Larry.

JØRGEN ANDERSEN:

Jørgen speaking. Thank you Brian. Maybe I've not expressed myself clearly or sufficiently clear. I think the problem we are facing is not related to finding out what the men in the streets think about this. I think the problem is, or challenge is, finding out those who have accused ICANN for not being transparent, not being accountable. These are representatives of governments. This is the group we should address.

The underlying reason for doing this is that if this decision, this view that ICANN is not accountable and transparent, is spread even more widely than today, this might be the end of ICANN because at a point in time governments, or the majority of governments, want to claim sovereignty over the Internet and want to decide what is going on there. This is not my view, it's not my country's view and that's not the European view,

we want to maintain the Multi-Stakeholder driven approach, we want to see the Internet flourishing to the benefit of all countries, to the benefit of all parts of society.

But I think that something very crucial must be done in order to maintain the current system and develop that further, and in order to do this we want to know exactly what are the concerns of governments. That's why this survey, which David proposed, and which I supported, should address governments, should address ministers directly and ask them directly the question: 'where do you see the problems with respect to lack of accountability?' 'Where do you see the problems with regard to the lack of transparency?'

190 ministers around the world it shouldn't be too difficult to carry out that survey but I think that having assistance from a professional company doing it would be very essential, very important. Thank you.

BRIAN CUTE:

Sorry, thank you Jørgen. Larry?

LAWRENCE STRICKLING:

I'm in strong agreement with the issue and the problem and how we, as an institution, ICANN, need to deal with this, and I think they are. I worry about the Accountability and Transparency Review Team taking upon itself to solve this problem when it's really not our responsibility. And I worry about interfering with legitimate ICANN efforts to do this, to the extent that we impose some process with this that really ought to be within the province of ICANN. So here's what I mean, very specifically.

If we all agree that the effectiveness of the GAC is enhanced by getting more participation from countries then it is absolutely appropriate for the ATRT to evaluate ICANN's efforts to do that. When you're reaching out to governments to get them more actively involved in ICANN, the tools that are used for that in the first instance ought to be established by ICANN's senior leadership and the Board. They ought to provide that direction. I can see that discussion, talking about what's the most effective tool to use to do that?

I have to think that a impersonal survey from, likely, an American firm, polling ministers on this would be quickly discarded as not the best way to reach out to governments, compared to the type of hands-on diplomacy we're seeing today from Fadi and other senior members of the ICANN Team. That's a decision that we really ought to leave to ICANN to make, and then we can assess it, as an Accountability and Transparency Review Team, as to whether or not we think that's been effective or not.

But for us to take it upon ourselves the idea that 'no, we want to do that survey' I think interferes with the autonomy of ICANN to make those choices and risks leading to a bad outcome because of the fact that simply – not just the question of the effect that Stephen mentioned, about how you ask the questions leads to a result – the fact that it's a survey firm that shows up on the doorstep of a minister could have a backlash for ICANN that we can't fully comprehend and appreciate, because it wasn't the more personal type of diplomacy that Fadi has engaged in.

So this is a really important issue and we can't mess this up. It's within our ambit in terms of making sure that ICANN is doing what it needs to, to be effective in this regard, but I worry about us injecting ourselves into the actually operational aspect of this in a way that could actually lead to unintended and unfortunate results.

BRIAN CUTE:

Thanks Larry. Let me ask a couple of questions on the context of your remarks. Jørgen earlier had suggested each GAC Member is provided with a list of questions that we put out for public comment and ask to bring back to capital and provide it to their ministry. Fadi or Steve putting their name on a letter that includes the questions for comment in a direct approach to a minister. Again, not taking your remarks about not getting involved and how ICANN Staff goes about the business of the outreach. Are those frames that work with your thinking?

LAWRENCE STRICKLING:

I don't see any problem with either of those. But I do think that if somebody who's not an existing participant in this process is touched by a survey firm, I do think there's a potential backlash from that, that we have to be concerned about, and particularly if we're injecting ourselves into what really... That's a decision that I think is best left to ICANN Board and Management to decide, because that is very much part of their outreach.

We're doing it as a diagnosis of effort of just trying to understand why governments feel this way, I mean I can predict the answers for most of this, it's going to be the type of thing that Fadi has run into when he

actually visits these countries, which is that the senior people are basing these comments on hearsay, they're basing it on misinformation that some people find in their interest to circulate.

But it's probably more a lack of knowledge as to what their own government may actually be doing in this space. That has to be dealt with on an individualized, personalized basis. A survey is not going to all of a sudden, magically change that. If a minister is not engaged in ICANN and gets a survey form, my guess is that they'll put it into the trashcan. Why would they necessarily respond to that? They're not going to do that when they get a request for a meeting from the CEO of ICANN, and I think in a lot of respect we've got to defer to Fadi and his team to figure out the best way to engage some of these governments on an individualized basis.

The larger questions that Jørgen has raised and Steve mentioned; these are huge problems for all of us in governments around the world and we do need to come up with a way to figure out how we turn around the outcome that happened in Dubai last year, and as we look ahead toward the [plenty potentiary? 03:39:45] next year for ITU. I don't think that gets done through the ATRT. That's a larger effort of likeminded countries that we need to get on and engage with.

BRIAN CUTE:

Do you think – because you focused in on the GAC piece of the recommendations from the ATRT 1 and the AOC – do you think that there's a unique set of questions that the ATRT could fashion that would

be useful for Fadi to put forward, that aren't reflected in the questions for public comment?

LAWRENCE STRICKLING: Maybe. I haven't thought about that. I'm happy to think about that.

BRIAN CUTE: David?

DAVID CONRAD: So one of the things that I'm interested in in this particular discussion is the mechanisms by which we establish whether or not Fadi and the Board, and ICANN in general, are being effective in their approaches at outreach – particularly to governments and other entities. The... Yeah... Traditionally, when one is trying to judge effectiveness, one of the mechanisms by which you do that is surveying the target audience to see how they are interpreting the outreach efforts.

I don't have a strong opinion as to the mechanisms by which that is done, but my interest is in establishing, in an accountable and transparent way, how exactly ICANN is implementing the clear need that it has, to improve its legitimacy, particularly within governments.

BRIAN CUTE: Thank you. It is an element of the assessment we need to do. Alan?

ALAN GREENBERG:

I guess I'm asking myself at this point, are we also supposed to be looking at the effectiveness of the components of ICANN? As an example, we have GAC Members... We have people who do participate in GAC who are not supporters... Whose countries are not supporters of ICANN. Does that mean that the individuals are at such a low level that they don't really affect the positions of their country? Does it mean that we have sitting GAC Members who really look at us as scants and say 'it's all a sham'? And that's the message they're bringing back?

I'm not quite sure how to address it and I'm not quite sure how this is out of our scope, but instead of trying to address how does ICANN better its image in the world, I think part of our focus needs to be to what extent are the mechanisms we have in place today effective? And I suspect the answer is some of them are probably not effective and I'm not sure I know how to fix them, but just understanding that perhaps some of them are not effective is something that we need to think about. And I don't have a way to transform that into words on a task list.

BRIAN CUTE:

Any other comments? I'm not hearing consensus but I'm hearing a narrowing. Jørgen?

JØRGEN ANDERSEN:

Thank you Brian. Not to prolong the discussion any further but I've listened to Larry's intervention and I appreciate his concern about letting a consultant company carry out the survey; an American company, and (laughs) I think that he might be right in his view on this. But I'm a little

bit confused about his concerns about letting you, as Chair of this Team, be the one signing a letter to governments, because I think that when we posted the questions it was done on your behalf, so to speak, as Chair.

If we submit the same questions to governments, why should it be you contacting governments? I think you should be the right person. I don't understand why it should be Steve or Fadi, but maybe I've misunderstood something. Thank you.

BRAIN CUTE:

Larry?

LAWRENCE STRICKLING:

I guess my point was that if, in the larger strategy that Fadi, working with the ICANN Board, has put in place to engage governments, they would see this as furtherance of that strategy for them to reach out to governments and invite them to submit input directly into this process. I guess I'd like to think that we'd defer to that view, as opposed to just assuming that just because the ATRT came up with the questions the ATRT Chair ought to get in touch with a bunch of governments and ask them for their view on this.

Again, it comes back to the role of us as a player tipping the outcomes of some very important issues, as opposed to doing so in a way that doesn't interfere with a strategy that's already underway inside ICANN, to reach the same goals with some of these countries. So I have no problem with the idea of encouraging governments, above and beyond

their GAC Members, to provide input to us on the questions. But I want to make sure we do so that is consonant with a strategy that's already underway here within ICANN to have the same outreach to governments to encourage them to participate in the process. I just think we need to be sensitive to that, every step of the way here.

The governments all have these questions available to them because of the public posting. You're now suggesting a separate reaching out to them, that I have no problem with as a matter to whether we do it or not, but I'm concerned as to how we do it in a way that doesn't somehow have inadvertent and unfortunate consequences for a larger strategy that's in play here. That's all.

BRIAN CUTE: Jørgen.

JØRGEN ANDERSEN: Thank you. I appreciate this view and I can agree to this as long as the final outcome is that the replies to the questionnaire are sent to the ATRT 2.

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND: Yes, thank you Brian. In listening to this discussion here there are a number of very good points that have been made, and I'm appreciative of all of the points. I do have a concern thought about Fadi or Steve to

be the messenger of such... Or to act as the messenger of such questions, due to the very fact that the ATRT itself is, I would imagine, is there to ask the right questions to find out about ICANN's accountability and transparency. I'm not quite sure how it works then when someone who does the outreach also does the evaluation of its own work or hands out a survey as in 'oh, tell me how I've done'.

For example, it's been mentioned that Fadi does the outreach and has gone to speak to governments and so on. How do we know whether he's being taken seriously or not? How do we find out? How do we establish any metrics on his success or not? Or do we *have* to have metrics on his success? On what he's doing?

BRIAN CUTE:

Avri.

AVRI DORIA:

Avri speaking. I think I'm getting confused. Maybe I'm the only one, in which case I apologize. When I look at the Mandate here, in terms of governments we have 'how's the GAC doing?' Not 'how are governments doing?' And when we get down to the Mandate we have 'how are we doing in general in terms of...' 'How's ICANN doing in general in terms of its policies?'

Now, I understand if we're at a point where we're saying 'gee, the way we've done the outreach on the questions didn't reach governments well enough, so we need to booster that.' 'The way we did outreach on our questions didn't reach.' – in my case – 'civil society well enough,

therefore we need to booster that.’ And I see no problem with that as a problem that gets solved by the Chair or anyone else saying ‘ooh, we think that the way we did outreach isn’t going to reach you so here, we’re doing something specific.’

But in terms of the Mandate, what we’re supposed to be looking at is how is the GAC working, not how is the GAC working with reference to other governments, to the governments that aren’t included. ‘How’s the GAC working?’ And that doesn’t seem... It’s ‘how’s the GAC working in relation to ICANN?’ Not ‘does GAC reach out well enough?’ ‘Does GAC have access?’ ‘Has GAC pulled in everything it should?’ ‘Has ICANN reached out to governments enough?’

Those things do seem beyond what we’re really supposed to be looking at, except when governments are embraced, supported and accepted by the public and the Internet Community, in so far as governments are of course part of that Internet Community – yeah, we care. So I guess the conversation in its specificity about this being part of ICANN’s GAC outreach or ICANN’s government outreach just confuses me.

BRIAN CUTE:

Thank you Avri. Larry, you’ve spoken to the role and effectiveness of the GAC aspect here as a tie-in. Do you want to reiterate your view?

LAWRENCE STRICKLING:

Well, I just felt that the wording of the Affirmation of Commitments... And I’m not sure if this is a direct quote or not because I don’t have the AOC right in front of me, but it does say that we are supposed to

evaluate whether ICANN is adequately assessing the role and effectiveness of the Governmental Advisory Committee and its interaction with the Board. I think within that, if ICANN were to say ‘the GAC would be more effective if we had every country represented on it’ in an enthusiastic way, and we have a plan to make that happen’, that would certainly something with our ambit to review.

In terms of how effective they’ve been in carrying that out, having chosen that as an indicia of effectiveness of the GAC. So I felt that this question of participation could be brought within our Review in the nearer scope of what we’ve been asked to look at. So I guess I wasn’t quite where Avri’s at, of saying ‘gee, is that even within our Mandate?’ I think it could be. I’m only worried that having decided that we want to look at that, which I think that we could decide to do, I’m concerned about us taking actions that somehow inadvertently – because we haven’t thought them through – interfere with the very strategy we’re supposed to be evaluating the effectiveness of.

That was my only point and I think the choice, when we start doing these individual reach-outs to important sectors where we need to think through are we becoming actors in this as opposed to reviewers and assessors. And before we do that we ought to think it through and, I think, make sure that if we are injecting ourselves into an area where the Board and Senior Management is already playing, we at least owe them the courtesy of that kind of discussion, to make sure that we’re not doing something that might interfere with what they’re doing.

In no way is this turning over the actual Review to the Board, turning it... The question is just making sure that we don't do something to interfere with the process that they may have underway. That's all.

BRIAN CUTE:

Thank you. So the thought there is that... Your concern could be addressed through consultation between the ATRT 2 and Senior Executive Staff at ICANN on this question. And with respect to the discussion about the Chair of the ATR Team versus the CEO of ICANN signing the letter, I'm going to offer no opinion on that. That's something for this Group to talk about and perhaps consult with ICANN Senior Executive Staff.

The only thought that I had when the suggestion was made was akin to the survey lands on the desk of the minister, a letter from the Chair of the ATRT lands on the desk of the minister in a sense of standing 'who is this person?' That was the only reaction I had; 'who is this person?' Does that go in the trash or the CEO of ICANN might get [don't? 03:53:17] more attention. [laughs] Steve?

STEVE CROCKER:

Let me just ask; how many people here have experienced dealing with the kind of survey we're talking about, where you want to reach very highly-placed people in order to get opinions at that level?

UM:

I would just say... Well, I've never gotten one from ICANN but anything like that that comes to me on email or something I would tend to ignore,

so... And Fiona says her experience is she ignores those types of things too, so...

STEVE CROCKER:

The reason why I ask is that – as I mentioned – I’ve had a little bit of contact with that and the way those things are carried out is not by having somebody send email and it just lands on desks. It’s very targeted; you have to have access, you have to use the right polling firm and it has to be structured just right. This is not a mass-mailing sort of thing. Think more in terms of somebody who has... Or a group that has knowledge about how to reach the right set of people and has the access to them so that when they call they get through. And calling as opposed to sending email. A whole different level of activity.

BRIAN CUTE:

Thank you. Any last comments? Michael?

MICHAEL YAKUSHEV:

Michael Yakushev. I do accept what Avri has told us about her concerns, but I also share what Larry responded to her. And I would like to mention that there is maybe a little bit more of a high-level issue in all of this stuff; when they’re talking about the governments. There is a certain misunderstanding, or certain concerns. Not only about how inefficient the work of GAC or the Board of ICANN is, so not the question about how transparent or accountable [inaudible 03:55:28] are, but also whether there are certain deficiencies or some defects in the Charter Documents of the ICANN and whether it can be corrected.

So in the Mandate of our Group, we're talking about how to make the work of ICANN more transparent and more accountable while some people from other governments are interested in talking about ICANN itself, the initial idea where it was properly implemented and whether it's reasonable or feasible to change something in the Charter Documents and the AOC, etc., etc.

I think that our task as ATRT is to try to convince, to explain to the people, what can be done within their existing framework and how they're making their organization more accountable and more transparent will help to answer the concerns and answer the questions that have been raised.

That is why I fully support the idea to interact with the governments, to give any [cot? 03:56:42] type of explanations and then also to show how it can be done within the existing framework rather than to go back to the issues of how ICANN was created and how it should work. Thank you.

BRIAN CUTE:

Thank you Michael. Clearly I think we've... Oh, I'm sorry. Stephen?

STEPHEN CONROY:

Stephen Conroy. I've just been listening to the debate with a lot of interest and I'm torn between the two views being put forward. As someone who would be the recipient of said survey I would then pass it to Andrew and get him to tell me what to say. In a normal run of events. So I share the point Steve makes; how do you actually get somebody to

respond in a meaningful way or not, as Fiona says, not even coming in and it goes in the bin. And different governments do it different ways.

My concern... I'm still torn a little bit between yes, we can do a Review that says GAC is ticking all the boxes and ICANN are ticking all of the boxes that they're required to and are doing it correctly. And then every government turns up at the [planning pod? 03:58:00] and says 'thanks for coming but we don't care'. And we're going 'but it's working fine; all the boxes were ticked, what went wrong?' So it just requires a little bit of both.

I'm a bit like Alan; I don't know how to write this down. I don't know how to find a way to write this easily but I'm sure if we dig deep into the processes of being undertaken between GAC and ICANN we're going to tick all the boxes, but that's not going to solve the broader problem, and we've probably got a timing... It's a good timing problem because ICANN are reaching out in ways that I understand they've not done before, and Larry's right, we've got to not interfere in what Fadi's doing because it's being done in a more thorough way.

I think if you listen to that report, he gave the intervention he gave – he is absolutely [tricking? 03:58:56] the world in a way that hasn't been done before. So we don't want to interfere with that. We've still got to be conscious... Be as [inaudible 03:59:04] how do we know if he's been successful or not. That's... I guess if GAC Membership swells, we can probably go 'there's a metric we can tick'.

But then also there's the question of just [inaudible 03:59:17] the government sends a representative of the GAC for the first time, does

that mean that they don't go to the ITU and vote to wipe, effectively, scope [cream? 03:59:24] over the top of ICANN. So I don't necessarily have a solution and I absolutely support that Fadi's out there doing it like it's never been done before, and we've got to support him in doing that by not interfering. So I'm probably speaking both for and against my previous contribution! (laughter)

UM: Way to have it both ways. (laughter)

BRIAN CUTE: And we'll leave you in that state. Steve?

STEVE CROCKER: Thank you. Stephen, thank you very much, I think you've nailed it directly. I think we're sliding from the specific Mandate of Accountability and Transparency to the larger and perhaps more salient question of 'are we being accepted? Do we have legitimacy?' And accountability and transparency are required, they're necessary, but they're not sufficient to achieve legitimacy and I think there's a deep understanding in all of us – this level of understanding because we've all been around here for a while – that there is that distinction.

So as you've pointed out, we could tick all the boxes and prove that we're accountable, prove that we're transparent and the reaction might be – either stated explicitly or implicitly – 'we don't care.' 'We don't trust you, we don't like you, we don't want you to exist this way.' 'We don't care how accountable and transparent you are.'

That's the conundrum that is facing us here and that's a much more important question, if you will, than just 'are we accountable and transparent?' But it may be beyond our grasp to solve it completely within this framework, so that's a challenge as to where we draw that line and how far we want to go down that path.

BRIAN CUTE:

Thank you Stephen. I'm going to go to Olivier and then draw it to a close.

OLIVIER CRÉPIN-LEBLOND:

Thank you Brian. It's Olivier, for the transcript. Steve just touched on something; proving to ourselves that we are transparent and so on. I'm a bit concerned that we sometimes just think that we are transparent and then are not. Or think that we are accountable and then are no. And this is why I do support going outside our walls to ask these questions, rather than asking ourselves the question.

I'm also torn – as Stephen – between the different points of view that were expressed. But how do you get a government to tell you whether they believe that ICANN is transparent and is accountable? You don't get that by going to the GAC, I'm really sorry, but I've had some delegates at WCIT coming to me – heads of delegation – coming to me and saying 'oh, you're from ICANN', 'yes', 'we've got someone in the GAC here. I thought about going. I didn't think it was worth me going, I sent some junior member. I don't hear anything from them actually. I don't even know whether they attended the meeting or not.'

It's just terrible and we have to open our eyes to that. So asking GAC Members about how things are doing, oh, they'll love it. They'll say they're doing great. They obviously don't want to get their travel budget to be taken off. [laughter] It's a similar thing for the ITU by the way, to get a lot of people who are involved in the ITU who don't want to get their travel budget taken off or their flat in Geneva, etc., etc.

But you see this sort of thing. I'd like to see some independent view on how ICANN is doing, and certainly what tears me is exactly what Larry has been saying; we don't want to interfere with what the Board and Senior ICANN Staff are doing at the moment. How do we do that? I don't know. Maybe we use them as the messenger but then receive the answers ourselves? I need some time to think about it.

BRIAN CUTE:

So, feeling acutely uncertain and deeply convicted about something we know is terribly important, why don't we break for lunch? We're going to take an hour and eat, for everyone online. Thank you. Oh, no, yes, sorry. No, yeah... We're going to put the whip down. No, it won't be a working lunch.

Originally we thought there were going to be at least four GAC Members who wouldn't be able to attend for the entirety of the day and the original thought was to have a working lunch [skip? 04:04:05] caught up, but since it's just Heather, we can get Heather caught up, I believe... We'll have an at-ease lunch. Thanks.

[tape change – atrt2 – 2 – -5apr13 – en.mp3]

BRIAN CUTE:

Greetings. This is the continuation of the Accountability and Transparency Review Team 2's face-to-face meeting in Beijing. Welcome back everyone online and in the room. On the Agenda we have the next area of discussion, which is going to be data collection and analysis followed by a discussion of the work streams and some brainstorming around issues that we want to bring into the work streams. And then we'll end the day with a presentation by ICANN Staff – The SSR Review Team Implementation by Patrick Jones.

So we've got the next hour for our data collection and analysis discussion. I'm going to ask Alice to pull up a document from ATRT 1. It's not put forward as a draft to be adopted. There are pieces of this document that I want to put in front of the Team for us to discuss. And we may generate a draft out of this or not, but this was the Framework of Review document from ATRT 1.

What we need to think through is the organization and methods by which we go about collecting data to do our assessment and develop recommendations, and also how we explore the issues in front of us effectively. So if you would come down to page 2, Data Collection. Again, this is from ATRT 1, this is not offered as a draft, just to show what the first Review Team did in terms of collection data for assessment. The ATRT 1 addressed time periods and divided the past into three time periods, each with their own relevance.

I think the simplistic answer – but I want to make sure we’re right about this – is that for this Review Team; ATRT 2, the relevant time period is a time period from which the ATRT 1 issues its recommendations and reviewing how ICANN implemented those recommendations and the following-on Review Teams’ recommendations. [Skype noises] So that I don’t believe we need to get into some segmented view of the past, it’s just simply the time period from December 31st 2010 to today.

Is that right? Oh, Lise, welcome. Is there any gray there? Is there any reason why this Review Team would look back beyond the first ATRT? In assessing ICANN’s accountability and transparency? Alan?

ALAN GREENBERG:

Due to the turnover in Staff and such, I’m not sure the answer is yes. But for issues that the ATRT 1 didn’t look at, there may well be relevance in going further back.

BRIAN CUTE:

One approach we could take too is we have four specific work streams. Three of them are focused on unique Review Teams, their recommendations and how ICANN implemented them – to your point Alan – within that work stream. If a given Team felt that it needed to look further back in the past, is there any reason why they wouldn’t be able to?

ALAN GREENBERG: Yeah, and I thought we had delineated the work to say each stream will review what was done but also consider things that weren't done.

BRIAN CUTE: Okay, any further discussion on this point? Okay, Alice, if you could just key forward a little bit? Okay, in terms of indicators or metrics, the other thing that the ATRT 1 identified – and I think this Team has a sense that it will be focusing more on developing metrics – ATRT 1 did identify that in developing metrics there are certain structures and approaches that make more sense in terms of measurement. Smart metrics were identified as one set of performance indicators that lend to useful measurement of performance. That's just one point of reference; we could use others in developing metrics.

Just scroll down a little bit. And then we had these other key points to consider; both from a quantitative and qualitative standpoint for measurements. Questions such as what performance indicators have been implemented to-date? This would be questions with respect to ICANN. How had they been tested or validated? What have the indicators shown? Do performance indicators vary? Can performance indicators be flexible for future evolution of tasks? Again, these are just framing thoughts. Anything from a discussion standpoint to add? Are these useful for our consideration? Okay. I think we're going to do it this time. Exactly.

Keep scrolling please Alice. Okay. Okay, so these are some of the other questions we highlighted at the outset of the work that focused on – effectively – tools for data gathering and outreach. I'm not going to say

that the ATRT 1 followed these points to the letter but [laughs]... We didn't, yeah, exactly. But, for example, focusing on data collection and that's really the substantive discussion we had to get to, was how do we go about collecting data? How do we validate data to some level and use that as a basis for assessment and analysis.

So we have the opportunity to collect input at public forums, at ICANN meetings, at other [fuera? 00:07:28]. We mentioned a survey the first time around. I guess this would be a good time to segue into the discussion about data collection and start building out an agreed-upon framework for that. Alan?

ALAN GREENBERG:

Just a comment, which might be flippant, but I object to the term 'group think' in the lead-in sentence. The definition I just found of 'group think' is the practice of thinking and making decisions as a group in a way that discourages creativity and individual responsibility. [laughter]

BRIAN CUTE:

Noted. [laughter] I don't know what else to say. Avri?

UM:

There are more derogatory [chat backs? 00:08:10].

BRIAN CUTE:

Nothing? Okay. So clearly we have questions for the greater ICANN Community. We have questions we can provide to ICANN's Board, ICANN's Staff, ACs, SOs, specifically tailored. We will have Durban as an

opportunity to have structured interactions with each of those bodies within ICANN. We have the public record, obviously, that we will be able to review.

And we've talked about broader outreach in terms of data collection. Anybody want to add thoughts to putting framing around data collection? How did ATRT 1 Members, who are here present, feel the data collection in that exercise went, or on any of the other Review Teams? Did you face challenges in terms of the data collection part of the process? Alan?

ALAN GREENBERG:

I guess I have a problem with the term data collection because I don't really think in many cases we're dealing so much with data as impressions and perceptions. Perhaps that is data, but it lends a more objective term to it than it really is, but maybe I'm missing something.

BRIAN CUTE:

Other discussion? No? Okay? Avri?

AVRI DORIA:

Alan himself said it – this is Avri speaking – when we're collecting people's opinions of things, that is the data and that's pretty much what we're collecting. 'Do you think it's been accountable?' 'Do you think it's this?' 'Do you think it's that?' So by and large, that is data; that is social science data and I think what we are doing is a social science type of exercise, not physics or chemistry type of exercise, so I think it is data.

BRIAN CUTE: Thank you. David?

DAVID CONRAD: So ideally the goal should be finding objective metrics that can be repeated over time, and as Heather indicated, we are seeing an increase in GAC attendance. Is that an indicator of improved perception of ICANN's accountability and transparency or is it something else? And part of the challenge [Skype noises] is figuring out exactly what a lot of the objective methods we can establish, what they actually mean.

The idea of considering a collection of subjective opinions on how ICANN is doing is the data from the data collection effort is entirely valid, it's just you need a lot of it for it to be statistically significant. You can't just have eight or ten people, you actually need to get, I think, a much larger cross-section of impressions than we've been able to to-date.

BRIAN CUTE: Thank you. Any other discussion? Yes?

DAVID CAKE: My name is David Cake, I'm from the SSR Review Team. You will get a lot of... When our data collection... We describe most of the data we got as qualitative rather than quantitative, but that did not mean that it was... So it's getting quantitative to the level where you can do statistical significance and so on was not a large part of our work.

But in terms of qualitative data that is nevertheless objective, there were plenty of results of internal reviews, looking at how that was responded to, looking at whether documents existed or not for particular things... There's plenty of data. There's a lot of qualitative... I would describe it as qualitative rather than subjective.

BRIAN CUTE:

Thank you very much. Okay. Okay, perhaps we should pull together some points along those lines just mentioned and circulate at least an outline. And the next item is analysis. And again the ATRT 1 broke their timeframes up in the past, at least across three specific timeframes. That was one structure of analysis. I don't think we need to get into that on this one. Could you scroll down? Okay, so this is evaluation methods must be identified and analyzed by the RT. The Review Team recognizes that the performance indicators that are adopted will inform the [inaudible 00:14:05] methodologies ultimately recommended by the Review Team.

So knowing that we want to produce objective and for the Review Team, independent recommendations based on the data that we've collected, anything we need to stress, identify or focus on with respect to the analytical process? Larry?

LAWRENCE STRICKLING?

Well, unlike the three Teams that preceded us, we start with an advantage in the sense that we've got dozens of recommendations that start our process. It would seem to me that one of the first things as a Group we ought to do before each of these Sub-Teams runs off and does

its own thing is we need a methodology by which to evaluate the implementation of each of the recommendations.

Now, I had offered some thoughts on some of the questions that ought to be part of that, that we had before we met in Los Angeles – by no means is that a complete list – but it seems like that needs to be put together so that for each recommendation there needs to be some standard set of questions that the smaller Groups asks about the implementation of it.

Things like was it clear what it was that had to be implemented? Some sense of whether the people who had to do the implementation feel they implemented it fully. Some appreciation by us as Review Team Members as to whether or not we agree with that or not, to the extent that there were gaps, what were the gaps? And then was there stuff that wasn't covered but should have been?

That's by no means an exhaustive list but it seems like that ought to be, if nothing else, before these Groups start sitting down and going through an analysis of each of the individual Review Teams, we need agreement on what that template looks like. And maybe that's something we ought to try to get done before we leave Beijing, just so the smaller Teams can actually sit down and get into the meat of the work effort here.

It'll certainly be supplemented by what we hear from people, both this week and next week and through the comment process, but there's no substitute for the Working Group to start going through these things with a certain amount of rigor, as fast... As quickly as we can. Because

out of that I think will emerge, is there a need for some external help to do that evaluation or to collect information?

BRIAN CUTE:

Thank you Larry. Alice, actually, do you have Larry's email with those questions? If you could pull it up on screen we really should walk through those. And in addition to those thoughts that you put forward I know Steve – he's not here – but I know he has on a number of occasions spoken to his litmus test for implementation, which I think goes toward the implementation becoming part of the DNA of the Organization, or whatever phrase he uses. But he's got a litmus test that I think is an additional companion to the list you've put forward.

So why don't we take a walk through the questions that Larry framed and see if we can't flesh out a little bit now some of the framework of the methodology to be deployed by the... Or employed by the respective Working Teams.

LAWRENCE STRICKLING:

And I will say the list I put forward was just to have a discussion in Los Angeles. I don't view it in any sense as the complete evaluation template that we ought to use; it was just a starting point so nobody should take it as a complete list.

BRIAN CUTE:

Thank you. Well, we've got a little less than an hour so let's see if we can make some headway in fleshing this out. Yeah, fine. I think we forwarded these to Patrick too, right? For his presentation. Yeah. No,

that's fine. We're going to pull these up on the screen shortly folks. It's not radio; we can be silent. Some Muzak? [laughter] An interlude. [laughs]

Okay. And here we are. So it's this middle paragraph, right Larry? Well, let's start through it and start our thinking and we can add to it as we go and flesh it out. So the first question is 'what did the Staffer understand the recommendation to be? And what did he or she understand the underlying to be that led to the recommendation?' So feel free to jump in here Larry. What I'm seeing here is a question that gets at, on one level, the sufficiency of communication from ATRT 1 – that's a communications issue – but then also an awareness issue on that part of the Staff or the state of accountability and transparency related to the issue.

And then 'how did he or she implement the recommendation?' Yeah, Avri?

AVRI DORIA:

Avri speaking. On that same vein with the first two would there also be... There's understanding the recommendation, there's understanding the underlying issue and is there understanding of an expected outcome? And I don't know if that's reflected in any of the others, in other words not only did they understand the recommendation but did they understand what kind of outcome was desired. And I don't know if that's a relevant question to ask, but that seems like it would be a third one in that same type.

BRIAN CUTE: Seeing no disagreement here. Alice, do you want to add that as a third?
What was it again Avri?

AVRI DORIA: It would basically be ‘what did she understand the desired outcome to be from the recommendation?’ That might be slightly contorted but...

BRIAN CUTE: Thank you. Okay, and then ‘how did he or she implement the recommendation? What options were considered and how was the actual option chosen for implementation?’ ‘Does he or she believe ICANN fully implemented the recommendation? If not, why not?’ Avri?

AVRI DORIA: Yeah, in that one I think there’s a question that comes between believing they fully implemented and perhaps the ‘if not, why not?’ it’s ‘what parts of the implementation were implemented and what parts weren’t?’ And then ‘why weren’t the parts that weren’t not?’ In other words there’s a missing piece there. I think in almost every case there’ll be an answer of ‘not fully’. If the answer is ‘not fully’, there’ll be ‘but partially’. So differentiating what parts weren’t done becomes an important part of then answering ‘and why didn’t you do those parts?’ Does that make sense?

BRIAN CUTE: So ‘why’, with respect to both, ‘was what done and what wasn’t done?’ I’m trying to interpret what you suggested.

AVRI DORIA: Yeah, I guess you're right for completeness sake if some part was done and some part wasn't, why the difference? What's different about the two? As sort of a compound answer 'one was easy, one was hard and one was impossible, one was... One made sense to us, one didn't'. I don't know what that answer is but it's sort of important to understand that answer to understand what parts they did and what parts they didn't.

BRIAN CUTE: How would we write that question?

AVRI DORIA: Yeah, that's a problem. [laughter] The second question becomes 'if not, what parts weren't implemented?' and then 'why weren't they implemented?'

BRIAN CUTE: Okay, okay, 'if not, what parts weren't?' Actually it goes down. Not there.

AVRI DORIA: It's with the question 'did she believe ICANN fully implemented the recommendations?'

BRIAN CUTE: Yeah. 'What parts weren't implemented and why not?' David?

DAVID CONRAD:

My impression, at least from LA, was that... How to put it...? That there's an aspect of interpretation about what's complete and what's not complete with regards to implementing the recommendation and my recollection, which might be faulty, given jetlag, was that Fadi had indicated that a vast majority of the recommendations had been completed, but when we drilled down into some of the recommendations there were parts that were in progress or were planned or were not fully, fully completed. They were sort of fully complete but not completely fully complete.

And my impression based on that discussion was that we're probably looking at, what percentage of the recommendations are complete? And, which portions of those recommendations have yet to be fully implemented? And I think it would be important to find out the constraints for the limitations that resulted in the lack of completion and well, I'll just leave it at that.

BRIAN CUTE:

Thank you. Does the sentence that we just finished capture what you're driving at? And then there are the obstacles, and then there are the implementability obstacles. But does that sentence get the first part of what you're driving at or would you modify it?

DAVID CONRAD:

I might just say that 'what portion of the recommendation is...?' Or 'how complete do you feel has the recommendation been...?' Badly worded

but... Just make an assumption that it's not complete and try to drive what percentage is actually complete.

BRIAN CUTE: When you say make an assumption that it's not complete... Is that something we should do? Or are you saying when we find that one has not been fully implemented?

DAVID CONRAD: Well, I think that in answering these questions... If I was presented with 'is this complete?' And my boss has said yes, I'm going to say yes. So I think to presuppose there's a scale of completion might be more effective in actually deriving what the real state of the situation is.

BRIAN CUTE: So I recall Steve saying that... I think it was when he had his Member of the ATRT 2 hat on, as opposed to his other two, that it was in the ambit of this Review Team to make its own complete assessment about whether these recommendations have been implemented or not. So I think we're starting from a blank-slate approach, effectively, in terms of assumptions. We review the data put in front of us and draw our own assessments.

I'm just a little bit worried about the assumption language; assuming that something's not completely implemented. But, that being said, to the questions on the board... Or shall we add something to the questions on the board David that would get at the responses you're looking for, or the data you're looking for?

DAVID CONRAD: We'll try this; let's see what the result is.

BRIAN CUTE: Okay. Jørgen?

JØRGEN ANDERSEN: Thank you Brian. Jørgen speaking. I think that remembering... Or if I remember correctly what we discussed in Los Angeles, I think that what we were very concerned about was to avoid 'tick the box' approach and look more into substance and I, in particular, like the question about 'how did she or he understand the desired outcome to be from the recommendation?'

Because in my view this leads to another question: 'What was the actual outcome then?' Because while it's important how he or she interprets the recommendation, at the end of the day the final outcome, which can be seen by everybody, is the essential thing. So I would propose that we add a question requesting this fact. I have got the text.

BRIAN CUTE: Thank you, and if I could make a friendly amendment I might add the word 'effect': 'What effect has implementation had?' Outcome and effect. Outcome and effect. What was the outcome and effect? Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. Is this is any particular order at the moment or...?

BRIAN CUTE: Oh, no no. We're free forming; we can reorder this.

OLIVIER CRÉPIN-LEBLOND: Because I would have put that further down. I was going to suggest just before the feedback, I guess...

BRIAN CUTE: We can do that in real-time too, sure. So which question or questions would you move down?

OLIVIER CRÉPIN-LEBLOND: 'What was the outcome and effect of the implementation?' would be before the 'what has been the feedback, both inside ICANN and external to ICANN as a result of the implementation of the recommendation?'

BRIAN CUTE: Just before that?

OLIVIER CRÉPIN-LEBLOND: And I would have used the same language, so 'what has been the outcome and effect both inside ICANN and external to ICANN as a result of the implementation of the recommendation?'

BRIAN CUTE: Okay. I'm also looking back at 'how did he or she implement the recommendation. What options were considered and how was the

actual option chosen for implementation?’ There’s an element that I think we want to assess, which is this is the he or she and the assessment is really organizational and we talked about this before, that it’s not one person who’s responsible for implementation, it’s in many cases many people across the Organization. So... Yeah?

DENISE MICHEL:

Yeah, and also of course the GAC. Who do we direct these questions to about GAC improvements? Do you want Heather to answer them? Do you want [Bill Grant and Minor? 00:32:34] who are the Chairs of the Sub-Committee that’s working on this for the GAC, to answer them? Different Staff people have been directed by them to do different projects. Do you want...? So it’s been that type of collaborative effort and depending on the recommendation, the Board, the NomCom and the GAC have had driving roles in implementation, so you should think about providing some more guidance about who you would like to answer these.

And while I’ve got the mic., the WHOIS Review Team Report was accepted by the Board in November, so that’s four months ago. Not all the recommendations have been fully implemented. Similarly, the [Secrets? 00:33:20] and Stability Report has been in implementation for a little less than six months and that’s further along, but there are outstanding items there as well. So keep in mind that not all the implementation is complete.

And as I noted in LA, just to remind you, I think one of the big challenges we’ve found is that for each of the recommendations, ultimately, Staff

and the responsible community or entity in ICANN put together a proposed work plan with deliverables; created discrete project plans for this and for many of the recommendations, what they've found as the project plan was executed was that additional suggestions and additional work came up.

So for many of the recommendations the improvement projects were used as stepping-off points for additional and ongoing improvements and so one of the things they found challenging was to... Is to how to define success or completion and where to draw that line when in so many of these projects we're finding literally continuous change and improvement. And indeed, when an ATRT recommendation is, the recommendation is continuous improvement of Board work practices so some of these questions will be a little challenging to answer.

Just to keep in mind. We can discern the intent and the Staff and the Board and other Members can put together initial answers and we can have some back and forth if you want additional responses, but it's just something to keep in mind.

BRIAN CUTE:

Thank you. Larry?

LAWRENCE STRICKLING:

I was confused... Why would that be challenging? I would think you would want to trumpet that, and the questions pick all that up. It asks what kind of unforeseen issues arose, what has been the outcome...? I would think ICANN would want to shout from the ramparts that the

recommendation has grown into a process of a continual improvement. That's great news for all of us. I don't think that should be a challenge at all.

DENISE MICHEL:

Yes, and so for all of you that I'm sure have read the Annual Report on Implementation of ATRT, that's something that we do shout and trumpet in the Report, many times, that this process has evolved and built. I'm just saying that these questions are worded to relate to one person, they're worded to related to very discrete, starting and ending type sub-tasks and some of the implementation projects didn't quite fit into that square hole.

LAWRENCE STRICKLING:

So these were written with the idea we were going to have somebody in a room address these things. Obviously if we go beyond this and we have a more formal way to collect this information I would assume the flexibility is understood, that if you need three people to provide the input instead of one, great, there's no problem with that. But we shouldn't be prisoners to the words up here.

We're trying to capture, I think, a series of concepts that were 'were the recommendations understood?' 'Did people feel they implemented them?' 'What have been the outcomes and what's left to be done?' It all fits into those four general categories. I think in the first instance we want to get ICANN's view of that. And I go back and look at the recommendations. The recommendations all seem to have been addressed to the Board.

Now, the Board may have assigned piece-parts of them to other people, like the Board GAC Working Group, to actually implement them, but it does seem like the Board has the first responsibility in terms of determining who ought to be the source of the information that's being requested here, or Senior Management. I don't know that it's our job to figure out whom to address these things to.

The Board was the one to whom the recommendations were made, but again, the whole idea is to try to have a framework within which to evaluate all of this and not fight about the individual words.

BRIAN CUTE:

Yeah, I think... Thank you Larry. I guess the way I would communicate that Denise, would be that while there are specifically constructed sentences and questions up here, take the broadest possible interpretation of what we're asking for, come back to the Team, what the broadest possible response... I'm the one who pointed out that this is not one person, but the questions up there; 'how did he or she implement the recommendation?' 'What options were considered?' Well, your project plan, those project plans are going to show us the options that you considered and how the actual option was chosen for implementation.

That decision had to involve, in some cases, more than one person so yeah, I think we'll do our best to flesh this out, but take the broadest possible interpretation and come back with the broadest possible response would be my shorthand way of saying...

DENISE MICHEL: Sure, it's more that I want to make sure I set expectations. Okay? So likely most of these questions won't go to one person sitting at a desk who will just answer them and send them back. Because of the collaborative nature of the implementation and the involvement of the GAC and the Board, blah blah blah, it will be a process of getting the Board's sense on some of these questions and their perspective on it... Adding Staff's... And so it'll just take a little time. We'll start working on this with all the different entities involved and come back and give you an estimate of how long it will take. How's that?

BRIAN CUTE: I've got Jørgen and Larry.

JØRGEN ANDERSEN: Thank you Brian. I have one question and I don't know whether the answer is hidden in one of the questions. When we discussed this issues in LA one of the topics, which attracted much attention was the baseline issue; how to assess the background for improvements. And I wonder whether you can get this answer in any of the questions or do we need a separate question to be answered; 'what was the situation before you started implementing the recommendations?' in order to see which improvements have actually been achieved. This is the whole essence of the exercise. Thank you.

BRIAN CUTE: Thank you Jørgen. Larry then David.

LAWRENCE STRICKLING: I just wanted to suggest that – again, I almost regret bringing these questions back up because they were envisioned for a very specific circumstance, which was a meeting in which we were going to have some oral presentations and the idea was to try to suggest that maybe these be addressed as part of those presentations. I think it would be possibly unfortunate if Staff goes back and assumes this should not be taken as a set of interrogatories to write pages and pages of responses. That might not be the most efficient way to do this.

It might not be what the Review Team wants to have, so I think there ought to be some dialogue about the best way to capture this information. It might well be that a Working Group, looking at some set of the recommendations might prefer a conference call with three or four ICANN people, addressing all of these in the course of it. To send it off as just a homework assignment, without further discussion, might lead us to a lot of needless work.

We know some of these recommendations. These questions aren't particularly pertinent to the ideas of whether or not to do translations. I don't know how many options you really have to talk about there, it's kind of a binary choice; either you're going to do it or you're not. So I don't want people to all of a sudden try to figure out a way to take a standard set of questions and apply them to a disparate set of circumstances, without thinking about it, and figuring out if that's really the efficient way to provide the information.

BRIAN CUTE:

Thank you Larry. And I think we started this exercise by saying let's see if we can begin to flesh out a framework that the Review Team and the Working Groups on the work streams on the Review Team use in common. So it wasn't intended to be an immediate homework assignment to ICANN Staff, but this helps us inform in dialogue with you what are the right ways to pose a question. So I find that useful.

Let's stick with just walking through what we think the right type of questions would be. This is not an immediate homework assignment for ICANN Staff, but just finish out... Are there other questions that we would frame here that we think, as a Review Team, are going to be important for us to look at? David?

DAVID CONRAD:

I actually just wanted to say that I definitely agree with Jørgen. I think that we need a baseline. We need to understand what the perception of the situation was before the recommendations were implemented and then a lot of these questions would be applicable in a discussion or in... Not necessarily as homework but in helping us understand where the implementation is of the recommendation, over time, compared to where things were before we started thinking... At a higher level. We had a situation as it was. The situation that was viewed and then how, moving forward, things are going to be improved. And I think focusing on that as a specific question, as Larry was saying, I think makes the most sense.

BRIAN CUTE: Thank you. Alice, would you just at the top of the document put in ‘what was the baseline situation with respect to X?’ There’s going to be different working streams and different questions. David?

DAVID CONRAD: Also, I’m not... Actually it’s sort of a question; looking at ‘what options were considered and how was the actual option chosen for implementation?’ what information are we attempting to gain from that? I’m not sure why we would care about the alternative options.

LAWRENCE STRICKLING: Well, I think when you understand that thought process it may help you see... Let me back up. If one concludes... Notwithstanding what you hear from the principals; that a recommendation wasn’t fully implemented, if that’s the expert judgment of the Review Team, it does seem like you want to go back and try to understand why that was the case. And is there some pattern or some explanation, some bias in the processes used that led to that?

So one might be that people didn’t fully understand the recommendation and didn’t seek guidance appropriately to get it. That could turn out to be an issue. I’m not saying it is or it wasn’t but that might be a dimension. Another one could be they absolutely understood what was being asked for, but through the process of doing options there might have been some bias that crept in that led to that particular process leading again to what we now conclude was not a full implementation, because of the way they went about creating options.

So that's why understanding the thought process that was used lets you go back and diagnose where, if in fact something went off the rails. And again, I'm not predicting that that's the case for any of these but if it was you'd like to understand why that happened so that it doesn't happen again. It could well be that to the extent things didn't get done was because the Review Team didn't do a good job articulating what it is they were trying to accomplish. We ought to know that so that we can fix that going forward.

So just the whole process of setting options could be, again, another example where you've introduced some form of error into the process that we ought to at least understand.

DAVID CONRAD:

So if I understand what you're saying, the exposition of the options was actually relevant generally in the case where things were incomplete, and trying to understand why they were incomplete? Okay.

BRIAN CUTE:

Thank you David. Any other suggested questions that should be the focus of the Review Team or the Sub-Working Groups? Okay. Yes, David?

DAVID CONRAD:

On the question related to... 'Did you run into any unforeseen problems or issues?' I guess, do we want to be a little more explicit in that particular question, as in i.e. 'were there cost factors?', 'were there timing factors?' That sort of thing.

BRIAN CUTE: I think when we had the discussion about implementability that clearly resources, costs, legal issues, there's a host there. Maybe it's a matter of tweaking the question to refocus it on that concept. Does anyone want to take a whack at that?

DAVID CONRAD: And to be clear I'm not saying... I was just wondering if we do want to provide some lead-in examples.

BRIAN CUTE: We could do that; cost, legal, resources. E.g. timing. Does that do it David? Larry?

LAWRENCE STRICKLING: We do say problems but the idea of including issues I think should also illicit the kinds of points that Denise made a few minutes ago which is they found the recommendation and opportunity to go broader, to go deeper, to go bigger. That's good and we want to encourage that. And again understand what might have led to that being an outcome, in this case not three others. What was it about that recommendation that led to that? Just, again, to give us guidance in making recommendations this time.

DAVID CONRAD: So maybe additionally scope increase?

BRIAN CUTE: Thank you David. I've actually Avri and then Olivier.

AVRI DORIA: Avri speaking. It's probably too late now but I was actually going to go against including the shopping list of possible reasons. One, because it tends to focus peoples' minds into that particular upset and so you really end up with, as opposed to an e.g., an i.e. in saying 'for example, including and not excluding...' Because otherwise what happens when you look at a shopping list like that you immediately try to find something that fits in the box as opposed to what issues. And they know what issues they encountered but...

BRIAN CUTE: Thank you Avri. Larry?

LAWRENCE STRICKLING: Or maybe break it up and have one question on problems, another one on opportunities. So you can try to spark the positive side as a separate piece of it. So delete the laundry list and put 'problems or opportunities'.

BRIAN CUTE: Ah, okay. 'Did he or she identify any opportunities...?'

LAWRENCE STRICKLING: '...additional opportunities for improvement by virtue of the implementation of this recommendation', something like that.

BRIAN CUTE: ‘...opportunities for improvement by virtue of the implementation of this recommendation.’ Okay. So I think we’re pretty close to closing this part of the discussion. What we’re going to move to next is going back to the work streams that we’ve identified; the four different work streams, and even at the risk of looking back at the issues list, but having another discussion, some brainstorming about putting some fine focus on the issues we really think are important to be assessed across the work streams.

Before we go there, one last thought that this triggered for me; since we don’t want this to be an immediate homework assignment for ICANN Staff, this is a list of questions that helps the Review Team’s focus and the Sub-Team’s focus. With respect to data collection and commencing that process, should we have a discussion about what we may want to ask Denise and ICANN Staff to start gathering for us, in this meeting?

Or is that a task for another day? Larry?

LAWRENCE STRICKLING: If this is the framework we want to use, I think now it might be useful for Denise and Larisa and whoever else to think about how they would propose an efficient way to collect this and come back to us. If we can avoid people sitting down and writing long answers to interrogatories, that’s probably in all of our best interests, but part that may depend... if they understand their resources better than we do and can tell us ‘here’s how we would propose to have you all collect this type of information’.

BRIAN CUTE: Denise? Comfortable with taking that as a starting point?

DENISE MICHEL: So that's a starting point? To think about the best way to start providing questions? The response is yeah. Yeah, we'll give this some thought and get back to you tomorrow during your meeting. It might be worthwhile to convene a conference call to have an initial discussion with... If you're going to divide up into Work Groups to handle these different sessions, have an initial conversation, see where we are and talk about maybe putting some things in writing and gathering some specific data. But I'd like to look at the questions and talk to some Staff responsible for the implementing and get back to you tomorrow.

BRIAN CUTE: Sounds good. Thank you. Alan?

ALAN GREENBERG: Thank you. Something's been bothering me as I've been sitting here and I think I've finally understood what it is. Almost all of these, or maybe all of these make an assumption of infallibility of the Review Team, and I wonder should we be asking, 'along the way did you release that perhaps the recommendations were not the ones that should have been made for one reason or another?'

That might not be the way to phrase it but it's not all handed down on stone and I wonder should we be prepared for that kind of answer?

BRIAN CUTE: Avri?

AVRI DORIA: I think having said that, I think plenty of places, if the answer came out the recommendation was brain-dead, as an explanation, that that would be... Okay, it's a bit impolite to put it that way but I can see that as an answer to when you say 'why didn't you implement it?' 'We didn't implement it because it wouldn't work.' 'We didn't implement it because...' And so I think that opportunity exists for them to say it was a bad recommendation.

BRIAN CUTE: Thank you. Alan?

ALAN GREENBERG: I'm more worried about the ones who did implement it even though they knew it was brain-dead.

BRIAN CUTE: Larry?

LAWRENCE STRICKLING: Well, I think that's covered because at some point one of the questions has 'what was the outcome?' It gets into all of that. Plus it seems like you have multiple data points here. You have what the Review Team thought they were doing and you're going to have a chance to talk to

the Review Teams about that, and you have ‘how was it received at the other end from ICANN?’ So part of that is by asking these kinds of questions you can try and match that up and say ‘here’s what the Team thought they were doing, here’s what ICANN heard, there was a disconnect.’

And then I think it’s partly our job to understand why there was that disconnect. And it could be because it was a bad recommendation or a poorly drafted recommendation. It could have been a listing issue too, but I think that’s our job to do that. And the questions is, are we at least identifying where the disconnects might have happened before we start analyzing why they happened or if they happened?

BRIAN CUTE:

And to your other point I think you made about if a Review Team didn’t make the right recommendation; again, we’ll have the opportunity to interview all the Review Teams and get their sense of why the put forward what they put forward and make out own independent assessment of that piece of it. Okay. Anything else here before we move on? Okay.

So, could you put the work streams up on the screen please? Okay. Up on the screen we’ve got the work streams that we’ve identified to-date and the happy volunteers for each of them. So work stream one is to review the implementation of the ATRT 1 Review Team recommendations and make any new recommendations under the scope of the work of this Review Team.

Work stream two is the Security, Stability and Resiliency Review Team. Review of ICANN's implementation of those recommendations. Work stream three is WHOIS, Review of ICANN's implementation of the WHOIS Review Team's recommendations. We've got that on there twice, we can strike one Team.

And then work stream four; consider the extent to which assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for decision-making and acts in the public interest. So a point that I made on the last call and Larry made today too is that there is an awful lot of work to do just on these four work streams. The amount of data collection and analysis necessary to go over the implementation of the Review Teams, of any single Review Team is significant.

So I do feel strongly, coming out of the last call that this is as much as we can do, in terms of work streams. I did want, before we broke up into smaller Working Groups, this full Review Team to have one more conversation about specific issues that might be brought in under the umbrella of any given work stream from our issues list. And I'm not opening this up to have an exhaustive conversation on the list, we've had that, but can we really focus on issues that we think are high priority for the Review Team to take on.

Getting to your question Alan or 'are we going to tee up the right issues or not for recommendations?' Can you put the issues list up on the screen? Yeah, we'll get back to that. Sure.

LAWRENCE STRICKLING: I think I had actually volunteered to work on work stream one but sitting here looking it occurs to me that we should probably have a discussion about whether this Team wants prior Team Members to be involved in evaluating the Report that they worked on before. Because as we pointed out, part of the evaluation is going to be how well that Review Team did in terms of presenting its recommendations and so that clearly presents something of a potential conflict.

BRIAN CUTE: Could you just answer the question for us?

LAWRENCE STRICKLING: That's what I'm wondering. But that would apply to several of us from ATRT; I think it may apply to... I think we have one Member of the WHOIS Team here as well, so you're trading the knowledge basis from that first effort against what it looks like to be involved now in evaluating that three years later, or whatever the timeframe is.

BRIAN CUTE: Great question. Sense of ownership creates subjectivity. Discussion on that point? Larry has asked whether Members of former Review Teams should be on the work streams reviewing their own work. Mr. Zhang?

XINSHENG ZHANG: Okay.

BRIAN CUTE: We'll put you on stream four. Thank you. Lise on steam four too. Very crowded. Yes, Lise?

LISE FUHR: I'd like to answer the question from Larry because I think even though you have Members that have been on the Team I think it's good to have the history. You have others in the Group who can challenge your views. So I'm not that afraid that I would have any bad effect.

BRIAN CUTE: I would go for stream four as well. But I think coming back to the conference call, one of the conclusions made, I think it was Larry who proposed that the whole Group would be on work stream one?

BRIAN CUTE: Actually, that was your proposal from the call, which would... Yes. Well, your question still stands though. Should that includes the former Members of ATRT 1? Mr. Zhang, myself, Larry... Fiona?

FIONA ASONGA: I think not. I think those who were in the previous ATRT would be able to give guidance, as Lise mentioned, on why, especially the 'why' of some decisions arrived at. And that will help. The involvement too is very important. I think they should still participate.

BRIAN CUTE: With the exception of flawed memory, which is always an issue. And there is a cold record there, which can be referred to. If we're going to

go in this direction, Larry did raise an important point. Subjectivity is a concern for something you've created. So I'd really like to hear from the Team. Avri?

AVRI DORIA:

Yeah, when it comes to subjectivity though, many of us that weren't on the Team were sending in comments about what we thought the Team should be doing and then didn't see them do it, so we're just as subjective. In terms of whether we were commenting... You're not culpable either. [laughter]

BRIAN CUTE:

I just want to check with Carlos and Demi, if you're still online? Certainly your views are welcome on this question before we close it off. No? Okay. Could you put the work stream thing back up? I think we did the breakdown? No, one of them is empty. I'm hearing the consensus of the Team that former Members of the Review Team can serve on a given work stream. Okay. And that all Members of this Review Team will serve on work stream one and a large gaggle on work stream four.

Now, do we want to collect volunteers for A through E at this point? [background chatter] Okay, so we're going to... excellent. Volunteer time. Where's the AFC? Okay. We've got Lise on C. So let me go... A is, just to remind you all, 'continually assessing and improving ICANN, Board of Directors, governance, which shall include an ongoing evaluation of Board performance, the Board's selection process, the extent to which Board composition meets ICANN's present and future

needs and the consideration of an appeal mechanism for Board decision.
Volunteers? Mr. Zhang?

XINSHENG XHANG: B.

BRIAN CUTE: B for you. Okay. Anybody for A? Stephen for B. B? Jørgen for B. Anyone else for A? We've got two volunteers. [laughs] Okay, so we've got others for B. B is 'assessing the role and effectiveness of the GAC and its interaction with the Board, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS.' Any other volunteers for B? A? Lise's on A. Thank you Lise. Excellent. [Background chatter] If they've got the cycles.

C is 'continually assessing and improving the processes by which ICANN receives public input, including adequate explanations of decisions taken and the rationale thereof.' You're there. Michael, Jørgen, Olivier. D is 'continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public in the Internet Community.' Alan on C. We need some on D. Anybody on D? Olivier? Fiona?

OLIVIER CRÉPIN-LEBLOND: If Alan wants to be on C then I can jump to D. If he's on D I can jump to C. [laughter] I just think there should be an element of the ALAC on each one of these.

BRIAN CUTE: Alan has a preference for C. Thank you Olivier for your flexibility. Olivier will be on D. Fiona on D. Avri on D. We can always assign Carlos and Demi too, in their absence. [laughter] And I haven't read it out yet but in case there's any additional interest, E is 'assessing the policy development process to facilitate and enhance cross-community deliberations in an effective and timely policy development.' That's the big kahuna. I'm on the big kahuna, put me down there. Anybody else for E? This is an open invitation. You can raise your hands after today as well. Great. Avri?

AVRI DORIA: This is one where I wonder whether I have the same question. I've been way too much part of developing a big chunk of policy development and so I'm interested in participating but I know there are whole chunks of it for development. And it's the same question that Larry was asking about that as opposed to... Yeah.

BRIAN CUTE: Make yourself readily available to the people on that work stream. Yes, Alan?

ALAN GREENBERG: One of the reasons I put myself down for that one is yes, I'm probably guilty of a bunch of it but I'm also aware of a lot of things and I think we need at least some people on that Group who understand how the process works, what the strengths are and what the weaknesses are.

BRIAN CUTE: That sounds reasonable.

ALAN GREENBERG: It doesn't mean we're unbiased, but at least we have some knowledge of the nitty-gritty of it.

BRIAN CUTE: Okay. Well, we have at least three on work stream two and three, again, open invitation, anyone who is willing. Ready, willing and able? And I won't get to this today but we are going to need some authors, so those of you who have the time, who have the writing skills... Your arm will be twisted soon enough but this is a writing-intensive exercise when we get into the September, October, November, December timeframe.

Okay. That's good for now. Why don't we jump over to the issues list and have a speak-now or forever hold your peace moment on if there are any issues here that you think are absolute, have to be subject of recommendations for this Review Team, let's hear it. Again, some of these will fit under one work stream better than another and can be adopted by the Sub-Working Group, but speak now.

I think we've already identified metrics number two as an issue that this Team is going to be focusing on, and I think that's a crosscutting issue. Correct? That being noted... Do you want to scroll down a bit? Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. Could you remind us of the colors please? Yellow was the high-priority...?

BRIAN CUTE: Yellow was identified as high-priority at the Los Angeles. Plum I don't recall. Crosscutting; plum meant it was crosscutting so metrics should be both yellow and plum.

OLIVIER CRÉPIN-LEBLOND: So does plum make it high-priority or low-priority when it's crosscutting?

BRIAN CUTE: I don't recall, I think...

ALAN GREENBERG: That was one of the things that we had to think about when we did the other ones.

BRIAN CUTE: Alan?

ALAN GREENBERG: If I understand the process then we're now asking ourselves are there any yellows which we want to eliminate or whites that we want to promote?

BRIAN CUTE: Actually, the question is ‘are there any here that you think must be the focus of a recommendation?’ That’s the question. Whether... Regardless of the color, is there any issue that we absolutely have to integrate into our work and recommendations at the end of the process? In your view? Larry?

LAWRENCE STRICKLING: A lot of this is implicit in the work streams you’ve already established. You’ve got number four, legitimacy, why isn’t that part of work stream four which is continually assessing the extent which... Sorry not work stream four. Work stream one, subpart D – assessing the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet Community. That seems to be legitimacy so wouldn’t that just be assigned as ‘make sure...’ I think it’s synonymous, frankly, but if it’s not, just make it clear to keep those issues in mind, for that particular Group.

Number five I think goes to work stream four. That’s the overall question for all three Review Teams, how did the Board process the recommendations? That’s implicit in work stream four. Accountability of GAC operations is clearly subparagraph B of work stream one. I can’t remember what recommendation six from ATRT was... That was policy for implementation?

BRIAN CUTE: Yeah, that’s still in progress.

ALAN GREENBERG: But it needs to fit into one of those ATRT 1 work efforts, so maybe that's the first task; where do these fit now? And then if there's anything left that people want to make sure is covered, do you create yet another work stream?

BRIAN CUTE: That's a good idea. Yeah, let's map them and then come back to that idea. Okay? We'll take that as a task and bring it back up on the screen when that's done, later today or tomorrow. In the meantime, maybe we should flip back to the Terms of Reference and Methodology documents, since Lise is here and had some suggested inputs to that document. We did walk through it this morning, Lise? But tabled it to get your input directly. Okay.

LISE FUHR: Yes, well I think the document lacked the definitions that we have accountability and transparency. And I really want us to define it, so I didn't do it beforehand because I'd like us to have it as a discussion or whatever... If there is a good definition already it's fine to use it, but for me it's very important when you make this analysis that you're clear on what you think accountability is, and I know we put in the three dots or the three spheres and I also thought that the document lacked anything about transparency.

And that was also what Alan pointed out in this email. I think we could try and put this in. But I didn't have the time or the language skills to define it myself.

BRIAN CUTE: Okay, thank you. Alan?

ALAN GREENBERG: Doesn't the first paragraph on framework define accountability though?

LISE FUHR: In a way it does but it's not clear that it's a definition but...

ALAN GREENBERG: Sorry. Within this document there's a paragraph that's entitled 'Framework #2'.

LISE FUHR: It's just under 'Framework', yeah.

BRIAN CUTE: Okay, so there's the language Alan was referring to. If you can go back up. Okay... Up... Keep going. There you go.

LISE FUHR: Yes.

BRIAN CUTE: So that's the closest to a definition, under '2 Framework', at its simplest.

LISE FUHR: And it's fine for me but I would like to be very active in the language that we... In our view, this is how we use accountability in our Review of ICANN.

BRIAN CUTE: So let's take a moment to review this. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. It's Olivier here. If we were to define it then I would suggest at putting quotes just after 'in its simplest 'accountability''. That would define it as a term. I don't know whether Lise thinks that we should add another sentence at the end of that paragraph to make sure that we will use that definition in the rest of our document?

LISE FUHR: I think that's a good idea.

BRIAN CUTE: Alan?

ALAN GREENBERG: Thank you. The similar definition of transparency, I think was assigned to me and with some help from Avri this morning, which we haven't got to. I'm not sure we want to try to define public interest. It's something ICANN has consciously avoided defining, but I don't think we can ignore it either and I'm not quite sure what that leads to.

BRIAN CUTE:

David?

DAVID CONRAD:

I'm curious how one is supposed to aim for improving public interest or supporting public interest if you haven't defined what it actually is?

ALAN GREENBERG:

I think the fear is if you always define it someone will come out with a 'gotcha!' and say this doesn't count because you didn't put it in the definition, so it's one of those I know it when I see it type things. But that's too loose from my perspective. I've always worked on the assumption that some examples may help.

BRIAN CUTE:

David then Avri.

DAVID CONRAD:

The engineer in me just screams at that concept.

AVRI:

Thanks. It was what I was trying to get around to this morning and what I think is defined [sneezing] as public interest is the result of our process and that... And it makes sense. It is a computational type of definition as opposed to a formula type of definition. We have a process within ICANN and the whole point of that process is to identify the public interest.

And without that process we don't know it and it's not that one of us recognizes when we see it but once we've cycled through the process we have identified what the public interest is. And there is absolutely no other way to do it. And that's why it's a Multi-Stakeholder Organization, because its process identifies the public interest. It just seems so clearly obvious to me.

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. This sounds as if it's coming straight out of the IETF, doesn't it?

BRIAN CUTE: Thank you. Any other discussion here? Stephen you look tempted?

STEPHEN CONROY: I'm not quite as comfortable as Avri as just saying 'a process is the public interest'. Processes can lead to sectional interests trumping the broader public interest so having a process which says still bad outcomes doesn't necessarily say to me that we've solved it by saying it is the process. I'm trapped... I don't know what a sectional interest is nor a vested interest... Does that mean that everything that's not that is the public interest? Which gets to your point, which is way too broad.

I'm not comfortable leaving it as a process, by definition, becomes a tag for public interest. But I'm not quite sure that's what you were trying to say so I'm interested in...

BRIAN CUTE: Thank you Stephen. Avri?

AVRI DORIA: What I was trying to say is what the public interest is, is something that our process has to identify and define. It's not that the process itself is... But that without the whole Multi-Stakeholder process, we only have sectional or sectarian or one Stakeholder's perspective on public interest. And it's only in the full exercise of the Multi-Stakeholder process that we can identify and define what indeed that public interest is. There's no external. There's no public interest by authority. Public interest by divine intervention. Public interest by any external definition.

The only way we have of identifying it is by the action. And that's why I'm saying it's a computational definition in that it's only by cycling the process that we actually know what the public interest is. Otherwise... We all have our own idea, but it's only that outcome that identifies it, is what I'm saying.

BRIAN CUTE: So this is fun. I'm just going to throw something in here. Avri, to augment what you're saying, it's not just the process of identifying the public interest but also that ICANN act in the public interest and one

formulation I've heard is that if the Organization is conducting its processes as accountable, to be defined and measured in a transparent way then it would be acting in the public interest by virtue of that process. In the acting-in element, not just the identification element but... Alan?

ALAN GREENBERG:

I think it all depends unto what extent your Multi-Stakeholder model includes all of the Stakeholders and all of the Stakeholders with a loud enough voice to make sure that they are not ignored. Otherwise you can well end up with certain sectors dominating, and it's to their benefit but not necessarily what would be deemed to be in the public interest.

BRIAN CUTE:

And let's keep it sectorial and not sectarian. David? [laughter]

DAVID CONRAD:

Since this is the second ATRT we have the advantage of being able to look back in history in understand what the previous versions of ATRT chose to interpret for public interest. I'm actually a little surprised that this question hasn't been address or hasn't come up before. Presumably since it's actually explicit within the AOC that both the Department of Commerce and ICANN will be working in the public interest. So what was the assumption about the definition that we're going into...? The AOC and then the ATRT 1.

BRIAN CUTE: I'll just shorthand it from my individual perspective. There were two things that I heard very loudly from the Community in the last exercise. One was you've got to define public interest. ATRT 1 chose consciously not to do that. The other one we heard was 'you've got to give them metrics.' We chose consciously not to do that. I partially regret the metrics part; I do not regret the public interest decision. [laughter] Any other thoughts here? Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. I'm going to venture into this. Looking at some commonly used definitions of the public interest outside these walls, one of them is the welfare or wellbeing of the general public. Another one is the relevance to the general public as well. I'm with Stephen Conroy on the question of vested interests. ICANN could act in an accountable and transparent way and yet be under the arm of vested interests, so one does not trump the other.

BRIAN CUTE: Thank you very much. Important points. Any other comments on the public interest? Okay. Where were we? That was a good diversion. Healthy. What were we trying to define? Accountability. [laughter] [laughs] Okay, yes, Olivier?

OLIVIER CRÉPIN-LEBLOND: Mr. Chairman, may I ask what is our position on the public interest. [laughter]

BRIAN CUTE: I defer. [laughs] We will continue this conversation, and if that's agreeable let's job back to accountability. Lise, you raised the issue of definition of accountability. You've seen what's in the document. I think you've asked us, rightly, to focus on, from a working mindset, of the Review Team, are we committed to this expression of accountability? Does it have vitality in terms of how we apply it to our work going forward? So let's answer that question, if there's any uncertainty and we need to make any adjustments here, let's do that now.

The only thing that occurred to me when I read this a few moments ago was... What I don't see is the Organization's own sense of being accountable. I think that's missing here and I'm not quite sure how to articulate that. Okay. Maybe that does cover it. [whispers] No, you're right; those three pieces do cover it. Yeah. Any changes, additions, questions? Are we comfortable embracing this language as our touchstone? Lise?

LISE FUHR: I'm very comfortable about the definition but I'd really like us to add the last sentence that 'this means that this is how we use accountability in our Review.' Yeah.

BRIAN CUTE: Yeah, 'ATRT 2 adopts this' – add a new sentence at the end – 'definition of accountability as applicable to itself and its work'. Alan?

ALAN GREENBERG: I'd like to suggest that near the end of our process we go back and read this again and see if we got it right. Because it's fine to say 'this is how we will use it.' I think the experience of going through the process may well tell us we got the definition wrong and we used it in a different way or various things like that. And I think that would not only be useful to the next Group that comes after us – to quote a book I won't mention – so that we can identify it in our own, final Report that our views of what accountability was changed during the process.

BRIAN CUTE: Thank you Alan. As long as we're not coming back to it on January 1st. [laughter] Sounds like a good idea. If we're going to adopt this explicit a statement it begs a question about transparency. Have we covered that off, definitionally? Do we have that? Can you scroll down Alice? That was the missing piece right? Yeah.

OLIVIER CRÉPIN-LEBLOND: I thought it was so transparent I couldn't see it.

ALAN GREENBERG: Since you assigned me I started thinking about it and I'm not sure what the words are. Part of it is how visible the processes are outside of the Organization. How understandable they are. I had a discussion with an ICANN Staff Member by email recently when they said they would document what the rule is for something, but what I was really talking about was who is it that made the rule and why? And that's completely opaque.

It's being able to understand the processes by which things evolve and things happen within the Organization. I don't quite know the right words without waving my hands at the same time, but it's something like that.

BRIAN CUTE:

Okay, well we clearly have a drafting task and we're not going to take that on in real-time here. And as before, Denise, if there is a working definition of transparency anywhere in the documents that you can use and you can bring that forward, we can start with that as a baseline and we can add that to our drafting considerations. Okay?

All right, let's take that as a to-do and maybe we can get offline, Lise? Okay, sure. Okay, we'll bring that back to the document. Okay. I think you had a few other edits in here? Can we scroll down? Okay, hold on.

LISE FUHR:

Well, that one can be reversed because we've moved it. But according to the definition of transparency, I really like the idea of having the spheres where you use accountability? And I think we should think about that according to transparency too. And I don't think it needs to be the same because corporate and legal transparency, well, that should be covered by the other things but for me transparency is within the ICANN Community and it can also be to the Internet Community as a whole. So we should make a distinction between those two. And that's inline with the outreach question we have discussed about are ICANN visible for the Community or is visible for the ITU, the other parts of the world?

BRIAN CUTE: So the definition as spheres articulation, as a baseline to start with. Okay. Any other suggestions on crafting the transparency definition? We'll take those under consideration and come back. Can you scroll down? I think Lise had another suggested edit too. Oh, there we go. Definition of transparency. All right.

LISE FUHR: I had one on outreach, I don't know the... On G - outreach. But that was just an exemplification of what we meant with other...

BRIAN CUTE: Was it in this paragraph. Did we lose it? Yeah, I don't see it here.

LISE FUHR: It's actually on the three... On the GAC. You have an F and a G in this one.

BRIAN CUTE: Let's see. I'm looking for the hard copy.

LISE FUHR: It's just been deleted. This means that ATRT will explore if other [four? 01:34:20] can be contacted in order to collect input.

BRIAN CUTE: Was this the AC and SO issue?

LISE FUHR: No, outreach. Nope.

BRIAN CUTE: We might have eliminated it.

LISE FUHR: No, it's in there now but I don't think the wording is beautiful [laughs] so we might work on that.

BRIAN CUTE: I think we eliminated that paragraph as we edited the document earlier?

LISE FUHR: No, that's...

BRIAN CUTE: No, in real-time this morning Lise, this was edited before...

LISE FUHR: That's fine. That's the only one.

BRIAN CUTE: Okay. That was the output of this morning's editing session Lise and... Okay, so it's there.

LISE FUHR: Okay. Fine by me. Beautiful.

BRIAN CUTE: Yes, David?

DAVID CONRAD: Are we done with Lise's...? I sent around to the list a very preliminary draft of where we are on the metrics stuff. I don't know if you want to take a look at that now or...?

BRIAN CUTE: I think we're making good time and we've got time so if people are willing and we've got a shorter day tomorrow. We're efficient so do you have David's email? All right. Now, we're getting a Staff update at 4:30. We've done our brainstorming. Yes, Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. In our research for a definition of transparency, there are several Organizations in the world that do specialize on this, and just stumbling across some of the websites I've seen several definitions of transparency, which are all pretty much the same, but it might be worth looking at those when defining the term.

BRIAN CUTE: Thank you. We're going to take a look at David's proposed language on metrics. Ah! The computer crashed. Okay. So once we get that back up, I'm looking at our Action Items today. We're waiting for Sam Eisner...[sneezing] Waiting for Sam Eisner to come back on the Conflict

or Interest Policy context and Statement of Interest. We're about to wrap up the Terms of Reference and Methodology document, effectively and that may be it for today.

Let's see how we do in the next few minutes, but then we may have a break between now and 4:30 when Patrick Jones comes in to present on the SSR implementation. Are you still down? Okay, why don't we take a break while we're working on the computer issues? For those online, we're going to go off until we can get this fixed and we'll be back relatively shortly. Thank you.

[Coffee break until 01:59:13]

BRIAN CUTE:

Okay, we're going to recommence momentarily. Okay, this is the Accountability and Transparency Review Team 2 recommencing in Beijing. We now have Sam Eisner with us from ICANN Legal Staff, who has a revised Declaration of Interest and a revised Conflict of Interest Policy for us to review. So let's start with the Policy. If you can walk us through the additions you've made based on our discussions this morning please, Sam?

SAMANTHA EISNER:

Sure. On the first page you'll see that we've inserted a definition for the close personal relationship. That's pulled over from the Board's Conflict of Interest Policy, so that will help you in interpreting your obligations for your Declarations of Interest as well as Conflicts of Interest. You'll

see that there are actually two items. There is family, which is C, which was already in there and describes your family members, spouse, domestic partner, siblings and spouses, ancestors and spouses of domestic partners, descendants of spouses or domestic partners.

Close personal relationship is any relationship other than the kinship, spouse or spousal equivalent that establishes a significant personal bond. So if you have such a close relationship with someone that it would be of an import that it could impair your ability to act without conflict, and they were within these... Of course, the qualifications of 'do they have the contract or financial interest' and those. So that's what we've inserted here to help you understand the words that we've inserted.

You'll see that we did not include a definition here for duality of interest. We took another look at it and... So we did a quick review of this last night after we were pinged by Alice and we realized this morning after we left that we dropped that in in better pace, because the duality of interest is really focused on when there's a fiduciary duty owed to two Organizations.

So that's true for the Members of the Board and to the officers of the corporation but Review Team Members do not owe a fiduciary duty ICANN, therefore while many of you might be in a position where you owe a fiduciary to a company that you work for, you do not owe a fiduciary duty to ICANN, so we took that out. If you could scroll down?

BRIAN CUTE:

Actually, before we move on let's take it bit by bit. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. Would Steve be considered a Member of the RT? Steve Crocker?

BRIAN CUTE: But the ATRT is not an Organization, right? In terms of fiduciary duty? Is there a fiduciary duty to the ATRT?

SAMANTHA EISNER: It does not have fiduciary duty to the ATRT. The ATRT is not an independent entity. Steve does hold a fiduciary duty to... Steve is an example of duality of interest, right? Steve holds a fiduciary duty to ICANN as a Chair of the Board of Directors, then also to his company; in his roles as an officer of his company. So that's an example of duality of interest. Duality of interest, only in the case of Steve, could apply here. I don't think that it's of a level that it's really necessary for us to complicate your Conflict of Interest Policy, to have Steve included in there.

BRIAN CUTE: Thank you. And could we just go back up to the close personal relationship. Does anybody on the Review Team have any questions, discussion, concerns? Comfort level with this paragraph? Alan? Okay, I think we're comfortable. Sam, please?

SAMANTHA EISNER: If you can keep on scrolling through Alice you'll see the language that you saw this morning...

BRIAN CUTE: Yeah, if you can go back to... Just up, Alice, and change it to 'is'. Yes. Thank you.

SAMANTHA EISNER: So this is language you saw this morning. We didn't make any edits to that. If you can keep going down. Here is where, in the potential conflict language we removed the duality of interest sections, so it's only the one and two... Two being the close personal relationship. So the language in 2.1 is the same, I just removed that comment.

And then if you scroll down further... The only other change to the document... Brian, you said that it couldn't hurt to have a separate Affirmation in here, so we left the Affirmation in. Kept the language, that's the same from above, and inserted the signature line. What we did is, as described within my Declaration of Interest. So there is another reference over to the Declaration of Interest so that the Members of the ATRT do not have to write out everything on two separate pieces of paper.

BRIAN CUTE: Questions? Avri?

AVRI DORIA: If I understand, Conflicts of Interest really only have to do with money?

SAMANTHA EISNER: It's mostly about money. It is a very personal decision to make if there is something that is intangible, a form of intangible benefit that you would receive of some import to yourself that it creates a conflict. But that is something for each Member of the ATRT to really consider for themselves. There could be a type of arrangement where money doesn't exchange hands.

You could be affiliated with an Organization that you're doing work for that... Simply because of the affiliation there's a level of import to that work or some other gravitas that comes with it that, even though there is no money that changes hands it's a matter of such import either to your profession or to your personal interests that it could rise to the level of a Conflict of Interest.

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. As an example, a member of an ISOC Chapter. Would that be a potential conflict?

SAMANTHA EISNER: Again I think that identifying potential conflicts of interest is in many ways a very personal decision. Many people within ICANN are Members of ISOC... Many people in the world are Members of ISOC Chapters. There isn't something inherent about Membership in ISOC that would

create a potential conflict of interest. If there was a recommendation that would be coming out of the ATRT that said 'ICANN needs to go and as part of its accountability needs to go and fund ISOC Chapters around the world'.

Then, depending on the level of interest you had within an ISOC Chapter, maybe that would rise to a level of a potential conflict of interest for that particular portion of your deliberations. But you would want to think about things as is it something that is of general applicability or is there something unique about it for a specific issue, or that changes the way that you would participate in this Group and influence this Group to the benefit of your participation in ISOC.

BRIAN CUTE:

Olivier?

OLIVIER CRÉPIN-LEBLOND:

Thank you Brian. Just as an example, with regards... I took the ISOC example due to the applications, the New gTLD applications and ISOC Chapters were asked to get their Members to... If they wanted a rite in favor of the application, if they supported it in one way or another. So that's where I could have seen some conflict perhaps.

BRIAN CUTE:

And its to each Member to analyze potential conflicts, to declare them, and then once their on the table for the Review Team to analyze itself whether it creates an issue that can be managed or not. Correct?

SAMANTHA EISNER:

That’s correct. If you want some idea to see how the Board handles issues of conflicts of interest we have a lot of documentation posted under the ‘governance’ link on the ‘about us’ page. One of the things that the Board does in their deliberations about a potential conflict of interest, they would ask certain questions of themselves such as ‘is this Member’s participation of such import that it makes sense for them to participate in parts of the deliberation?’ ‘Are they expert enough?’

But that really is a matter for each Member of the Review Team to first come to the table and identify for themselves what they think is a potential conflict of interest. Now, given the fact that you are all going to be signing the Declaration of Interests and setting out the Declarations of Interests, it is incumbent on all of the Members of the ATRT to consider if there’s a place where you think that one of your colleagues may have failed to identify a conflict of interest and that’s said without judgment, right?

Maybe you didn’t think about a certain relationship in a certain way, but you might have an idea about how that really could affect the deliberations. And so then it would be incumbent on someone who believes that there’s a failure to identify a conflict of interest to try to bring that to the table. Hopefully, with the transparency of the documentation it’s not that difficult and it doesn’t always have to be done in a confrontational manner; it’s a discussion.

BRIAN CUTE: Thank you. Any questions, comments, discussions on the Affirmation part of this document. Larry?

LAWRENCE STRICKLING: Now that we've put close personal relationship on the table, where is it disclosed? It's not disclosed here. I don't think it was in the Declaration either, unless that's been modified.

BRIAN CUTE: Sam?

SAMANTHA EISNER: Alice, if you could switch over to the Declaration of Interest document? Yes we did. And because we took out the duality of interest, the only modification that we made... There are a couple of minor alterations; we clarified that the person that is declaring in number three and then we added number four, and that would include your family or those with whom you have a close personal relationship.

So there's the ability to disclose that here. And then the only other change I made to the Declaration of Interest... If you could scroll down Alice... You'll see that... You'll need to change the draft date if the ATRT does adopt a new Conflict of Interest Policy. And then we ported over the language that we had modified in the Conflict of Interest Statement... or Conflict of Interest Policy, into the Declaration of Interests Statements. That's the only change. For consistency, yes.

BRIAN CUTE: Okay, any questions on the declaration? We will be executing this before we leave Beijing. Each of us. Any questions? I don't see any. Okay. Sam, thank you very much for very quickly getting on top of this, really appreciate it.

SAMANTHA EISNER: You're welcome. Always happy to help.

BRIAN CUTE: Thank you. Okay, that's behind us. What time is it? [background chatter] We haven't been voting on documents. Is there a consensus? Is there any concern with this Conflict of Interest Policy as modified by Sam? Or the Declaration of Interest? Okay, I see nodding heads. We'll move forward in adopting these documents and execute those Declarations of Interest. Please have them to me by the end of day tomorrow. No later. Avri? Alice is all over that.

AVRI DORIA: My question was mechanics. How are we getting, filling out, printing, whatever else we're doing with them?

BRIAN CUTE: Alice will have hard copies for us in the morning when we arrive.

AVRI DORIA: And then we fill in our conflicts by hand? Wow. [laughter]

BRIAN CUTE: Okay, well we can send soft copies around. Yeah. [background chatter] All right. Why don't you send it by email as a soft copy attachment and have hard copies tomorrow, so that people have options? Thank you Avri. Okay, anything else? Let's move on. What's next? David? Ah, yes, yes, yes. David, do you want to walk us through what you've put on the table for consideration?

DAVID CONRAD: Sure. Basically I've just expanded the original wording; the structure is basically the same. 'It's an identification of reliable indicators of progress with respect to accountability and transparency [is as? 02:14:50] important to assess effectiveness and whether continual improvement is occurring. ATRT 2 has therefore tasked a Working Group to identify potential metrics to assess Stakeholder and others, and in discerning how ICANN is progressing [inaudible 02:15:03] transparent and accountable.

The initial recommendations of the Working Group are available at some URL. Members of the ICANN Community and others will be invited to submit suggestions for such metrics as well.'

BRIAN CUTE: Discussion. Well, that's one of the questions. Are we going to set up a Working Group or are we just going to do this all together? At some point there will be a Working Group; formal or informal. People typing. Alan?

ALAN GREENBERG: Isn't that a stage that comes after we find out what the substance of our recommendations are?

BRIAN CUTE: The drafting of metrics you mean?

DAVID CONRAD: I guess I would think that coming up with a metrics would go terminus, but documenting them, sure, might occur, after the fact... I am not...

ALAN GREENBERG: I guess what I'm saying is you can't do it before doing other work.

DAVID CONRAD: True, true.

BRIAN CUTE: Is everyone comfortable with the draft? Anything to add or change? Where are we? Which sentence Larry?

LAWRENCE STRICKLING: The last sentence refers to there being some initial recommendations. To my knowledge they don't exist. I don't even remember them existing three years ago!

BRIAN CUTE: No, that doesn't exist.

DAVID CONRAD: Would it make sense to say ‘will be available’. Just, ‘the recommendations will be available.’

BRIAN CUTE: Yeah, that would be consistent with the state of play.

LAWRENCE STRICKLING: Well, I think there’s still a threshold question as to whether each Working Group’s going to be tasked with developing its own metrics, or is there going to be some umbrella group? This language suggests there’s an umbrella Working Group that’s going to look at metrics across all of the Review Team Reports. And maybe that’s what we want but I don’t think we’ve made that decision, so I’m not quite sure how we can say that until we’ve made that decision.

BRIAN CUTE: We haven’t made that decision. And I can certainly see how metrics would vary across the three different Review Teams, recommendations in question. So this becomes placeholder language until we get... David?

DAVID CONRAD: Yeah, I think it should be placeholder language. However, one way of looking at this might be that the Working Group that shall be formed will aggregate the output of the streams. In the streams themselves the role would be to come up with the metrics, and then this extra Working

Group, its entire task is to aggregate and make sure they're consistent; that there's no conflicts or confusion amongst the different metrics.

BRIAN CUTE: Okay, I can certainly envision that back-end work, if you will. Is everyone comfortable including this in the Terms of Reference and Methodology document as placeholder language? Small parts of it are not yet operative.

ALAN GREENBERG: When do you envision releasing the Terms of Reference document? Isn't that something we want to get out of here this weekend or...?

BRIAN CUTE: Yes.

ALAN GREENBERG: I don't know what placeholder language means and if we're trying to finalize it...

BRIAN CUTE: For us it works, for the public it doesn't so much.

ALAN GREENBERG: So I don't think we should let the draft words drive decisions we haven't made yet. If you want to have some language that says 'the Team will consider forming a Working Group to evaluate this' or however you

want to do it. But let's put it in words that are relevant and factual today and move on.

BRIAN CUTE:

Okay. ATRT 2 will form a Working Group... May. May form a Working Group. ATRT 2 may form a Working Group to identify potential metrics to assist... Initial recommendations, if any, of the Working Group will be made available. Something to that effect? Help here? It's late. There you go. David?

DAVID CONRAD:

You need to clean up the... Right there. Yeah. Any recommendations of the Working Group... No, you were fine before. Yeah, down, yeah, there you go. Yeah, just say any recommendations of the Working Group will be made available.

ALAN GREENBERG:

Why do we need to say that at all? Obviously if we're going to make any recommendations we're going to be making them available. Why is the need...?

DAVID CONRAD:

Oh, it's just providing the location of the URL, that's all. You can strike it; I was just taking that from the previous language.

OLIVIER CRÉPIN-LEBLOND:

I would suggest we don't have a clue where it's going to be based as the Wiki and other things evolve.

BRIAN CUTE:

Strike the sentence. Are we there? Okay, we'll cut this into the Terms of Reference and Methodology document. And thank you very much David for taking that on. Okay, we've covered Conflicts of Interest. We've covered Terms of Reference and Methodology. I think we have covered... Alice, correct me if I'm wrong; we've covered everything with the exception of the Report from Patrick?

Let's see. Which means... Well, if we want to we've got what, half an hour before David's here, roughly? I mean Patrick? Yeah, you could. The other Item we could pick up that's on tomorrow's Agenda, I think, would be preparing for the interaction with the ICANN Community. On Wednesday we're going to have a public session. We're going to take that offline. The mapping exercise for the list, the issues list? That'll get consolidated into that mapping exercise and we'll bring that back tomorrow.

So if everyone's okay we could have a discussion now until Patrick joins us here in half an hour, preparing for the interaction with the community on Wednesday? The public session? Alice was going to develop some slides and show them to us tomorrow, to walk through them. Why don't we just have a discussion about what we think should be in there? We had some early thoughts... You want to... I'm not sure I could remember at this point. I think the questions that we have for public comment are clearly too voluminous to put up on the screen, in front of the community in a meaningful way, so we can put together some slides.

And in terms of highlighting for the public, here, what the work streams would look like, we could put the four work streams up on the screen and do a verbal overview of what those work streams would entail, from our perspective so far an invite inputs on those elements, in terms of background. Seriously Alice, can you help me out? What did we discuss?

Yeah, the baseline data points, which is the composition of the Team. The deliverable deadline of December 31st for recommendations. Our working methodologies that were going to be open and all things. An overview of how we're going to operate from a transparency perspective, just as background. Oh, yeah and in addition to these background points, putting up the four work streams, giving a verbal overview of the work streams, inviting comment at the microphone, we also should identify the means through which we're going to take public comments.

So the email address, the different avenues through which we're going to allow them to provide inputs to us. And that gets us back to that question about the anonymized email list that we were discussing earlier. Can we see if we can come to a conclusion on that particular question? Avri?

AVRI DORIA:

I wanted to add another question, because I know we're going to get it because I'm already getting it. Is there any chance that we can do anything about our questionnaire to make it an online fillable-out form? I've already gotten that several times from people so we'd better be

ready with an answer. And maybe the answer is no but... Yeah, I've already gotten it from several people so that's why I'm asking...

BRIAN CUTE: You have. Yeah, David had asked that question. Are we able to do that?

ALICE JANSEN: Yeah.

BRIAN CUTE: We will prepare an answer, Avri. How did we run these things in the past? I think it was pretty much people asked questions from the mic., anybody on the Review Team could respond. We didn't have a hard structure in terms of how we responded but of course it's good if we're all in synch in our responses. Anything from last time around? Larry, or Mr. Zhang, that we need to keep in mind for these sessions? Okay.

Is there anything on this list of issues to address to the public that we've overlooked? The background? The delivery date? Our methodology with respect to transparency? The ways in which they can provide input? The request for public comment? Thank you Olivier. Anything else? What's that? Anything else?

Okay. Alan, your mic. is on. Okay. Yes, ten minutes? Thank you. Ten minute break? We're being extremely effective here and efficient. I hate to do that to the folks online that shortly but we really don't have any item to pick up at this moment. Shall we break for ten minutes until

Patrick Jones is here? Okay. One last break and then we'll hear from Patrick and be done for the day. Thank you for your patience, those online. We'll take a break now.

[Coffee break until 02:37:45]

BRIAN CUTE:

We're going to recommence in a moment. All right. Are we live? Okay. This is the Accountability and Transparency Review Team 2 recommencing this face-to-face meeting in Beijing. We're going to have the last Item on the Agenda today which is an ICANN Staff update on the Security and Stability Review Team implementation of the Security and Stability and Resiliency Review Team's recommendations. I'd like to welcome Patrick Jones for the presentation. Patrick, thank you very much. The floor is yours.

PATRICK JONES:

Thank you very much for accommodating me here and providing time to give you an update of where we are with implementation of the SSR Review Team recommendations. My name is Patrick Jones. I'm Senior Director of Security at ICANN and I was the Staff Facilitating Lead, also with Denise, with SSR Review Team's work.

Throughout the whole Review Team's process I was following along with the progress of the Review Team and in many cases our Team was making adjustments to our annual framework and our operating processes and procedures so that by the time the Review Team got to

the point of publishing the recommendations, and also for the Board approving those recommendations in the final Report at the Toronto meeting, we were already well on our way to making some progress toward implementation.

With this short [side-deck? 02:39:45] I'll do a walkthrough of the process we've used and talk about where we are now. As you know there are 28 recommendations in the Review Team's Report. Our approach has been to map them to the management delivery strategy that Fadi has been implementing and we provided an update to the Community on our progress in the SSR Review Team's recommendations.

It was incorporated into the most recent, annual framework document that was published to the Community on 6th of March. In addition we've provided a timeline so that the Community can see what our anticipated progress is from now until the start of the second SSR Review Team's work, which I expect would be in FY 15, so the middle of 2014.

When we started to look at how to implement these 28 recommendations we divided them into six categories. There's a set that are really focused on a high-level; what's ICANN's role and remit in security? How does the Organization look at the strategic decisions that it makes? And also the transparency of its budget and decision making.

There's a next set of recommendations around the terminology that we use and the relationships that the Organization has with the Community and security, and then they follow from those recommendations; that are focused on looking at laundering, outreach and engagement with the Community, recommendations focused on ICANN operations and

functions, recommendations focused on best practices; both for the Organization and also for the Community, and then there's a set of recommendations around risk-management practices and procedures.

Next slide? At the Toronto meeting when the Management Delivery document was presented to the Community, we then took those 28 recommendations and mapped them to those four areas. So what you see is how we've aligned each of the 28 into those four areas. It helps us condense things down and I think it also, for reporting purposes, we'll be able to show how each of these recommendations fit into these different areas.

This was the deck that I had developed for the face-to-face meeting in Los Angeles. Since then we published guidelines for coordinated disclosure, which we think touches very closely, if not perhaps meets the recommendation for recommendation 15, so we'll provide an additional update in our next reporting on where we are with the recommendations.

Next slide? So this is difficult to read in slide form but I guess there will be written printouts for the Review Team and also it's published within our annual framework document. And this is the breakdown by... The trimester periods for the next three fiscal years; so you can see how we've mapped the recommendations in a timeline fashion of where we think we'll be on implementation between now and 2015.

So at this point I'm able to take questions.

BRIAN CUTE: Patrick can you just walk us through – this is Brian – row one, the title fiscal year 2013, T1, T2, T3... Just give us a little context of...

PATRICK JONES: In parallel with the development of the Review Team work, the Security Team published a document that was a draft statement of ICANN’s role and remit and security, stability and resiliency. We published that, I’m going to say in May of last year and then took a very extended comment period on that role and remit document to try and reach very broadly.

So while we don’t think that that recommendation is completely met, we did publish a document and then going through the activities to... Yeah. So this is to show by trimester basis, on a timeline basis where we are for each one of the recommendations. The things that are in green are those that we think are complete, so recommendation 18 and recommendation – sorry my eyes are failing me here – but those are the two that we believe were addressed in the publication of the FY 13 Security, Stability and Resiliency Framework and also in improvements to the ICANN website, security page, documentation about what we do. So if there are other questions I’m happy to answer those.

BRIAN CUTE: Any questions? Okay.

PATRICK JONES: So I would add one last item is that we’re still taking public comment on the 2014 framework and have gone through a very... It’s not... It’s a documented process of how we’ve reached out to a very broad and

diverse group of entities, not only encouraging them to read the document but to please weigh in and provide constructive feedback. I know that each one of the Stakeholder Groups has received a personal invitation from me to please read the document and weigh in.

I've also reached out to a number of community groups and also some new entities who are not familiar with ICANN, may not have participated in ICANN processes before, and used this as a way to say 'here's something we've published. Please take a look and see if this is something you're interested in.

BRIAN CUTE: Questions of Patrick? Avri?

AVRI DORIA: You mentioned new community groups, I'm just wondering what kind of groups you've been reaching out to?

PATRICK JONES: I think it was in the Toronto meeting, and it may have been in the public forum or in a comment that I think you might have raised, of what's ICANN doing to reach out to those groups that are in freedom of expression or civil society. So I've sent personal notes to contacts at the Article 19 Organization, to UNESCO, to a number of other groups that may not be traditionally participating in ICANN, following the processes, but may have been at WCIT, may have been at other events in the Internet Governance space.

So there is somewhat of a connection and we're using some terminology in the document, or in our framework, about DNS health, fostering a sustainable eco-system... And some of this language is not traditional security language but it's language that might be of interest to these new groups and they may see this as an opportunity for them to get involved and participate.

AVRI DORIA:

Can I ask a follow-up? Have you gotten any responses from any yet?

PATRICK JONES:

I have. It hasn't yet translated into the public comment box but I did receive quite a bit of replies saying 'thanks, we're reading it' or 'we're interested'. I've also received some notes that 'our Organization may not be able to comment publicly' or 'we'll try to provide you with some feedback in other ways'. And I know people are looking at it.

We published an insane amount of documentation and this one may get lost in the shuffle of the other topics that are carrying the day right now, but I think by reaching out individually to these groups and organizations, I think that's paid off more than just publishing something and saying 'it's out for comment' and then expecting people to read it when... That's not enough.

BRIAN CUTE:

Patrick, a general question. Being a recipient of the recommendations and being responsible for implementation, at least in part, how clear

were the recommendations to you when you received them from the Review Team?

PATRICK JONES:

I think in this case this is one where the recommendations were fairly clear, since we were following along the work so closely. In many cases we were working hand-in-hand, providing feedback throughout the Review Team's process and so none of these recommendations were a surprise to us.

On of the big focuses – and Denise can comment on this as well – is making sure that the recommendations they provided were clear, implementable, that there's really not a lot of ambiguity with them... And I think this will hopefully be a success story because I think we're very early in the stages of implementing this, but it's something that all seems very practical.

DENISE MICHEL:

Yeah, because there was a very strong working relationship between Staff and SSR Review Team, the draft recommendations were iterative, there was a lot of questions, a lot of responses, a lot of discussion about the feasibility, whether or not we understood the recommendations, what their key objectives were, discussions with Staff about the different ways we might implement them... Things we didn't understand.

So by the time they finalized their recommendations, Staff was very clear on what their objectives were and already had an idea of how they would be implemented.

LAWRENCE STRICKLING: So if you look at recommendation number nine, it talks about ICANN assessing certification options with commonly accepted international standards, for its operational responsibility – so that’s pretty vague, as written – and the response so far from ICANN was you’ve gotten certification for DNS [stuck in the root? 02:51:12], and that further certification processes are being led by ICANN’s various Teams.

But is there any daylight at all between what systems the Review Team thought it needed certified and what systems you all are going to proceed to get certification on? Or is that still an open issue? Because what’s written down doesn’t show a lot of clarity in terms of... Or show that agreement, but maybe in fact it exists because of the process that you all used.

PATRICK JONES: The Review Team didn’t want to specify which areas... We wanted to see where practical, feasible to proceed with certification. There is work underway within [IN? 02:52:59] and IT and additional [citrust? 02:52:00] audit and certification process. There’s also an IT Best Practices Review that’s underway. And so this work will lead to additional certification, using some of the well-known standards that were discussed at the NIST event earlier this week.

LAWRENCE STRICKLING: I guess, at the end of the day, how will one know that that implementation was fully implemented, given the fact that all it did was

say go and get your operational.... Go get those systems that are part of your operational responsibility certified. Yet it seems like there isn't yet, today, an agreement on which one of those systems really ought to get certified? So how will we know when we're done?

Because I guess I just need some help understanding what you all think is full implementation, given the vagueness of the instruction.

DENISE MICHEL:

...Good recommendation to ask about; the Sub-Group, if I recall, Patrick, on the SSR that was looking at this started out with some very specific ideas of very standard certifications that you would find in a typical IT company. That they thought that ICANN and different areas of ICANN should comply with, and there was a very long and extensive discussion with the different areas of ICANN and the different parts of the Staff about where those standards fit well with ICANN's activities and where there was quite a disconnect and wouldn't fit.

So the result of that long discussion was that Staff and the Review Team came to a clear understanding of what the objective was; what the broad objective was. And I think as part of the implementation, Staff is looking at where the best fit it on which standards to pursue or to create sub standards and best practices that are unique, given the particular, unique responsibilities of ICANN. And we can provide some more detail for you, but this is in some areas a work in progress.

LAWRENCE STRICKLING: Well I understand that and I understand the complexity and difficulty, but I still have the same question, because we're going to have to answer it, which is; how do we know when this is fully implemented? Because it seems like certification has been tossed up there as an issue and it's fine, maybe there's no way around this, but I'm just trying to understand how we grapple with this.

BRIAN CUTE: Thank you for the questions Larry. And we have a former Member of the SSR Team. Could you identify yourself for the record?

DAVID CAKE: My name is David Cake, I was on the SSR Team, and yeah, that particular recommendation, the assess part, was very much part of it. We wanted the Security Team at ICANN to consider a range of formal certification procedures. We didn't want to dictate any given one. What we wanted to do was look at the formal procedures and assess which ones were applicable and which ones would be useful.

We definitely didn't dictate... As far as we're concerned, I think that is completed. If within the roadmap it says 'we looked at these certification procedures. These ones were found to be useful.' But that is what we want to see in the roadmap. We definitely were not intending to make a specific recommendation of any single one.

BRIAN CUTE: Larry?

LAWRENCE STRICKLING: So I really like this idea of how you all worked hand-in-hand and I guess hearing from both of you in terms of what challenges did that present, is that a best practice we should look for, for all Review Teams going forward, including this one, and what do we need to keep in mind in terms of making that a workable way to approach this?

PATRICK JONES: From a Staff perspective, now that I'm in the position of having to implement these, having followed along so closely with the development of the recommendations, I think we're really at an advantage of understanding what they meant, of also having had a long period of time to think about what would be the best way to tackle this.

I think it really put an incentive, just from a time standpoint; we're able to save the Organization, save the Community time in addressing these recommendations. And some of these were well on the way, if not very close to addressing many of them earlier than expected. It helps us. We're probably six to nine months ahead on some of the things.

DENISE MICHELS: And of course this is the most homogeneous of the Reviews. It really focuses other recommendations and improvements on one department. Not solely one department, but about 80% or more is one department driving it, whereas the ATRT have the expanse of the whole Organization, in a sense, WHOIS also involves a lot of different entities,

both on Staff, and some of the Communities as well and so it's a little more challenging.

BRIAN CUTE: If you would please?

DAVID CAKE: Yeah, David Cake again, I just wanted to say from our perspective we felt the Team very much appreciated it; made our work much easier. We worked closely with the Staff and they provided us with... I definitely think that the fact that they worked closely with us did mean a lot of the time; a lot of our recommendations were well entrained before a lot of our Report was even presented.

And I felt quite positive about that Review, partly because we worked so closely with the Team and it was already... We already knew... We were able to identify things like implementability and think it working well and truly, so... I would say positive, but that point about the SSR Team, we're dealing with a fairly specific part of an Organization, for the most part, which meant it was a lot easier for us to do than it might be for the ATRT, where your Staff support may be much more widely spread over the Organization.

BRIAN CUTE: Thank you David. Any other questions for Patrick? Patrick?

PATRICK:

So maybe to flag one more issue, there are a couple of recommendations that will require Community-Staff collaboration to get to completion. Some of these are in the best practices area, I think there's recommendation 12 is one of them. There are also some recommendations around SSR. There are terms of practices in the introduction of New gTLDs and so I want to flag these as an addition to all of these being ongoing work.

The ones that really need Community-Staff collaboration in order to get to that final hurdle; to say yes, we've addressed these, we're going to need to come back to the Stakeholder Groups, to the Counsels and say 'here's how we think we would address this but we really need some assistance and we want to do that in a collaborative way', so just as a heads up, we're going to be coming back to the appropriate groups to say look, are we thinking about this in the right way because we can't hit complete on this recommendation without that close work with the Community.

BRIAN CUTE:

Thank you. Any other questions for Patrick? No? I don't see any. [phone rings] Patrick, thank you very much for your time and your presentation, we appreciate it.

Okay, at this point of the day I think we'll move to a brief summing-up. We've already knocked some Items off the Agenda for tomorrow. We've been very efficient and we'll likely be working towards a more abbreviated schedule for tomorrow. Looking toward tomorrow we'll start off the day... I think Heather will be able to join us in the morning;

I'm pretty sure. Heather Dryden. So we'll start the morning with a recap of today's discussions and the high points of what we've agreed to move forward.

We are also going to... We have to come back to one of the Items; we need to finalize the Terms of Reference and Methodology document we'll finalize tomorrow. We were going to map the issues to the AOC and also combine Carlos's document and bring that back to the Team. That's the issues list. We will have the Declarations of Interest circulated for signature and the Affirmation part of the Conflict of Interest Policy for signature tomorrow.

We will have an exchange with Review Team Alumni tomorrow, scheduled from 10:00 until 11:30 and then... Excuse me, 11:30 until 12:30. And then I think we'll come back to one more discussion on the work streams themselves and make sure that that's well structured and then look at our next steps and next meetings and order our work accordingly.

Anything else to add to the summary, that I forgot? Question, Avri?

AVRI DORIA:

Maybe Alice has done it already but if not, can you send out the latest copy of the framework document, the methodology and whatever document? I don't know if you've sent it already? Okay, because I volunteered to work on a paragraph so I wanted it... Oh, you did that? Okay, thanks. I just didn't see it. Sorry, thanks.

BRIAN CUTE:

And Alice is sending out an invitation from the Review Team to all the Chairs of the ACs and SOs, with respect to the public session on Wednesday, so that hopefully we can get some very good attendance at that session and have a good interaction there. Any other Items before we close? Okay, seeing none. Anything? Okay. Thank you those online, we'll catch up with you tomorrow. And actually we're going to start tomorrow at 9 o'clock. So we'll see you all at 9:00. Thank you. Whoohoo!

[End of Transcript]