
COPENHAGEN – CCWG Accountability Work Stream 2 Face to Face Meeting
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ICANN58 | Copenhagen, Denmark

UNIDENTIFIED FEMALE: March 10, 2017: ICANN58 Copenhagen, Hall A2, 9:00 a.m. to 6:00 p.m. CCWG Accountability Work Stream Face-to-Face.

BERNARD TURCOTTE: Good morning, ladies and gentlemen. Welcome to the CCWG Accountability Work Stream 2 Face-to-Face Meeting. There is coffee that is served if you want it. Please take a seat. We'll begin momentarily.

LEON SANCHEZ: Good morning, everyone. This is a two-minute warning. We will be beginning shortly.

THOMAS RICKERT: Just a little message for our remote participants. We will start in two minutes. Thanks for your patience.

Can you please be seated? We have an important announcement to make. Please be seated. Can I please ask you, please be seated?

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

We're going to do a little morning exercise, so listen closely. We have one person in this room who did something which may or may not have been very unwise, and this person doesn't yet know what he got himself into. Leon was picked for the Board, so let's give him a big round of applause.

[Applause]

I wanted to get this out of the way before we start the official part of this day and before we start the recording because, as you know, this is part of our conspiracy takeover plan. So, we have number two from this team on the Board now. Some more to come, probably. It's not going to be us, for sure.

So, Leon is going to start with the official agenda. Leon, over to you.

LEON SANCHEZ:

Thank you very much, Thomas. Welcome, everyone, to our CCWG on Enhancing ICANN's Accountability Work Stream 2 Face-to-Face Meeting in Copenhagen. For our remote participants, I would like to remind you to please raise your hand on the Adobe Connect room. Or if you are not in the Adobe Connect room, please do state it at this time so we can be aware that you are on the phone bridge. And if you need or you want to speak at any

time, please let us know so we can place you in the queue. We will be happy to do so.

As usual, this is also a reminder for those here in the room to please raise your hand in the Adobe Connect if you want to speak. It is easier for everyone to have you raise your hand in the Adobe Connect room so that way we can keep a close view to the queue and let everyone speak as we usually do.

In this meeting, we have sent an agenda with the supporting materials a couple of weeks before we arrived here, and our first agenda item for today is, of course, a reminder of the Expected Standards of Behavior, for ICANN meetings. I believe that we all know those Standards of Behavior already. And if you don't, if you are just coming in, please do read those standards of behavior. They are very useful.

And, of course, we also have a reminder to update your Statement of Interest. If you have any changes or if you haven't done so and you need to actually update your Statement of Interest, staff will always be glad to assist you if you have any problems. Please do so at your earliest convenience.

As I said, we sent the agenda and I would like to see if there are any comments. If there's anything that anyone would like to add at the end for Any Other Business or if there are any comments

on how the agenda is structured, it would be useful to receive those comments now so we can adjust accordingly.

Okay, so I see no hands raised and no comments. So, the agenda stands as we sent it.

Next, we're going to review the action items from our last meeting. We had some correspondence with the Chartering Organizations of the CCWG, and so far all of the Chartering Organizations have spoken and each of them has stated an opinion about the status of ATRT 3.

The last Supporting Organization to speak on that was the GNSO, and we received the correspondence from the GNSO and I believe that Mathieu forwarded it to the Plenary list. And each of them has now stated whether they want to have a narrow scope of ATRT 3 or should that ATRT 3 review should be kept as is.

And I think now it's on the hands of the Review Team itself to define whether they want to have a narrower scope than initially intended and, of course, keep an eye on those overlapping issues that we have discussed that may be affecting the work of the Review Team and of some of the sub-groups or our Work Stream 2.

So, we will be, of course, pending a reply from the Review Team as to how they want to lead this effort, and we will communicate

this to the Board. We are going to draft a communiqué to the Board informing them about this situation so they can also have this information handy and act accordingly.

I would also like to remind you about the travel funding applications for ICANN59. I know that we just got into ICANN58, but it's something that we want to remind you. We have our travel policy. It has been circulated to the list again, and those that qualify for travel support for ICANN59 should be filing their requests at your earliest convenience as well.

We also have some public consultations open and some questionnaires that are on the pipeline. It would be excellent if we could engage all SOs and ACs during this week and in the coming weeks with these public comments and the questionnaires that are open for public consultation. Of course, as members of the CCWG and as members of the different Chartering Organizations, please do try to have your corresponding SO or AC engage in these exercises.

So, I guess that would be a general review of what we had pending, unless I am forgetting anything, Thomas or Mathieu. I would now like to hand it to my co-Chair Thomas for the next agenda item. So, Thomas, you have the floor.

THOMAS RICKERT: On ATRT 3, as you well know, we have reached out to the –
[inaudible]

Can we flip slides, please? Sorry for that.

MATHIEU WEILL: It's done.

THOMAS RICKERT: It's done? So, we can have Jordan and...

Jordan and Avri, can you come to us because you will be up next? Do we have Jordan and Avri's slides ready to go into the Adobe? Please bear with us for a moment. We will continue momentarily.

Just to give a little bit of context, we're now going to discuss the Staff Accountability work, and Avri and Jordan have joined us to give us an overview of their paper.

And as you will have seen reading the documents that Bernie circulated, we need to discuss with this group how the sub-team is going to best continue its work because there are some questions from the sub-team in terms of how we continue and how to potentially reframe the work that's currently been done.

So, I'm not sure whether Avri or Jordan is going to be first. I think you're going to take turns anyway, but Avri's going to be first. Please.

AVRI DORIA:

Yes. We've got the slides. Okay.

We wanted to talk a little bit about Staff Accountability Group. Might as well move on to the next slide.

Basically, our task was well-specified in Work Stream 1. There's a whole list of things we need to complete. We will talk about the work we have done so far. We actually got fairly far, but then we hit a halting point and that's what motivates today's discussion.

That's the challenges we face: the need for a better working method with ICANN is one of the things we'll discuss; a request, a need that we have, to rescope our work somewhat – and we'll get into the “why”; and then some examples of issues that have been identified so far.

Okay, moving on. The work was established in Work Stream 1 as an area of further work to work with ICANN. And that was a very important part of our mandate: to work with ICANN (and that means ICANN staff, ICANN org whatever it is we decide we're going to call it at the end of the day: the part of ICANN that's paid to be ICANN) to document the roles of staff compared with

Board and community – often referred to as the “trinity now” of Board, staff, and community – and to consider a range of improvements to processes and feedback loops.

And this “HR” is not “Human Rights” but is –

JORDAN CARTER: “Human Resources.”

AVRI DORIA: “Human Resources,” thank you. I’ve been using the other “HR” for so long that the fact that there are two “HRs” escaped me.

[MATHIEU WEILL]: It’s human.

AVRI DORIA: Yeah, they’re both human...for the most part.

So implicitly, the intent of the work was to improve the relationship, but we’ve seen as we’ve gone through this that there are various pitfalls and areas in our discussion.

Please, next slide.

Stop me anytime you want to say something.

So, what we've done so far – we've developed a Work Plan; we discussed the topics. We actually came up with a draft for our A Document, "The Relationships and the Roles Describing Them." And it was a very expansive draft that we then cut down, put part of it in an Appendix.

We thought we were on a good track to submit that for this meeting. We had told the Chairs and Bernie and everybody that we were on track to have it done, and then basically at our – I think it was the second reading of the document – we got a halt from at least one member of the group that said, "No. This thing is not ready to go forward. This thing is missing part of its content. We have to step back. We have to think some more about what we're doing there."

So, we have these two documents. Document B was started on the processes. It got so far as defining the existing processes, but didn't go into recommendations for future ones because A was the one that was discussing the roles and responsibilities – the relationships and roles that would determine what we put in B.

We also, by the way, have a third document that's not listed here, and that's that in the midst of requesting information from ICANN staff – a.k.a. ICANN organization – we received a set of questions from them to answer.

Now, the questions from them are very directed and one of the sub-texts that we find in those questions is, “So, what’s the problem?” And indeed, that was part of the halting problem we had. We were discussing relationships; we were discussing roles. But we weren’t discussing the problem. So, that’s how far we’ve gotten.

Next slide, please.

Is this the place. Are you going to talk about the challenge?

JORDAN CARTER: Sure.

AVRI DORIA: Okay. You talk about the challenge.

JORDAN CARTER: Thanks, Avri. Hi, everyone. I guess following on from what Avri said, the wording in the Work Stream 1 report about what we needed to do leaves that, “identify problems and propose solutions” thing a bit unclear. And part of what we’re asking you today is your agreement or consensus that we can actually focus on that.

And so, there’s a bit of a gap in what we’ve done from what is most useful, which is, if you think about the problem of staff

accountability and if you think about the aim being to say, “This is how we could improve the relationship,” then saying, “Work out what the problems are and propose ways to sort them out,” seems quite natural. But it isn’t quite what we were [expected] to do.

The related point, I guess, is that, particularly in the evaluation of what processes are already in place, it has taken a long time to get the information. I’m not raising that to excuse the progress that we have or haven’t made; just to point out the chronology of it, really – that we were established in the middle of last year and that the staff papers arrived in late last year.

Requests for info went to ICANN in November, I think, last year. We got replies at the end of January. So, this halting flow of information back and forth hasn’t really delivered.

Could we grab the next slide?

There are two things we would like to get your feedback on, and I think the easiest way to go is to just outline those two and then come back and discuss them one after the other.

First is a better working method. I think that if we’re going to work with ICANN to develop documents, the worst possible way we could work with ICANN to develop documents is by drafting

documents and then asking ICANN for further information or feedback, and then six weeks later getting a response.

It's not exactly that we need to have a negotiation of these documents, but it's more the case that working with someone to create something is much better done more in real time than by back and forth if you can do it.

So, we need a group of people on the ICANN side of that equation who can offer views and make commitments and explore stuff – brainstorm, tweak, adjust – and bring their knowledge and perspective of these issues to bear.

And when you think about it, when it comes to how staff are held to account, of course people inside the organization know more about how that process works. They're in the culture. They're dealing with it day to day. They're on the receiving end of it. They have a different perspective about what the community is doing. If we were only accessing that through the exchanges of written documents every six weeks, we're missing the trick.

But it seems to me – and my experience here is [largely] limited – that this is a different way for ICANN to work. This isn't the standard way you might deal with a community group, and so it requires ICANN to think about and agree a different way of working.

So, we think that the Staff Accountability Sub-group of CCWG can do it. And the CCWG can do it, but we would need ICANN to agree to that as well. So, that's one of our two points – the better working method.

If we could go to the next slide? Oh, yeah. Avri –

AVRI DORIA:

I do want to add one thing in that it also had “?Board?” in parentheses. We do have a Board liaison, and the Board liaison has been participating in the meetings with moderate regularity. And in fact, it was the Board liaison that was one of the two people that called a halt to the work and basically said, “Hold on a second. I think you're going in a problematic direction. We need to step back.”

So, the Board member did work with us, but perhaps worked with us a little towards the end of the process when we thought we were almost there and perhaps that is a familiar timing to people.

So, other than the support we've got, giving us documents we asked for – that certainly has happened – there has not been any staff person who's actually been participating. There was a Board person participating.

JORDAN CARTER: And none of that is to blame that Board member for the concerns that were raised. It wasn't just one person's concerns that brought us to today. Two people raised it on the call. I shared some of those concerns as well. So, I'm not trying to pigeonhole this as a Board liaison problem or anything, just to be clear. It was helpful. Well, I'm not, anyway. Avri might be, but [it's the] diversity of rapporteur views. That's what you're paying us for, right?

(Oh, shit. That was a secret.) [laughing]

[Laughter]

JORDAN CARTER: The next slide. [laughing] I was kidding.

AVRI DORIA: Is it your turn to hold the nickel? [laughing]

[Laughter]

JORDAN CARTER: So, the second point really flows from the introductory comment that we think that we need to do a slightly different piece of work than we were envisaging and that the literal words written down in the Work Stream 1 report say. We want to do a

brief documentation and job of the set of relationships and procedures and so on that are in place. We want to do...

Quite a lot of issues or concerns or problems with Staff Accountability have already come up, but we want to canvas and get any more of those on the table. There's the letter from the Registries Group that came through. There are other specifics that people have raised.

We just want to make a call to really say, "What are the challenges that you're facing about staff accountability as a broad topic?" and to come up with possible solutions for them, not with the hope necessarily that those exact solutions will be implemented word for word, but that the community is applying some energy thinking to ways that they might be resolved – ways that probably aren't micro-interventions on each single issue that comes up, but on changing the process and structures of ICANN so that they're less likely to come up in the first place; and to make sure that we're dealing with these issues in the rubric of staff accountability, not building the perfect ICANN or ICANN 3.0 or relitigating Work Stream 1 or any of those things.

Those are the two key areas. I'm sure that Avri's got something to add to that as well. But it's like, can we have a different working method at ICANN and can we have the slight adjustment or refocusing of our scope?

AVRI DORIA:

The only thing that I'd want to add is, not only to find ways to prevent them from coming up – because you can never prevent issues from coming up completely – but to have some known paths for mitigating other than an unknown, “Someday there will be a Complaint Officer and someday the Complaint Officer will deal with all complaints and we'll never have a problem again” type of approach.

So, some intermediate methods of dealing with issues when they come up so they don't rise to the level of complaint. They just rise to, “Ooh, there's a problem. How do we deal with it?” and such. So, it's both helping to prevent...

But, really, we have to come up with a question of, as we discuss this and then people say, “Well, what's the problem you're trying to solve?”

Well, staff accountability. “Well, what about staff accountability? What's wrong? What are your complaints?” And we have heard many of them. Only the registries have gone through the effort of documenting them in a politically safe way of documenting without casting aspersions or putting themselves in retaliation's path. So, therefore...

And that is one thing that we've heard that isn't on the slides. When you start pressing people to talk about the issues and the problems they had, it's, "Uh, I've got to keep working with them. We've spent hundreds of thousands of dollars and we can't afford to have this complaint become something that blocks our work, that blocks our business cases."

So, even when people do it, they have to do it very diplomatically because there is a certain amount of apprehension. Thanks.

JORDAN CARTER:

That's a perfect time to just go on to the next slide, which is the last slide. So, why don't you keep talking?

AVRI DORIA:

Okay. So, some of the examples of issues and problems:

"There's a lack of forum in which staff or community can safely raise or work through issues." And when you've got an issue with staff, you can complain to CircleID; you can complain in the public forum. But how do you deal with it in a constructive manner? You can go to someone's boss if you can figure out exactly who is their boss.

Very often, staff is “perceived as crossing that, albeit fuzzy, line between implementation to development or decision;” and where that line always lies is difficult.

“There’s a culture of the staff in respect to focusing on supporting community role in policy development,” and there are certain stressors there in terms of who takes responsibility when.

The whole roles and responsibilities issue that we hear discussed often in sort of a general Internet Governance sense of, “There are different roles and responsibilities and how they work together.” Well, we don’t have a clear notion, a clear delineation, of how we deal with that here.

And then there’s, “Lack of formalized inclusion of community feedback in staff assessment.” It’s not that we’re saying that community should be reviewing staff, but especially staff that is community-facing – the notion that their managers would talk to some of the responsible members of the community at review time is that there’s sometimes there’s great surprise that you hear of someone who has been elevated to a great new role and you go, “But what about the Peter Principle?”

And so, there’s a certain, “Why did nobody talk to us?” And then you go and you ask, “Why did you promote...” or, “Why did you reward...?”

There's another issue that comes up that we didn't get on this list. We often hear of the bonuses that staff members get, but we don't know what they're for. Are the bonuses to get certain policies through? Are the bonuses to make sure that a policy happens in a specified time? So, what are those specifications?

If a bonus relates to the work that the community's doing, the question is, should the community know it? If you're working with a staff person whose incentive is, perhaps, other than the community's incentive – and I'm hand-waving because I don't know, and perhaps that's Trump-like of me – but it's basically, “What are the incentives? What are they getting rewarded for? And does it in any way contradict or force the hand of the community?”

Is there another slide? I don't think so.

JORDAN CARTER: No.

AVRI DOARIA: Okay. That was our spiel.

THOMAS RICKERT: Thanks so much, Avri and Jordan. I suggest that we now open it up for comments from you or the remote participants. As you

know, we would like you to raise your hand in the Adobe room so that we can manage the queue. The first one in line is Kavouss. Please.

KAVOUSS ARASTEH:

Good morning to all of you. First of all, thank you very much for your comprehensive report on the problems and difficulties. You all remember that at Work Stream 1, I raised the questions of the approach that we have to take with respect to the staff accountability. I mentioned that it seems that we want to get involved in the micromanagement and day-to-day operation of the ICANN, and we are breaking the hierarchy that exists. We want to totally bypass the Board, bypass the CEO, but go to the staff one by one and being responsible that asking them to report to us. And we judge them. There is no black and white, but there are some limits that we should put on our activities.

There was a lot of complaints made. This report, while we very much appreciate, is striking and disappointing. There are so many negative issues which may not exist. Either we are perfectionists or idealistic or we are far from being involved in the management up to now. And all of a sudden, given such authority that go to the detail of everything and ask everything that you want.

So, I don't understand the role of the community to go to so much in detail of the things and asking so much detail situation. We have to normalize or streamline our demand. And we have to listen. And without having any two-part discussions – negotiations and discussions – and listening to the problems and so on so forth, we cannot [make] decide unilaterally and we cannot dictate the day-to-day and hour-to-hour operation to them. And that is the situation which may not resolve the issue.

I don't think that ICANN, the 350 or 380 – I don't know how many staff they have – is much more important than any other organization in the world. They have thousands of the people and they may face problems, but they do not go to that level of detail that we are going.

The maximum that they do – they have an external auditor, they go to their problems, and make recommendations to the management, and ask the management to implement the recommendations. At the end of the year they come whether the recommendation which has been made were implemented or not. If not implemented, ask them why have not implemented?

But the people that are management – top Board and CEO – but not the staff. We are totally excluding them, and that may not work. It is idealistic and perfectionist.

So, you are requiring but, perhaps, listen to those people who might have some other experience in other part of the world how they think it is done. We are going too far.

So, you ask the endorsement of the community or CCWG with respect to what you have proposed. I don't think that there is a lump sum endorsement. We have to see what is possible and what is not possible. We don't want to have a negative outcome of this. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. I suggest that we collect one or two more interventions and then you will get the opportunity to respond. Let's move to Steve and then to Alan.

STEVE DELBIANCO: I think that my view is that you're the work team and you're doing the work. And if you have arrived at the point where you believe an adjustment in your scope and focus is appropriate – I've read it over and I fully support that. And yet, because you're doing the work, you're proposing to make this change in focus and are really, really, asking, "Are there any objections to it?" as opposed to throwing it out there for broad community input.

You're nodding, and I appreciate that.

Our work group went through the same thing where, as you start to do the research and review, you discover that it may not be exactly what was in the Bylaw for Work Stream 2 or the report. So, I support that adjustment that you're making.

And with regard to the adjustment at looking at problems, I think you've found the right distinction at describing issues/problems. What you have on the screen – these four bullets – are examples of pattern of practice, or systemic issues, that require more systemic solutions and culture changes. Those are entirely appropriate to identify in a report like the one you're doing.

On the other hand, a specific instance where an individual or an incident occurs is perfectly routed for the CEO's new Complaints Officer. And I'm positive that he'll talk about that today because there's been multiple conversations with him where if you have a concern about an issue like that, bring it to the Complaints Officer; and that Complaints Officer would deal with individual incidents and individuals in real time. And you're not doing that here. You're looking at systemic patterns that have occurred over time that require more structural. And those four are good examples.

Denise Michel in the Business Constituency has been leading our effort in the BC to look at another example of a systemic, and I'll

leave it to Denise to give you the details. But the BC has been documenting, for quite some time, a systemic issue in the way its staff analyzes, summarizes, and acknowledges public comments that all of us spend so much time preparing.

Systemic issues like that have a perfect place in your document, and I think the change in focus that you've proposed is entirely appropriate. Thanks for your work.

THOMAS RICKERT: Thanks very much, Steve. Let's hear Alan, and then you guys get the chance to respond.

ALAN GREENBERG: Thank you very much. In the interest of full disclosure, I'm a member of this working group and have not been particularly active. That notwithstanding, Avri has pretty well channeled for me and repeated anything I might have said completely independently of discussions in the working group.

Many times, there is almost a curtain of opacity as opposed to transparency between staff and volunteers. There is a certain level of both secrecy and, "You don't have a need to know." And the details of how processes work – as Avri said – if you're looking at a low level, try to find out who someone reports to, who to complain to.

If you're working at a higher level, there's almost a – I don't even know how to put it – but a group of mutual finger-pointing so you never can actually get an issue resolved. It just goes to somebody else.

I donate my time to ICANN. I donate a lot of time to ICANN. Now, I may be in a particularly interesting position. I am the Chair of At-Large, of ALAC; and we are wholly dependent on ICANN to provide our services. We have no resources of our own, and there's no money in the game. And the number of letters I have to write, e-mails I have to write on a regular basis complaining but not complaining.

We've made reference to a Complaints Officer. I don't want to raise things to the level of a formal Complaint. That will set a tone between the staff and volunteers that's just going to be untenable. We need a better way of working cooperatively – less defensiveness on ICANN's side, and a lot more openness. Thank you.

THOMAS RICKERT:

Okay. Who wants to respond – Jordan, Avri, both? And then we will continue with the queue.

JORDAN CARTER:

We might both have a couple of comments. Backward first from Alan's comment. What we want, I think, is processes where that feedback isn't seen as complaining; where there's a kind of institutionalized way to get community feedback so that it isn't seen as unusual and where you don't feel like you're putting relationships at risk by raising concerns and where giving praise isn't seen as unusual either.

Anyone who thinks that staff are always performing badly obviously doesn't work with ICANN staff very much. Most of the work done – that I've observed, anyway – has been really good, so you want to get both sides of that coin in the loop.

Steve, thanks. Yes, systemic issues and processes are what we should be focused on.

And Kavouss, I think that comes to your point. Certainly, from my point of view it isn't about micromanaging staff. It's about transparency of process so people can understand how these concerns are dealt with when they arise, and identifying the community's take on where there might be gaps or issues not being solved by today's processes to be a constructive contribution to ICANN's evolution.

So, if you see the substantive content that we work on from this process straying too far, please say so. But at the moment, all the endorsement that we're looking for is to focus on problems

and solutions, not on the specifics that have been raised there and we're not asking for a blank check for you to endorse the outcomes of that work.

AVRI DORIA:

Thanks. Very little to add. First of all, I don't think there's anything in what we're talking about now that is anti-hierarchical within the staff. There may certainly be those within the group that would prefer to see a very different relationship and a very different set of roles and responsibilities between staff and community.

But what we're talking about at the moment is a way to contribute to the assessment – to be able to talk; to be able to, yes, as Jordan says – “Here's the stuff that's really good and here's the stuff that could be improved” – not to interfere with the hierarchy, but to contribute to its functioning.

I very much agree with you when you say, “It's good to talk, to be able to go back and forth, between staff and community.” One of the things we're saying is, “That is not currently happening.” It happens perhaps on an individual level: certain, “I will talk to someone. Someone will talk to me.” But it does not happen in a systemic way. And within the group, it's not happening.

So, I completely agree with you. Yes, we need to talk and work together with them, but they need to talk and work together with us as well. And us just wishing for it hasn't made it happen. Us asking voluntarily, "Will some staff person please come and participate in the group?" didn't happen.

And it got to the point where we feel that we're working sort of single-handedly without the other side of the coin, and so that's part of this issue. Thanks.

THOMAS RICKERT: Thanks very much. So, let's now continue with the queue. We have Olga.

OLGA CAVALLI: Thank you. Good morning everyone. Thank you very much, Avri and Jordan, for the great work. I agree with most of the things that you have explained and expressed after being participating for many years in ICANN. So, thank you very much for that.

I would like to know which are the next steps that you are envisioning for the work of the sub-working group?

AVRI DORIA: Did you want to collect several before I answer to that?

THOMAS RICKERT: I suggest we take two or three again. Next is Greg, please.

GREG SHATAN: Thanks. ICANN is a unique organization, and I think that the relationship between the staff and the community is one of the unique aspects of that; and therefore, lessons to be learned from other organizational matrices are limited at best.

For the community to accomplish what it needs to accomplish, it can't do it without the staff. Essentially, we would all be engaged in a circular exercise – and not one of finger-pointing – if the staff didn't take our work and turn it into reality. They are a membrane between us and the Board, and approaching them only through the Board is, I think, an improper approach.

I think, in fact, the Staff Accountability Working Group may be the heart of this entire Accountability work as much as we've spent time on so many other incredibly important things, such as Jurisdiction and Human Rights.

But in terms of – in Work Stream 1 we kind of solved the cataclysmic problem of what to do when something was so bad that we had to get together the Empowered Community and perhaps [spill] the Board, [spill] the Director.

But in terms of dealing with things that were impeding the proper work of the community but that were not necessarily

cataclysmic but were definitely problematic or less than optimal, we didn't really create a methodology for that. And that's – I think, this group's job is to identify the issues, which are up there, as some of the key issues and then to resolve that.

I think the first report of the group went off on a tangent or a series of tangents that was unfortunate, but I think the stop to refocus is very important. So, I'm very encouraged by the work of the group.

And I admit, I am a member of the group and I have been moderately active – not active enough – and increasingly active as I've seen where the group is going, its strengths, and its weaknesses of its work to date. And I regret, also, having kind of been a little bit late to the party on some of my comments and criticisms of the work, as well as some others.

So, I think we're heading on the right track. I think that it's critical that the group work with staff and vice versa on this, as that was a unique part of the charge of this sub-group and this sub-group alone, to work with staff. And I think that finding the methodology for staff and community to work together to accomplish the objectives of the ICANN ecosystem/organism/magella – whatever you want to call it – is among the most critical and important pieces of work that we have. Thank you.

THOMAS RICKERT: Thanks very much, Greg. Let's hear Sébastien now. After that, Avri and Jordan will respond. And let me already announce that after Phil, I plan to close the queue.

So, next is Sébastien, please.

SÉBASTIEN BACHOLLET: Thank you very much. A few things. The first one is, I really think that we work in Work Stream 1 to solve the main issue around the functioning of the Board, and now we don't have a coin with two sides, but we have a coin with three. And I don't know which one is a small one and the middle, but it's important that we have three elements in this discussion.

And, of course, we organize the work to be done to discuss the relationship between the community and staff in one group, but in another group we are talking about Accountability and Transparency of our own community groups. And that's a third piece of this overall work.

I remind being in the history of this organization – oops, in this ICANN system; whatever you want to call the three elements together – that the relationship between the community members and staff change depending on the CEO; depending of

the time of the CEO mandate; depending of the outside situation.

There were times the door of the staff was quite open to have discussion with member of the community; times where it was really closed and everything needed to go through the CEO; everything needed to go through the Board; and sometime they can go directly. And I think what we need to do is to find a way how it could be handled the more easily and for the success of the whole structure, not for one against the other.

My last point is that I see too much situation where, in fact, staff production raise a battle within the community. I can take some example with some reviews, but you can find other work done in that direction. And I think if this group can help to fix that also, it will be great. Thank you very much.

THOMAS RICKERT: Thanks very much, Sébastien.

Matthew?

MATTHEW SHEARS: Thank you for this. I found the document A or the document that was circulated with the many comments in it quite useful and, obviously, a considerable piece of work. What I think is so

interesting is that there is a Part B, I understand, which is the second part to the mandate of the group which is really to look at the performance indicators, training and other issues.

And I think in a way, that probably is where your proposed change of tack really belongs. If you look at these examples or issues up here, you can see that the first bullet and the last bullet are really about performance, about training, and specific to Staff Accountability. The second and third, more interestingly, are about relationships. So, I think both parts of that mandate deserve the same kind of focus that you've given to the first part.

To Greg's point, I think he's absolutely right. It's absolutely imperative that staff be involved directly in this process. It's inconceivable in a way, that we would think that the accountability of staff would be considered without them participating. Thanks.

THOMAS RICKERT: Thanks very much, Matthew. I suggest that Avri and Jordan respond now, should you wish so.

AVRI DORIA: First, I wanted – in fact, I almost wanted to jump in on Olga's question. I think one of the things that we would do going forward is start collecting these issues, problems – and, I think,

the other thing is – good stuff. Because there are some features of the interaction with staff that you want to say, “This is great and we want more of it.” So, there’s that, too.

But even when that’s the case, it’s, “How do you make that systemic? How do you make it not, ‘Gee, there’s one really good person or there’s one really good group, and we wish all the other groups worked like this one really good group.’ So how do you make...?” So, we would basically start that process.

In terms of the comment Matthew made, I think that this figuring out the issues, problems, and things to reinforce issue falls in between. It affects Document A and it drives Document B. But it answers that question, “So what’s the problem here? So, what’s the issue that both A and B have?”

You can read a lot of A now and say, “Interesting, but why did you say that? Why did you describe it that way?” And to get into those issues felt like it was out of scope to some of our participants. Some of thought, “No, it was probably a reasonable derivative of our scope.” But it not being explicitly condoned meant that some were able to believe – and quite adequately – that we were stretching beyond our scope.

I like what Greg said. I think, yes, a lot of the brain power that we need has been busy leading the other groups; has been busy being the contributors to the other groups. And while we were

sitting and waiting on documents, we had nothing to keep those folks busy.

We were sort of in a wait mode at the beginning and everybody got fully involved. So, as you start to complete the other work, I think it'll be really exciting to see that brain power coming in.

One of the things I forgot to mention to Steve, and a couple more have come out, is exactly looking for those reports from other folks about what they see as the issues.

And please, when you write them, if there's really good stuff that you would like to see more of and you'd like to see systematic, please describe that, too.

JORDAN CARTER:

Only one quick thing. Thank you for the feedback, Matthew, Sébastien, and Greg. Good points.

On the process, Olga, I think what we can best do is document some issues and some problems that we develop and have from the information that we've got and probably seek public comment on a draft like that, though we haven't discussed that kind of working method yet, just to make sure there aren't major systemic problems that we've missed and to get some validation that people think the proposed solutions will actually tackle the

problems that have been identified. And that would be a precursor to a final report and set of recommendations.

THOMAS RICKERT: Okay. So, we have three more people in the queue – Athena, Denise, and then Phil.

ATHINA FRAGKOULI: Hello, this is Athina, ASO liaison. I would like just to echo some of the comments that were given. Of course, the community has an interest in the good function of ICANN. Of course, ICANN is an organization and has its own structures and hierarchy, and the community may give and may make assessments on whether ICANN as an organization indeed follows its procedures and performs in line with the community expectations.

I think it's a good idea that the community gives feedback on the performance and highlights these expectations and obligations, but this should be mainly directed to those on the top of the hierarchy. And below this top level assessment of staff is an internal process of each organization. And I understand how the transparency there cannot be very high because it's an internal process. So even [if] they're getting feedback from the community, it is essential. But how this feedback is evaluated, this is still an internal process in our organization.

I do agree to formalize this process of feedback from the community to ICANN, but I trust that any work in this sub-group will respect internal procedures and the hierarchy of the organization. Thank you.

THOMAS RICKERT: Thanks very much, Athina.

Denise?

DENISE MICHEL: Thank you. I want to follow up on previous comments, specifically about the formal public comment periods at ICANN. This has been an ongoing issue for decades. We've received various staff commitments over the years to provide timely, fulsome, substantive responses to the community's formally submitted public comments.

That has occasionally happened, but by and large the responses we see – not only from staff, but I think it certainly be incorporated very explicitly in this work we're discussing; not only from staff, but actually from the Board and other members of the community, SOs and ACs included that post things for public comment – we are not seeing a substantive response to the specific issues that the community raises.

They're either non-responsive or they are erroneous or they are simply lacking. In particular, over the last few years staff seems to have treated the response to public comments as a pro forma summary rather than a substantive engagement with the often very thoughtful and substantive responses that members of the community take time to post. And so, we're seeing, really, a break in the engagement and discussion of very substantive issues that are moving towards the Board.

So, I think it's worth calling out explicitly staff and other members of the community's responsibility to engage substantively in the public comment forum, respond to comments quite substantively, and I think I'd like to raise that staff should also have the responsibility of actually reaching out and engaging directly, particularly with SOs and AC groups that file substantive responses to public comments. Thank you.

THOMAS RICKERT: Thanks, Denise.

Phil?

PHILIP CORWIN: Good morning, all. Thank you. This is perhaps the most important topic in Work Stream 2 because if staff is not properly accountable to the community, then ICANN really isn't working

right. Then there's a disconnect between community-based, bottom-up, policy making and its actual implementation and enforcement.

And I think it's not the job of this working group, but it's the job of all the community leaders working with the senior staff and Board members to do everything we can to create a culture of accountability among the staff that will minimize any problems.

The staff's in a difficult role. The staff has to be accountable to their managers in their day-to-day jobs, but they also have to be accountable to the community which is what this organization is all about.

I think some of the problems we've seen resulted from the fact that under the prior CEO, there was a massive expansion of staff ranks by 150% in an 18-month period and a lot of new people coming in without history of the organization. And it's the natural inclination of staff people in general to want to first please those managers they report to who control their promotions and their salaries.

And also, that expansion took place during a time of some substantial tension between the community and the leadership of ICANN – the Board over the Transition and the terming and the timing of the Transition. But we're past that. We've gotten

through that. I think it strengthened everyone. We have a new CEO with a different tone.

The key thing is for staff to understand that their job – and they do a great job of supporting the policy process. I co-Chair two working groups and we couldn't get one tenth of what we're getting done without the excellent staff support received from the policy staff. So, they're there to support the community. They're there to implement policy.

There's a lot of things staff do – compliance, contracts, etc. – where they're not directly responsible, accountable, to the community. And that's what we need transparency for. As long as we know how those processes are being carried out, we can chime in when we think something's gone wrong.

The last point I'd make is that on this new complaint process, I've had some conversations with senior staff on that in the last few weeks. As I understand it, the new Complaint person may be named at this meeting, that this is a project initiated by the CEO, that the person will report directly to the General Council, and that the actual process, how the complaint process will work, what type of complaints it will be applicable to, what relief may be available, are still on the drawing board.

So, I think that's something all of us should be asking questions about in our meetings here because I think we have a chance to

shape that Complaint process. It's not written in stone yet. It's just being drafted up. So, let's make it something which is a last resort, but is a last resort that serves the community in the way it wants, once implemented.

So, those are my thoughts. I think this working group – I am a member. I haven't participated in every meeting, but I think it's doing a fine job and I support its current effort to refine its mission and get to a completion with a good report. And I thank you all for your efforts.

THOMAS RICKERT:

Thanks, Phil.

Alan, I have closed the queue earlier. You spoke already on this topic. Is it very brief?

Okay. Go for it.

ALAN GREENBERG:

Thank you very much. Appreciate it. Just a follow-on comment to Denise. I generally agree with her. I think we do have to differentiate the comments that are answered by the community versus those by staff. Not necessarily that the community does a perfect job, but it's done open in meetings that are publicly attendable. Staff comments are formulated behind closed doors with no discussion, and I think we have to differentiate between them. Thank you.

THOMAS RICKERT: Thanks very much, Alan.

I suggest that you get an opportunity to respond to the last interventions if you want to, and then I'll try to wrap it up.

AVRI DORIA: I really only have one comment, which is for all of you that said you're members of the group but haven't been participating too much.

[laughter]

You had really good comments and I really look forward to you helping us take the next steps.

JORDAN CARTER: I would say the same thing without the emotional torture and blame game that Avri just tried to impose on you. [laughter]

AVRI DORIA: I wasn't blaming. [laughing]

JODAN CARTER: [laughing] Kidding. More participation would be great.

I think we'll try and prioritize a revised Work Plan out of this, and certainly, for myself, I take the comments as an endorsement of

the two things that we've done. We will have to – with the conversation with Göran this afternoon – make the point I think about the need for a new working method with people, as others have mentioned, further up the hierarchy of the ICANN organization to be able to advance that discussion and dialog.

But thank you all for the input.

THOMAS RICKERT: Thanks very much, again. So, let me just confirm for the record – so you did get the guidance that you were expecting?

AVRI DORIA: We got the guidance that we were hoping for. I didn't have an expectation.

THOMAS RICKERT: It's always good to start with zero expectations and be positively surprised. That's a nice principle of life.

I think what sort of turned out during this discussion this morning is that we are now clearer on what we don't want. So, we don't want an entire organizational overhaul with new job specs written for everyone in ICANN. We don't want to micromanage staff. That's not for us to do. We don't want a repository of individual complaints or we don't want to

formalize issues that are not working between staff and the community because, in general, relationship between staff and the community is an excellent one and I think that shall be preserved.

So, the overall scheme of this is to find high-level patterns, systematic patterns, where things can be improved so we're not looking at individual issues. But, at best, we're going to come up with a concise paper spelling out some observations on systemic patterns and then potentially recommendations how these systemic issues can be resolved.

But it's not for us to implement those because that would be something for the CEO managing the staff ultimately to inject into the organization.

What we're missing at the moment is more engagement with staff on this particular item. So, I guess one of the questions that we should be asking Göran this afternoon – and hopefully we're going to have a few minutes to prep for our discussion with him – is how we can better engage with staff to get that information.

And ultimately, everything is about consumer satisfaction. We are lacking, to a certain extent, a feedback loop between the community and staff on how things can be improved. You see that happening in some parts of what ICANN is doing, so if you're engaging with the GDD or IANA, you're getting an e-mail

afterwards and you're requested to take a few minutes to fill out a feedback form.

But I think we're looking for other ways to get feedback on how the interaction with the community works so that formal complaints are not required and the overall accountability with ICANN staff is improved.

Do you think that's a fair display of where we are?

AVRI DORIA:

I do think so, though I want to avoid thinking of us as consumers. And in terms of the automated feedback forms that you get, I want to make sure, perhaps personally, that they're more than just putting a number down on a piece of paper.

THOMAS RICKERT:

That was just an analogy to illustrate that ICANN is doing these things in other areas, but we need that for the interaction with the community more.

I think with that, we can end this part of the agenda. And if I'm not mistaken, we can now start with an early – we have five minutes, so we give back five minutes to you.

Thanks to the sub-team. Thanks to Jordan and Avri. And we will reconvene on time for the next session. The recording can be paused. Thank you.

MATHIEU WEILL:

Thank you for your cooperation in sitting down. I hope you enjoyed the coffee, and I know that the valuable discussion we had prior to the break was followed on by many insightful suggestions for Jordan and Avri and their subgroup. I'm sure we're going to see many new applications to contribute to the subgroup in the coming hours and days certainly considering the level of interest.

And of course, I've also seen a number of rapporteurs expressing how jealous they were that the Staff Accountability Group would be considered the most important, so I'm expecting them in the remainder of our meeting to make sure and state how their group is the most important or at least should be joined with more volunteers and so on.

So with that, we're moving to the next point on our agenda, which is a discussion that is not specifically related to one subgroup but rather addresses some potential commonality or joint issues for several groups. And Sébastien was the one raising this issue to the Plenary with a draft document, so I will turn now to Sébastien for a short summary of this issue and

document so that we can then discuss how to proceed and what the next steps should be with that. Sébastien.

SÉBASTIEN BACHOLLET: Thank you, Mathieu. I am rapporteur of the ICANN Ombuds Office subgroup, but I hope a broader view that I came to you to discuss this issue. And of course, it will be the most important item for this meeting. But regardless of that, I participate to different subgroup and I am sure that the people who participate to more than one and eventually to all those subgroup came with some of the same question, it's that there will be new mechanism requested in the course of the Work Stream 2, and where to put or to take care of those mechanism, specifically regarding Ombuds' mission and also the new and future Complaints Office within staff, where we will put those mechanism, who will be better suited to fulfill those new mission, and to do what we have the right structure – do we have the right structure to handle those request? And that's these three questions I try to answer in this document.

The current situation, I will not describe it. We already discussed that. it's the ICANN Ombuds Office and the future Complaints Office within staff, but what I tried to put in this moving world where all the subgroup are not yet settled, but I tried to figure out in some of them what are the topic who could be a new

mechanism who could be handled by the Ombuds Office, by the Complaints Office or by another possible – if needed – office.

And I raise, I find some issue in the – for example, in the Diversity Subgroup where there is a discussion about Diversity Office. I got some inputs from SO/AC Accountability where there is some part of the discussion on what could be the role of the Ombuds Office regarding this issue.

I found some in the Staff Accountability, even if it's here more than maybe in the others a moving target, and there are some also in Transparency. That's more stable as it's already going through some comments. But maybe there are some things in other groups that need to be taken into account and put in this document to be sure that we bring all the new type of mechanism who can be handled by one. I will call that Complaints Offices, and that could be useful to design the future relationship between the two or three offices in that regard.

I guess I will stop here. My suggestion for possible solution was to allow some discussion, but I guess that the first two part is already enough to be discussed here if you wish, and I will be happy to. Not to answer question, but to participate to the discussion with you. Thank you.

MATHIEU WEILL:

Thank you very much, Sébastien. So maybe the first thing is to make sure we have a shared understanding of the various groups where these discussions have taken place or may be affected somehow. Obviously, the Ombuds Group, there was a discussion about this. There was – you mentioned the Diversity Group as well. Staff Accountability potentially, but hasn't come to this point. Other groups, Transparency, right? And the appeals for the DIDP – in the DIDP process, if I'm not mistaken.

That's already four subgroups that affected somehow by this discussion. Any others? SO/AC Accountability also, okay. Pretty much. Nothing in Human Rights? We can do something about it. Any other group? That's already quite big.

Because that's going to have also a connection with our discussion about whether or not we go for approval of the recommendations once we have consensus by the chartering organizations, as a full package or in separated, incremental approach, subgroup by subgroup. Because obviously, there are connections in the various groups, then that's an issue.

Just want to make sure the issue is clear for everyone about the point that Sébastien was raising. Okay. In the absence of objection to the fact that it's clear, I think the issue statement is okay. So now, how do we move forward with that, Sébastien? Oh, I see Kavouss's hand. Kavouss, please.

KAVOUSS ARASTEH: Sorry. I think before we talking of establishment of so many groups, we have to really consider the need of that group. Complaining group, praising group, accountability group, diversity group, too many generals but no soldiers.

MATHIEU WEILL: I don't think we're speaking about a new group. We have enough.

KAVOUSS ARASTEH: So I think we have to really see the need of that, whether all of them could be considered in one place. I don't think that [my] complaint could not be under the Ombudsman and so on, so why we need to have so many diversity of groups and so on so forth? And it could not be manageable at the end. So let us be really careful. I'm not objecting, but be careful, really.

MATHIEU WEILL: Thank you. Okay, so I don't think there was an intent from Sébastien [that's] mistaken to create an extra group, but more to create awareness about connections between the existing subgroups. Correct, Sébastien? Okay.

And then I think the next question is, how do we manage these connections as we proceed with the various groups? There's the Ombuds review taking place right now. The reviewers may have may be asked a few questions, I understand, about this. What's your suggestions about how to proceed now, Sébastien?

SÉBASTIEN BACHOLLET: Two things. First I think if in your subgroup there are specific issue dealing with the general term complaints, whatever form, and how you want to be handled, please let – I would say let the subgroup on ICANN Ombuds Office know and we will try to take care of that. If your document, it's change all of the time, as I will not follow the [tense] in so much detail, maybe you can bring that to our attention also.

And maybe if I can ask all the subgroup not to settle the solution but what are the requirements about complaints? And it will be the next step that we will look at if it can fit within the Ombuds arena, if it needs to go somewhere else, and if it's somewhere else, can it go to the ICANN Complaints Office staff organization, or do we need to have another place to do it? That's something we need to be open. That's the first thing.

The second is that I think it could be useful to have the people who will review the ICANN Ombuds Office to take care of those question for the moment. I don't think we raise too much those

issue because they were supposed to do what it was requested in the ATRT2, that means a review of the ICANN Ombuds Office. And what it was request also in Work Stream 1, it's to compare with the standard of international Ombuds organization and they will help us with that, but definitely, it will be good elements to ask them if those new requests could be handled by – from their point of view – the Ombuds Office. And if yes, on the current Ombuds Office or with the need of expanding or changing the way of the Ombuds is working. Thank you.

MATHIEU WEILL:

Thank you, Sébastien. I've seen a couple of hands in the Adobe Connect room and then they disappeared. I think there was Fiona and then Niels. But Fiona.

FIONA ASONGA:

Thank you. I think it's nice that the group handling the Ombudsman's mechanisms is looking at how they interrelate with the other groups, but I think the need to give the other working groups time to complete their conversations and to be clear on what mechanisms they feel are going to be most appropriate in addressing and improving accountability within ICANN.

Case in point is the diversity conversation. When we have not yet gotten to a point where we are critically reviewing the recommendations want to give. Yes, there's been discussion of a diversity office, but at this point in time when we are still gathering information, it becomes difficult to really firm up on whether that diversity function should sit with the Ombudsman or not, because it depends on the scope of what we assign as the role of the Diversity Office. Because again, there's a limit to I think what the Ombudsman's Office can realistically handle, and we need to be cognizant of that as we move along.

So my thinking is that it's good that he's raised the interlink and his proposal, but we need to go back to our groups and to have further conversations. And as we develop our recommendations, then see how this fit in. Unfortunately, it may not necessarily fit in with the ongoing review of the Ombudsman's Office, so our recommendations may end up being an additional document to the Ombudsman's Office on what we recommend, and I think it's important that we are cognizant of that. Thank you.

MATHIEU WEILL: Very good point, Fiona. Niels was also in the queue.

NIELS TEN OEVER:

Thank you very much, co-Chair. Traffic jams are often formed simply by cars slowing down and speeding up. And weirdly enough, it doesn't need cars to stop to grind the whole system to a halt. So maybe there's a lesson that we can take from there, that we might... We have spent considerable time together in this process. It has created bonds and understanding and trust.

One example of that was when there was the potential interlinkage between the Transparency Group and the Human Rights Group. After a good conversation between the co-rapporteurs of the Transparency Group and our group, we managed to bilaterally find out this is not necessarily an issue, we'll discuss it in our groups, and if it's an issue we'll bring it back to the Plenary and we'll discuss it. That worked perfectly fine, so I'm not sure whether there's a need of a processification of this and whether we can be pragmatic.

Another example of that is I think the excellent work that's been done by the small group on the trinity. So we see that there's a recurring problem. We address it and the Plenary, and ad hoc, we go along. I think Work Stream 2 doesn't need necessarily more process. Thank you.

MATHIEU WEILL: Oh, no. Definitely not. I think we sufficiently structured like this. Sébastien, would you like to share your thoughts? And then I'll try to wrap this up with a few conclusions.

SÉBASTIEN BACHOLLET: Thank you, Mathieu. Yes, I don't think that we are adding processes. I just wanted to raise that those issue will come, and it's maybe better to have that in mind within each of the subgroup and nothing else if you don't think that there's anything to be taken into account in your subgroup with new mechanisms that could be sent one way or another to one of the Complaints Office. That's okay.

I am not requesting that you find something specifically, but I just wanted to be sure that we don't stay with just the mind of we have the Ombuds and that the only place to go if we have new mechanism, and we want that to be independent from staff and that's to go to the Ombudsman. Or if it could be dependent on staff, it could be to the Complaints Office, but there could be another way to do it. But it's not yet the time to decide if it's needed or not, it's a question of the diversity. Yes, maybe part could go to the Ombuds, but maybe all need to go somewhere else, and that will be a good time to discuss it when you will be done. But what I wanted to raise is that I don't want each group to try to find their own solution for this new mechanism. It's why

I tried to raise this issue to the Plenary with a draft document.
Thank you.

MATHIEU WEILL:

Thank you, Sébastien. I think it's very valuable that we have early conversations about these connections between the subgroups, because it helps everyone broaden their views on the topic. And we know that the way to handle this is not by adding more structure or process or conditions, but rather by taking into account a broader perspective from the subgroups down to the Plenary, and so we are now aware.

I think the key recommendation, but that's a valid recommendation for any subgroup whether or not there is this issue is to start these requirements before actually designing the mechanisms or solutions, and that's always going to be helpful if we have to coordinate things later. So I think this is well taken into account already in the various groups we've discussed, whether it's Diversity, Transparency, we've been moving sometimes upwards to the requirements where needed, and that's what is going to help us later on.

And then at the Plenary level, I think your point has come across, Sébastien, very well. We know we need to be aware of this part of any recommendation, that there might be some things to refine in terms of consistency at the end. But we'll handle this on

an ad hoc approach and certainly not by adding extra layers of process.

That's my takeaway of this very useful conversation. Thank you again, Sébastien, for raising the point, putting this documenting it to the Plenary. It's certainly useful moving forward and it will help us conclude faster once the various subgroups are ready. Thanks, Sébastien.

We're now turning to the first reading of SO/AC Accountability, and Thomas is going to be the co-Chair for this one.

THOMAS RICKERT:

Thanks very much, Mathieu. Cheryl and Steve are already coming to the tabletop, but let's not forget that Farzaneh is also a co-rapporteur for this subteam. Unfortunately, she can't be with us today because of reasons that you all know, but I'm not sure whether Farzaneh is actually in the remote participation room, but we would like to greet her wholeheartedly and hope that she's with us next time around for the next meeting.

So the idea for this session is – and actually, we do have a full hour for Cheryl and Steve to present the state of play with the paper, then we're going to have a discussion on the document, hopefully be able to conclude successfully the first reading. And if all goes well, we would like to carve out like 15 minutes of the

session to have a little bit of time to prepare for our discussion with Göran which is going to take place after the lunch break. Because as you know, we had a couple of items identified earlier this morning where we thought we could do well with Göran's input, and we would like to structure our discussion with him a little bit more with the whole group.

So now without further ado, let me turn it over to Cheryl. I think Cheryl you're going to be first, right?

CHERYL LANGDON-ORR:

Thank you, and I do like to get the first [hand] off and the last word in, so good for you to pass it on to me. I do want to recognize however – as Thomas mentioned – that Farzaneh, our co-rapporteur was unable to attend this meeting for travel difficulty issues, but she has been an incredibly important contributor and drafter to a large proportion of the text of the document that we're presenting to you today as a first reading for Cross-Community Working Group.

Our Work Stream 2 topic is one of looking at the Support Organization and Advisory Committee Accountability, and we have as of – I think it was only almost ten days ago now released a final report which I would like to think that you've all read and have digested, and perhaps know various pages verbatim. Some of us are saying yes, that's great. But what Steve is going to do is

take us through the high points and the holidays of this, and [through it] we'd like to have a discussion, some feedback from you to call this a first formal reading. Open for edits and suggestions, obviously, but a first formal reading for our final draft recommendation.

We had by our last report to the full Cross-Community Working Group progressed to what we thought of as about the 40-50% completion of our work. With this first reading, we would see our work progressing into the 60-60+% ranking, but obviously, that might be reflected in the dashboard until the end of the month reporting. So with that, let's have the next slide, and I'm going to hand over to hand over to Steve.

STEVE DELBIANCO:

Thank you, Cheryl. Steve DelBianco here, one of the co-rapporteurs for the SO/AC Accountability Group. We distributed the report, as Cheryl said, a week ago. It's about 33 pages, but two thirds of that is our recap of the responses received from the ACs and SOs with respect to their own accountability, transparency participation mechanisms.

So roughly a third of it is captured in the recommendations on three different tracks that we've put together, and three tracks that correspond with the mandate that showed up in the ICANN Bylaws for Work Stream 2 on SO/AC Accountability. Those three

elements are summarized on the screen here in front of you, describing what it is we set out to do from the Bylaws.

The genesis of this though is worth a little bit of exploration. Very early on in the CCWG for Accountability Transition, we made the point over and over again that the point of this transition was to use the IANA contract as leverage to hold the corporation accountable to the community. And it was in those conversations at a point when I do believe there was some conflict about what we were doing and why we were doing it.

There was reaction from ICANN staff, from ICANN Board members, from our independent experts, and in fact many of the people in this room who said, “Yes, the community should hold ICANN the corporation accountable, but who’s holding the community accountable?” And for a number of us, we said, well, we didn’t quite get that. How do you hold the community accountable to the community? But what was really meant was that the individual SOs and ACs which are created by the ICANN Bylaws for the most part – how are they accountable, and to whom are they accountable?

That was expressed many times and by independent experts. Jan Scholte is here today, I remember him asking the question at the Frankfurt meeting: who watches the watchers, for

instance? And then Willie Currie, our other independent expert contributed some vision on that as well.

And that led to a Work Stream 2 – not a Work Stream 1 since it wasn't critical to the transition – Work Stream 2 project to look at this accountability. And that's really the first item you see on the slide. There were two other things that were thrown in. Willie Currie in May of 2015 submitted an item to the list describing a notion of a mutual accountability roundtable, and that became track two of us and that got thrown in here for this project.

The third was as the IRP was being developed with respect to holding the corporation accountable for actions and inaction, the theme of who holds the ACs and SOs accountable came up and the question was put to us to assess whether the IRP itself should be made applicable to the activities within an AC and an SO. So next slide, please.

The draft report that we've got in front of you then has three tracks, but most of the document is on track one. For track one, we didn't look just at the ACs and SOs but also to several subgroups that exist within the GNSO. Let's first thank all of you in the room who starting last November began to respond in great detail to a questionnaire that we put out.

Then the questionnaire probed the areas with respect to accountability, transparency, participation. We know that we

could tap into the websites for the ALAC or the website for the BC, but it was also instructive to have those groups respond, pointing us to not only things that we may have missed but unwritten procedures and rules that they were able to disclose.

And so we thank you for that response, and in reaction, the document you have recommends best practices in these particular five areas. And before I turn to an example of two of the best practices, I wanted to summarize that with accountability, the most important question was asking the ACs and SOs to whom they are accountable.

And on that, our workgroup and each of the ACs and SOs had clear consensus that an entity that was created in the ICANN Bylaws to serve the interests of, say, country code managers is accountable to country code TLD managers, right? A group like the GNSO for the Generic Names Supporting Organization is accountable to the communities described in the generic names, the users, the registrants, the various parties that support what happens in the gTLD space.

So there was no illusion here that the GNSO is somehow accountable to the greater Internet community. It is accountable to all users and registrants of gTLDs. The ccNSO is accountable to users and registrants and managers of the ccTLDs. ALAC, GAC, each of the groups was created to serve a

designated or target community, and that accountability starts and stops there.

If the ccNSO ends up pushing for policies that undermine the global public interest, there are opportunities as those policies are implemented for the ICANN Board to assess whether it serves the global public interest, and the rest of the global public interest outside of the cc community has every opportunity to do input there.

But we cleared up a lot of confusion about who's accountable to whom, and that ended up having a lot of influence on the conclusion we reached, which was not to do a mutual accountability roundtable by which GAC was accountable to ccNSO or GNSO or anyone else. We talked about transparency however being transparent to everyone, not just transparent to the community you were designated to serve. I think that's pretty obvious.

Participation by whom? Well, participation in a given group like ALAC is open to the members of the designated community they were targeted to serve, and yet only some parts of the designated community will choose to join. Not every business, registrant on the entire planet joined the Business Constituency yet. And while they have –

CHERYL LANGDON-ORR: We're working on it.

STEVE DELBIANCO: We're working on it though.

CHERYL LANGDON-ORR: Right. While they're part of the target community, they are not yet members. So the question is, how do we encourage and facilitate participation by members? And then the next step on here was outreach, because there are certainly businesses that don't yet belong to the BC, so we asked about how is the outreach working. To reach out to other members of the community that you're supposed to serve but who do not yet participate. So that outreach is not outreach to the global public interest, it's outreach to your designated community members who are not yet participating. Then finally, we asked about how fresh are – each of us in the ACs and SOs and subgroup, how fresh are we keeping our documentation, our charter and other documents.

Next slide, please. Thank you.

Let me just summarize. There are 25 best practice recommendations on track one. 25 of them, and they're summarized in our document. The easiest place to look at that is the table we put together [inaudible] all of that, which is

beginning on page six and goes through page seven. I'll just highlight five of the recommendations and best practices.

There's a caveat on the best practice recommendations, because we suggest that each AC and SO and subgroup consider adopting the following best practices where applicable to your structure and purpose. So consider adopting where it's applicable.

This is the time to indicate that nothing in our group is making a recommendation of changes to the ICANN Bylaws in any of the three tracks, and we're not suggesting that these best practices on page six and seven be enshrined in the Bylaws anywhere. The best practices are by nature aspirational, and in many cases they're not even applicable to certain groups. Where they are applicable, our recommendation would be for the groups to consider adopting them.

So for instance under Accountability, there's a recommendation that each of the ACs and subgroup publish an annual report to the public about what they've done in the previous year to improve on their accountability, what initiatives did they take for instance to adopt some of the best practices and whether there are plans in the future. That would be a new item that's not done today.

Under Transparencies, this was important too. We gathered all the information and learned that many groups open all their meetings, but most will close some of their meetings, whether that meeting is a conference call facilitated through Adobe or in person meeting at an ICANN gathering.

So we simply are suggesting for the purpose of transparency that ordinarily, your meeting should be open to public. But when you determine that it's only open to your members, that you should explain that is the case and explain why.

Not a long explanation, but make sure that an observer who looks at ICANN and suddenly notices that the Business Constituency is holding a closed meeting, why is it closed? Well, it's closed because we're going to conduct a debate with respect to policy recommendations or we're going to do elections or charter. A simple explanation to explain why not everything that each of you do is totally transparent.

On participation, again participation is among the target community. We believe that when you have to ask people to apply to be a member of your group and you examine their credentials to see if they're part of the target community and whether they can join, that there should be a process of appeal. If a member of a community wants to be a participant and for

some reason has been rejected, they ought to have an ability to appeal.

On outreach, that we think that each group should have a strategy for outreach to members of the target community who don't yet participate. I think that makes entirely good sense.

And then finally, we took a look at the updates that each of us have done with respect to our charter, our policies and procedures. And for many of us, and in the BC especially, it drags on for multiple years. And we are recommending as a best practice to try to – to do your internal reviews and policies and procedures within a year. And if it looks as if it's going to drag out, maybe you should consider adopting some temporary measures about which you have consensus before you drag on into the longer review.

So thank you for that, and I think if you'll allow us, we'll quickly go through and then return to each track and take questions. I think that might be easier, because Thomas wanted us to try to make sure we get this done in 15 minutes.

THOMAS RICKERT:

Just before you continue, Steve, I guess that the way we're going to try adopt the document also. So once you went through it,

presenting everything, then we're going to slice it into the various segments and ask for objections or comments. Right?

STEVE DELBIANCO:

Alright, that'll be great. So let's move to the next slide, which discusses track two. Now, track two was our charge to us in the Bylaws to evaluate and potentially suggest implementation of mutual accountability roundtable. So that was a phrase introduced in May of 2015 by Willie Currie, one of our CCWG advisors. The entire content of what Willie recommended is in our track two. It might be page 32 or 33. Page 31, actually.

So Willie started by suggesting that the idea of mutual accountability is that multiple actors are accountable to each other. It goes on to describe a notion by which the ACs and SOs answer to each other, not just to their target community or the global public interest. It goes on to indicate that part of the way it would work is to convene meetings at the ICANN meetings and to share a lot of best practices of what worked and didn't work.

So there's a notion of accountability and there's a notion of best practices, so what we did was said the best practices are what we've captured in track one, and we did not recommend that ACs and SOs are accountable to each other on a peer to peer basis, but in fact they're accountable to the targeted

communities and that the sharing is beneficial and can be done informally.

We tried to formalize it by coming up with best practices track one, and we concluded that there was no need to implement new processes, new meetings, new structures for a mutual accountability roundtable. So I'll be anxious to hear the reaction from you here today during first reading on that conclusion.

And then finally, on track three. Next slide, thank you. Track three was – the question put to us is, should our new and enhanced judicial system, the Independent Review Process, should it also be made applicable to the ACs and SOs? So for instance in the GNSO, if we had an action or inaction that wasn't in keeping with our charter, would the IRP allow any aggrieved party to invoke an Independent Review Process with all of the – I would call it – heavyweight structures that go with it?

Now, our recommendation on this was pretty clear, that when we looked at the IRP as written today – and David and Becky are both here as part of the group that's doing the implementation oversight of IRP – we said that it would not be applicable to SO and AC activities in the way it's described in the Bylaws and the way in which the IOT has laid it out. And we did some interaction with that team on IOT before we reached these conclusions. So it would not be applicable as written today. Well, could it be?

Well, yes. Enough lawyers could probably come together and describe in the Bylaws how the IRP also could be made applicable to the GNSO, the ALAC or the GAC. But we concluded – I think it was very clear consensus – that it should not be made applicable to SO and AC activities.

It is in the IRP very complex and expensive, and there are easier ways to challenge an AC or SO on the basis of its actions or inactions with regard to its targeted community, its charter, its policies, procedures, and in general the ICANN Bylaws to the extent they speak to the activities of GNSO, GAC and others.

One of those easier processes would potentially be the Complaints Officer, and we talked about this with Sébastien many times as we felt like the Ombudsman has been and should continue to be a place where you take a complaint about something that's happening within the BC or within the GNSO, and we've had interactions with the Ombudsman before.

That would conclude I believe what we would summarize for the three tracks, and we have the entire document available as an Adobe display. And Thomas, I think it would be a great time for us to begin to take a queue at this, our first meeting of our draft report.

THOMAS RICKERT: Thanks very much Cheryl and Steve. You guys did an awesome job with this document. I see a lot of hands are raised already, but let's please follow the structure that we've proposed a little bit earlier. So let's hear comments on track one first, and then we'll move to the next tracks afterwards.

And for those who want the full text of the recommendations, again as Steve mentioned earlier, you had the full report and the reading pack that Bernie recirculated last Friday I think it was, and the recommendations start on page six of this document. So please go there to read all the recommendations. Let's now start hearing comments or questions with respect to track one.

Can I ask for the person managing the Adobe – I'm not sure who that is from staff – to go back to the slide speaking to track one? That's two slides back. And let's now hear – I think Tijani is first. Tijani, please.

TIJANI BEN JEMAA: Thank you very much. Thank you for this subgroup, for this report. I think it is a lot of work done, and I really appreciate. I have a question about the accountability of the GNSO. Are the registrant part of the designated community for the GNSO accountability?

STEVE DELBIANCO: Staff, could you put up slide two, which is the very first slide on track one? Thank you for the question, Tijani. We didn't try to invent anything here. If you look at page four of our document, we went to the ICANN Bylaws where each and every AC and SO is described. So the GNSO is, quote, "Open to registries, registrars, commercial stakeholders and noncommercial stakeholders."

Now, in the commercial and noncommercial stakeholders, registrants of domain names and users are part of the noncommercial and commercial groups within GNSO as distinct from the other side of the house in GNSO which are the contracted parties that serve the domain, the registrars and registries.

So we took all of this right from the Bylaws and presented that back to each of you and asked, "Would you affirm or expand upon whether you see yourself serving the community that the Bylaws say that you serve?" Next question.

THOMAS RICKERT: Next is Malcolm. Please.

MALCOLM HUTTY: Thank you, and thank you for a very useful and well considered document. I have one specific question related to the recommendations on I think it's called participation, which

specifically the one that's talked about having an appeals mechanism, recommending an appeals mechanism if somebody were to apply.

Can you please clarify that this is intended to be an appeal against the application of the eligibility criteria in a particular case, and in no way provides a mechanism to appeal against the eligibility criteria themselves?

STEVE DELBIANCO: Yes.

MALCOLM HUTTY: Thank you. Can we have that clearly documented? Thank you.

THOMAS RICKERT: I guess we can, Malcolm. Thanks for the question. Next is Kavouss.

KAVOUSS ARASTEH: Yes, thank you very much, and thanks to the three co-Chairs for their devotion and hard work they have done.

I have one question, but before raising that question, I ask another question and that is, according to the report, there is no proposal to modify the Bylaw. So I think that is clear. Where you

want to put this recommendation? Where it goes? Once you replied to that, then I have another substantive question to make. Thank you.

STEVE DELBIANCO: Thanks. Kavouss, as a very active member of the group, you were aware and relieved that we weren't making any recommendations for Bylaws changes. So I think the nature of your question is, "Should our report say the words, 'We are not making recommendations for Bylaws changes?'" You're asking whether we should put those words in here and –

UNIDENTIFIED FEMALE: [inaudible]

STEVE DELBIANCO: Fine. If so, I'd be happy to put them in. I suppose they would go in the executive summary.

THOMAS RICKERT: Thanks. Next is Fiona.

FIONA ASONGA: Thank you, Thomas.

THOMAS RICKERT: I'm sorry, there was a follow-up.

UNIDENTIFIED FEMALE: [Yes, he had a follow-up.]

UNIDENTIFIED MALE: [inaudible]

THOMAS RICKERT: Kavouss had a follow-up, so Fiona, we'll get back to you in a moment.

UNIDENTIFIED MALE: [inaudible]

KAVOUSS ARASTEH: Sorry. I apologize.

STEVE DELBIANCO: In fact, Kavouss –

KAVOUSS ARASTEH: [inaudible] follow up to that. Okay, you can [inaudible] summary or executive summary –

STEVE DELBIANCO: I'm sorry, Kavouss, it's already in there. It's in the third paragraph.

UNIDENTIFIED FEMALE: It's in it.

STEVE DELBIANCO: And it says we are not making recommendations –

KAVOUSS ARASTEH: Yes.

STEVE DELBIANCO: Any changes to ICANN Bylaws to reflect the best practices. So it's in the third paragraph.

KAVOUSS ARASTEH: Yes. I've seen that. I'm asking that when you put in the executive summary, what would be the course of action that will be followed by the SO and AC? Would be something that SO and AC are seriously encouraged to do this and that? That is my follow-up question. A lot of work has been done, there is a need to have some sort of follow-up actions. Optional, or some semi-optional, non-mandatory, so on and so forth. That is the question. Thank you.

STEVE DELBIANCO: Thank you, Kavouss. In that same paragraph, the sentence before, the action is in track one we recommend best practices that should be considered by each AC, SO and subgroup to the extent the practice is applicable. So the words, “Should be considered by” are the action words to the ACs and SOs that we’re serving. Do we need to be any more explicit than that?

KAVOUSS ARASTEH: Yes, we need. I don’t think that this will fly later on after this executive summary. There should be some sort of action somewhere in the scope of activities of each SO and AC saying that this group has developed 25 recommendations and you are urged or encouraged or requested or invited to take necessary action with respect to the recommendation that relates to your activity. And if you find any difficulty in their implementation, to take also any follow-up action. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. I see nodding at the table. Fiona is next.

FIONA ASONGA: Thank you, Thomas. Just before I go, Jan has been trying to raise his hand but his machine has issues. Can he please speak before I do? Thank you.

JAN SCHOLTE: I was actually second in the queue and then I got disconnected and my name was dropped from the queue.

THOMAS RICKERT: So we didn't successfully manage to suppress your views?

JAN SCHOLTE: You try very hard, yes.

THOMAS RICKERT: Please go ahead, Jan.

JAN SCHOLTE: Thank you. Well, as being a bit responsible for creating all this work for people, I want to just thank the group for everything they've done. It's a really good report, and if I make a few criticisms, it's in huge respect for what you've done. It's great to see that his has been integrated into the sort of normal thinking of the accountability issues here.

One issue, just a clarification maybe in the final report, to clarify always what the units are that are being accountable. It says here ACs/SOs and subgroups, but maybe is it ever the subgroups of ALAC in terms of the RALOs? What is particularly the status of GAC in all of this? Because it's a little bit fudged over. So maybe a little bit more clarification of exactly who the units are that this is addressed to.

Yes, I think there are other issues of transparency that could be raised, but maybe I can put those to you offline. Participation and the outreach. The outreach overlaps with the diversity work, I would have thought in some ways, and I wonder if there can be a cross-reference or at least some mention that the outreach is done with a kind of diversity sensitivity in mind in terms of regions, gender, whatever the work that Fiona's group is doing.

The form of the annual report, is it going to be a template? Is it going to be a format of some kind? Who writes it? How is it published? I suppose there are some details of that that get worked out later on.

Internal reviews of policies and procedures, that's one place actually where I think anticipating in a moment. Maybe it wouldn't be a mutual accountability roundtable, but I would have thought that some kind of regularized interaction between communities would be useful there when you're reviewing

policies and procedures, and it would be quite useful to know what other groups are doing and have comparisons and learn from each other. Maybe it doesn't have to be formalized as a mutual accountability roundtable, but some kind of formalized discussion I would have thought could be useful.

Yes, you anticipated my question a little bit when you say that the IRP is not necessary. Oh, no, that's a later issue.

Then one final issue on implementation. Have you got some ideas and should there be anything in the report about how you're going to ensure that this is followed up and implemented? Does it want an ICANN staff person or a team or something that's going to have this as their brief to oversee, make sure it happens? How do we make sure that it happens indeed? That's left a little bit open at the moment. But a great report, and lots of really good ideas. Thank you.

STEVE DELBIANCO:

Thank you, Jan. You're the catalyst I think for this, so it's only appropriate that at this point you try to hold us to be specific. With respect to this first question was about subgroups. I earlier described what the Bylaws say about subgroups and GNSO, commercial and noncommercial stakeholders.

So where the Bylaws described subgroups, we strongly encourage the ACs and SOs to distribute to the subgroups and hopefully they would respond, and they all did in GNSO. The Bylaws of ICANN describe the At-Large community. You asked about ALAC and regionals. When the ICANN Bylaws describe ALAC, it suggests that ALAC is the primarily organizational home within ICANN for individual Internet users.

But when we sent to ALAC the questionnaire with an invitation to distribute to subgroups, ALAC didn't distribute, or if they did, they didn't get individual responses from the regional operations within there. So we relied upon the ACs and SOs as described in the Bylaws to relay our questionnaire to the underlying subgroups where applicable. So we left that to the community itself.

Your second question was whether outreach should include diversity, and it would be our view that that is up to the ACs and SOs. I can tell you that the Outreach and the Business Constituency is about gender or racial diversity, it's about representation in the BC from business users and registrants from around the world.

We end up very heavily focused on global reach of our targeted community, and we strive to achieve diversity when we elect officers for instance. We have rules about geographic

representation, we are always anxious to achieve gender or racial or other forms of diversity when we elect officers. But there aren't – to my knowledge – written policies and procedures on those kinds of diversity that have been baked into the outreach activities.

So Jan, I'll invite you to scrutinize the outreach section of best practices, and I think what you're recommending is that we try to take an overlay from the Diversity Group and put it on top of here. We'll take that under advice, but I'll need to see what Diversity is coming up with.

You also asked about an annual report format, and I don't think our group was going to prescribe what an annual report should look like. In fact, one best practice would be that as a group comes up with an annual report, other ACs and SOs may wish to follow it.

Then you asked about internal review of policies and procedures. Good news, that's already done. When the BC charter was put out for public comment, we did collect five comments. And the comment period, Jan, is open to everyone who wants to submit a comment, and then staff summarizes those and puts those to the Board and back to the BC. And we have already come up with a written response to that. So when a

group does a review of itself and proposes changes, those changes are put out for public comment.

And finally, you said to ensure implementation. So let me be clear: we are only asking that the ACs and SOs consider adopting best practices where they're applicable to their particular group. There is no mandate in here. If there were a mandate, we'd be looking at Bylaws changes.

Kavouss indicated we ought to do more than just ask them to consider, we should urge them to consider adopting. And yes, Kavouss, we'll put the word urge them to consider adopting. But for you to suggest we are going to ensure implementation, the only thing we would want to ensure is that the best practices have been considered.

I don't know how to make sure that we do that. There is no mandate that each of the 25 best practices be adopted by each and every AC/SO and subgroup. If that's something that all of you in the Plenary want us to do, you'll have to make that signal loud and clear, because it's not part of our draft 1 recommendation.

THOMAS RICKERT:

Thanks very much. Fiona, thanks for allowing Jan to speak first, and now it's your turn.

FIONA ASONGA: Thank you very much. On the issues of participation and outreach as you're finalizing on your report, I think it's going to be important for us to at least have a conversation on this part of your report and the impact on the diversity mechanisms, because I think we may need to add to its aspects of diversity, so I'd like to welcome the team from your group to come and [inaudible].

Cheryl has been involved and she's been very active, but I think she needs to speak out stronger and louder on participation and outreach and diversity, because that helps us to be able to have a Work Stream 2 report that is balanced and able to effectively address the mechanisms we want to put in place for accountability. Thank you.

THOMAS RICKERT: Thanks, Fiona. Michael?

MICHAEL KARANICOLAS: Hi. Just to comment on the transparency standard. You mentioned that meetings should normally be open, and that if they're not open, reasons should be provided for that. It strikes me that that's kind of a soft standard which allows for quite a lot of flexibility, and I wanted to ask if you've considered developing

a defined list of reasons for why it might be acceptable to have closed meetings in order to provide clear guidance for when that would not be acceptable.

I think that does tie a little bit into the previous discussion on promoting implementation, because clarity can be critical to that.

STEVE DELBIANCO:

Michael, thank you. We were looking forward to some feedback on transparency. The answer was no, we did not consider a list of specific reasons that an AC or an SO such as the GAC would be allowed to go to a closed meeting. If you're aware of a list like that, I could see potentially making it a best practice. But as we discussed with Jan earlier, there is no implementation other than ACs and SOs are invited to consider – urged to consider adopting best practices.

We aren't making any Bylaws recommendations here, so there wouldn't be an ensuring the implementation so that the GAC could only close the meeting if they picked one of the four designated reasons. But I would welcome your advice and expertise on transparency, about what you think are typically the best reasons to move to a meeting to be closed to membership as opposed to open to the global world, and we'd be happy to put that in as potentially an example list under the

best practices. But it would not be a, “You may only close a meeting for the following seven reasons.” Our mandate and our recommendations are not to that level of prescriptive specificity.

THOMAS RICKERT: Thanks very much. Actually, I’m going to close the queue after myself. I have a comment to make as well, so I put myself at the end of the queue. John, David, and then myself.

JOHN CURRAN: Just excellent document, by the way, by the team. I tried to minimize my contributions to it because I tend to slow things down. But I just want to say just remarkable work.

One little thing that may come up in here. It’s important to identify the best practices and in fact the work of the entire subgroup as within the context of ICANN. And that may be obvious because that’s what we’re talking about, but ICANN interacts with a lot of different organizations, some of which are wholly within ICANN and some of which are wholly external, and some of which straddle the line. The IETF for example isn’t covered by this but it interacts with ICANN but lives entirely outside. So the best practices aren’t applicable, they have their own practices that are developed by their community, by their method.

Most of the organizations involved in the DNS constituencies are wholly within ICANN. The number community, the ASO are global activities are within the ICANN scope, and our regional activities are without. So it might just be helpful for clarity to define that these are within the scope of ICANN's activities, because some organizations do have activities that are within and external to ICANN.

STEVE DELBIANCO:

Thank you, John. Groups from ASO and the root server community made those points early on, and in fact the Bylaws make it clear that ASO is the entity established by the MoU between ICANN and the Number Resource Organizations, which is an organization of existing RIRs.

So sure enough, in a few cases like the ASO, there's an outside organization that was invited to bring its participation into ICANN, so it's only that participation within ICANN that we are speaking to here. Let's take that onboard and add something to clarity that. Thank you, John.

THOMAS RICKERT:

Thanks very much. David?

DAVID MCAULEY: Thank you, Thomas. I would simply like to add a voice to resist the idea of changing the word recommend these activities to the SOs and ACs and their subgroups, and not change it to urge. If you use the word urge, you're going to characterize folks as outside of an area of responsibility if they don't adopt these. These are sophisticated organizations that are mature and responsible participants in the community, and I think they should have the chance to consider them as opposed to being pushed into that corner. Thank you.

STEVE DELBIANCO: Thank you, David. Even if we urged, the thing you would be urging is to urge to consider, not urge to adopt and implement. And it was Kavouss who brought up urge to consider, recommend that they consider. And currently, you're right. We have recommend. I appreciate your comment.

THOMAS RICKERT: Since we haven't heard Finn today, I'm glad to let you speak although the queue had been closed. Please, Finn.

[FINN PETERSEN]: Thank you. I will not be long. It was only a question. First of all, it's an excellent document and good recommendation, but reading through the practices on transparency, point five which

talks about minutes from meetings and reading participation, point four, I think there's some overlap there. Could you explain it? Could it be simplified in point four in transparency? Everything should be published in point five in participation point four it is subject to confidentiality and you talk about membership meetings and all meetings. So, could it be simplified or have I missed something? Thank you.

STEVE DELBIANCO:

Thank you, Finn. I think we'll try to clarify that transparency item four and participation item four are speaking about the very same meetings, membership meetings. They're speaking about both of them, and they should both have the qualifier, "Subject to exceptions for confidential matters."

We did learn that for the most part, ACs and SOs publish summary minutes of their meetings, and those minutes are published on open e-mail lists. But each group has a different level of how it summarizes and whether it gets into the details of debate and confidential matters. We'll make those consistent. Thank you.

THOMAS RICKERT:

Thanks very much. And as promised, I will also make a quick comment, or it's rather a question. Looking at the participation

criteria, has the group considered to speak to the question of membership fees to participate in certain groups? Because it would be relatively easy for a certain group to raise membership fees to a level that would de facto exclude a lot of players around the globe.

So I'm not sure whether that's a question for this group or whether it's rather a Diversity question, but still, I think in order to be open and globally inclusive, that might at least be worth considering, wouldn't it?

CHERYL LANGDON-ORR:

We didn't consider that, nor was it raised in any of the input. So if you want to add it to our mandate, well then fine. It's a question that I guess the community needs to be aware of, because it would be – as many things can be – a barrier to open and general participation from the designated community, and it is a matter of the ACs and the SOs being in service and being accountable to their designated community here.

I can imagine hypothetically that a designated community may in fact not have a problem with a fee-based structure. It's kind of their business. But it wasn't something that we discussed and it wasn't something that we've drawn any recommendations on.

STEVE DELBIANCO: I could see us recommending that membership fees to the extent they're used should be kept as low as possible to encourage participation, and having that be a best practice recommendation.

UNIDENTIFIED MALE: Yes.

UNIDENTIFIED MALE: Yes.

UNIDENTIFIED FEMALE: Let's do that.

THOMAS RICKERT: So I guess in summary on the feedback that we heard on track one – we still have track two and three to discuss – there was nothing in there that would really beg a rewrite or overhaul of the whole document. So I would suggest that unless there's objection, last minute objection, that we take this as approved for first reading and that the refinements that were specified here such as the encouragement to consider or urge to consider, that's for the second reading.

So I think on track one, we're good to go. Let's now hear whether there's any feedback with respect to track two, and for that I'd like staff to move to the next slide, please.

Is there any feedback on track two? We heard Steve explaining why or how the idea of the mutual accountability roundtable has been discussed, and he's offered a rationale for why this was not considered to be formalized as a recommendation. So we have Jordan, Séb and then Jan.

JORDAN CARTER:

Thanks, Thomas. Jordan Carter here, .nz. I think with this concept, it's maybe a shame that it was put within the SO/AC Accountability work, because I understand the kind of principle agent logic that you've used as the rationale for your recommendation. But in terms of improving ICANN's overall accountability as a system, the thing I thought that this would bring as a concept is permission to have a particular kind of conversation.

Sure, there are SO/AC leadership groups, but it's always a little bit dangerous or tentative to say, "Hey, did you really end up doing that as well as you could have done, or did you think about this?" When you don't have permission to do it.

So I don't really know where I'm going with that comment, other than to say that I heard some feedback from people saying this would be a shooting circle for SOs and ACs or the Board or this will be a whinge fest, something that wasn't constructive. I guess we'll know that ICANN is maturing and succeeding as an organization with an open, healthy culture when these conversations are happening if this isn't the way to do it. And I think it's still something either us as a group or the next ATRT review ought to be thinking about. Thanks.

THOMAS RICKERT: Thanks very much. Next is Sébastien.

SÉBASTIEN BACHOLLET: Yes. Thank you. I didn't participate enough in this subgroup, unfortunately, but I was agreed to publish the document as it is. But at the same time, I think this question about not having a mutual accountability roundtable or whatever organization possible to have exchange between the different silos is a missing part in our work.

But I hope it's not the end of the story, and we will be able to get those discussions somewhere back in this place or in ATRT one day, doesn't matter. But I really think that we can't have

structure an organization with just accountability within our own silos. What is happening in the other is also important.

I guess for each part, it's important what is happening in the other part, because we form all together one single structure organization. And it's why I think something to allow a mutual understanding, mutual accountability and to raise transparency and awareness will be useful in the future. Thank you.

THOMAS RICKERT:

Thanks, Sébastien. As I see the queue is getting longer and longer and we have limited time, so can I ask you to be brief, and maybe focus on criticism? So if you just have comments that would not hold up the train for approving the first reading of the report, then we better keep it very brief.

Next is Jan. Please.

JAN SCHOLTE:

Yes, much in the same way as Jordan and Sébastien, my particular take might be that we have this Cross-Community Working Group on Accountability, and in a sense we've been having a mutual accountability discussion in the CCWG over the last two years. This group is not going to continue, and let's think about how much we've learned.

I go back to the Frankfurt meeting and we didn't even have a definition of accountability. Look where we are now, how much we've learned through this whole process. If we don't replace this CCWG Accountability with something that is an ongoing cross-community conversation, then we lose all of the things that we've been learning over these last two years.

So I'm not sure how to do it, and maybe this particular roundtable idea is not quite the way to do it, I don't know. But the idea of saying we don't continue some kind of institutionalized conversation across communities seems to be an awful loss of an opportunity. Thanks.

STEVE DELBIANCO:

Jan, let me thank you for that. And in the chat, what I indicated as well is that on page two of our document, in our mandate discussion, we point out that Recommendation #10 of the CCWG final report tries to suggest ways in which this work will continue. Let me give you two examples.

The first is that in Work Stream 1 we included the reviews of SO and AC accountability mechanisms as part of the Independent Structure Reviews. The Bylaws require ICANN's Board to find an independent reviewer every five years to review each and every AC and SO as to its effectiveness as an organization. That's every

AC and SO except the GAC, by the way, and I know the GNSO has just gone through one of them.

I believe that the Board dictates what terms of reference are for those independent reviews. So the Board could easily suggest that the reviews include an assessment of Accountability, Transparency, Participation and Outreach, and could even suggest that the best practices developed here be part of the basis on which you independently review each and every AC and SO. That is one mechanism for it, the structure reviews.

The second is the ATRTs, which currently occur no less frequently than every five years. They're organization-wide, they're not just focused in on one AC and So, but you would be the second person then who suggested that the ATRT be given an opportunity to hook into these best practices when it examines the degree to which the ACs and SOs are being transparent and open and accountable.

So we can make both of those recommendations more explicitly here so that the independent reviews every five years and the ATRT every five years.

JAN SCHOLTE:

No, that's great, but neither of those involves the cross-community conversation and a cross-community [inaudible].

STEVE DELBIANCO: The ATRT does.

JAN SCHOLTE: If you think that's enough.

THOMAS RICKERT: I can really understand why Jan doesn't want this group to be dissolved at some point. We're having so much fun, aren't we? Kavouss is next.

KAVOUSS ARASTEH: Thank you. I think we have discussed at the level of the group and I have suggested that since we do not favor or support to have mutual roundtable accountability, perhaps the second to last part of the text can be done formally, could be modified that can be done to, and then we say this one. Holding e.g. some annual meeting between the leadership of SO and AC for exchange of information with respect to that implementation of these recommendations.

I think it is good to take account of this, not leave it aside of that. If someone has a problem, they get into [whether] the leadership [inaudible] every year or whatever period they

decide, but I think meet a little bit more than informally. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. And as I have asked the colleagues from the floor to be brief, can I also ask that the responses be brief? Shall we take the next question first? Okay. So next is Alan, then Greg, then Malcolm, and after that we're going to close the queue.

ALAN GREENBERG: Thank you. I'm responding to Jordan and Jan. I'm one of the people – I'm on this group and I am active. I'm one of the people who supported the mutual accountability roundtable. I thought it was a potentially useful exercise. At-Large is just in the process of having the draft of its review published after having an earlier draft published. A report that is heavily based on comments received by the reviewers, very negative comments. Not necessarily accurate comments, and to watch the absolute joy of other parts of the community rubbing their hands to see the knife being put to us, I don't think we're quite ready and mature enough to have to do this. Thank you.

THOMAS RICKERT: Thanks, Alan. Greg?

GREG SHATAN:

Thanks. I think it's unfortunate that perhaps the focus on mutual accountability got kind of mixed up with the concept of the mutual accountability roundtable, which felt like a circular firing squad and therefore not one that most people would cotton to as a recommendation. But I do think that mutual accountability as a concept shouldn't be dismissed, and I'm concerned that the first bullet point that says that each AC/SO is accountable to its designated community and not to other ACs or SOs or to the larger community or to the trinity or the global internet community I think is stating the question too narrowly, and I say that as someone who serves in a leadership capacity in a community and thus realize that it would be very enjoyable to be bulletproof from all other organizations other than my own designated community.

So perhaps this is an admission against interest, but in any case, I think it's important perhaps we do need to reconsider that first bullet maybe to say that they're primarily accountable to their designated community and only secondarily but also to ACs or SOs. And I think there needs to be an opportunity somehow – whether we're mature enough or not – to have that kind of mutual conversation or bilateral direct conversation and to try and figure out how to do it. The roundtable seems like it wasn't that way, but what would be that way for there to be some

constructive discussion and even perhaps criticism of different organizations? And in addition to the various types of reviews, ATRT and structural reviews which allow for a sort of intermediated discussion which has its advantages too. But I think some way to actually have active, mutual accountability aside from a roundtable, something we need to explore further. Thank you.

STEVE DELBIANCO:

Thank you, Greg. This bullet on this slide is part of the rationale for why we said an MAR was not to be done. So that bullet language is not in the recommendation. What is in the recommendation on page four is: “This does not imply that each SO and AC make its decisions without regard to the broader Internet community outside of its designated community. Rather, the global public interest is a fundamental consideration of the ICANN Board in approving and implementing advice and policy recommendations that come out of an AC and SO.” That is our formal statement, and what you’re pointing out with regard to a bullet is a fair criticism.

It’s definitely my shorthand to try to suggest how that accountability discussion factored into the decision not to recommend a formal new process for mutual accountability roundtable. And if you have creative ideas about how we could

recommend doing it, we would be happy to incorporate it in our second reading, third reading.

But we need to get moving because we're now on this page, on mutual accountability roundtable, we are not recommending anything formal. And if you're advocating that we do recommend something formal, we'll have to understand what that is, put it back to the working group and try to put some meat on those bones.

GREG SHATAN:

Just briefly, decisions I think are probably are only one aspect of what an AC/SO does, and probably those that are least open to criticism perhaps by other ACs, SOs, because that is where you're probably most accountable to your own community for why you've made a decision, but I'm thinking more about processes, fairness for membership, sorts of things to her than kind of formal, policy-oriented decisions I think is where the mutual accountability is the most needed and then not on the decision point. Thank you.

THOMAS RICKERT:

Thanks very much. Let's move to Malcolm. Malcolm?

MALCOLM HUTTY:

Thank you. The ICANN community as a whole clearly has an interest as a whole in that each of its constituent parts are effective and functioning properly and adequately representing the parts of the community and the stakeholders that they're designed to so as to ensure that all relevant stakeholders that have an interest in ICANN's activities have a chance to be heard.

But ensuring that that [inaudible] thing works as a whole seems to me to be a high level activity that is properly the purview of entities like the ATRT. Moving beyond that to have a more direct and ongoing mutual accountability session where bodies that are meant to represent broader stakeholders are actually speaking more directly to each other in my view risks turning us inward, away from the communities that we seek to represent, and therefore undermining actually ICANN's accountability to the broader community.

I think – I apologize for not having played a greater part in the formulation of these recommendations, but I am heartened and relieved I guess, clearly my input wasn't necessary, because I consider them to be wise, well put and as ever exceptionally well defended by Steve. I urge you not to change them.

THOMAS RICKERT: Thanks, Malcolm. You will have noted that I had closed the queue after Malcolm, so since Avri and Jorge haven't spoken from the floor at least, if you keep it very brief, please do speak.

AVRI DORIA: Okay, thanks. I was just ready to pull my name out, but thank you. I'm a member of that group, though I admit the whole discussion about mutual accountability roundtable turned me into a passive member, because that was such a dog's breakfast of a discussion. And partly because we had no notion about what we were being accountable for when we started talking about having a roundtable.

But listening to this discussion has convinced me that we really do need one, that we do need an event that basically allows – because the border issues between the various groups need a place to be worked out, and as soon as somebody said, "Oh, we can go to the Board to handle those," was the alarm bell. No, that's not it.

If we've got issues of accountability to each other, we've got to sit around a table. Now, maybe we should call it the mutual accountability kitchen table as opposed to a roundtable so it seems a little less important, but sitting around a table and talking about our mutual accountability border issues seems to make sense to me. Thanks.

THOMAS RICKERT: Thanks. Jorge?

JORGE CANCIO: Hello. Good morning and thank you for giving me the floor although you had closed the queue. Very similar to what Jan and what Avri and others have expressed, I think that there's value in having a permanent open process or group or whatever you make of it. It provides for a venue where to discuss these more structural issues with each other, and it also creates a group of interpreters of cultural translators between the different SOs and ACs. I think there's a lot of value to that, and I think that we have learned a lot in this process.

It would be really a loss to no longer have this in the future and it would erode perhaps the value we have created during the last two years, and it wouldn't be helpful for the mutual understanding of the different parts of our community, which I think the people in this CCWG have contributed a lot and can contribute a lot more in the times to come. Thank you.

THOMAS RICKERT: Thanks very much, Jorge. And it turns out that there is obviously the need for discussion, there's a perceived need for discussion by many of you. The question is, is this really what the

evaluation of the mutual accountability roundtable idea was?
And that was the task for the subteam to work on.

So my suggestion to you – and I’m looking at the rapporteurs to chime in on that – is that we take your feedback as, “Okay, we are happy with the recommendation as it is. We adopt this report as a first reading, but we take note of the need to discuss a forum that might be slightly different from this idea that was on the table for the subteam and thereby out of scope for the subteam work, and we put that on the Plenary’s agenda to discuss, to have some sort of – whatever we might call it, kitchen table or what have you – for the community to convene and discuss accountability topics as well.

Is that a way forward? Steve.

STEVE DELBIANCO:

Before we design a new one, I would ask that people look at page 31, second paragraph from Willie Currie which was May of 2015. He says, “At the annual general meeting, there would be a gathering. It would be a roundtable of the Board, the CEO and all the SO and AC committees represented by their Chairs – to Malcolm’s point – entirely inward focusing.”

So if this plenary wants to implement Willie Currie’s idea, the middle paragraph on page 31, then we do have a structure. It

was within our scope to evaluate it. People just plain want to do that. Because a few of you have said, “Yes, we do want to do that,” and that’s the first time we’ve heard it within the subgroup. That’s why we do first reading in front of the Plenary.

So your first reaction is, “Yes, we do want to do what Willie Currie described.” If the answer is, “No, that’s not what we want to do,” then we’re going to need specifics for other ideas, which was Thomas’ point. Before you pick other ideas, please give us a thumbs up or down on what Willie describes on page 31.

THOMAS RICKERT:

Willie is giving the rationale for what he’s trying to achieve. Nonetheless, I think that we should conclude that the first reading on track two was successful as well, and we bring this discussion to the whole Plenary where we pick up that idea for discussion. Nothing is covered in stone, but we’re going to pick that’s up so that it’s not being forgotten.

So let’s now move to the third track. Sébastien and Avri, do we need to continue this conversation? Track three, okay. Sébastien, go ahead.

SÉBASTIEN BACHOLLET:

I understand why you want to go that way, and okay, let’s do it, but I just want to raise the issue that in fact the voice within the

subgroup was so strong against that it was not really possible to discuss it, except if you put a very strong voice and long time to have that. And it's why it came like that to the Plenary. And the fact that it's coming for the first reading in this Plenary can also have as a consequence that we need to give back to the group to discuss again this track two. That's another possibility, and let's go with an agreement of the first reading for the track one and track three, and that will not put more time for those two tracks to work out.

That's another solution. But I really feel because each [scenario] is [inaudible] that we have few people in the subgroup, and that's good that they are there, but the voice of everybody can just be heard here. Then it's why we will face that with other subgroup, I guess. Thank you.

THOMAS RICKERT:

Thanks, Sébastien. And this is also in response to the comment made by Kavouss. This is not to not allow the discussion, but it's rather to give an appropriate forum for the discussion, because I think that the ideas that you're sharing are different from what has been originally tagged the mutual accountability roundtable. And that's the only point, so we want to give it more room. We think that the right place is not like now, but we're

going to have a separate Plenary discussion on this important subject. Avri?

AVRI DORIA:

My comments were on track three. It's okay. Okay, I understand why we're not using the IRP. I think it's too bad that it's not usable, but I understand why. I happen to be in both this group and the other. I don't think there are easier alternative ways, except maybe Ombudsman. I think maybe the idea of using the mythical Complaint Officer is a bad idea. That is a corporate complaint mechanism that has nothing to do with complaints within the community.

We may need to think more, is the Ombudsman sufficient? And it may be sufficient, and especially if we take care of track two. But at the moment, I don't see easier alternative ways, but certainly we should not be recommending the Complaint Officer.

THOMAS RICKERT:

And I guess that's something that we can seek confirmation on with Göran when we speak to him after the lunch break. Kavouss, your hand was raised.

KAVOUSSARASTEH: Yes. I put in the chat that the important of this mutual accountability is merit to have a few minutes more. I think this last paragraph of page 31 allows that such sort of the accountability be resulted from the Chair of the SO and AC, so perhaps we should say that which may trigger the need to have that mutual accountability process to be initiated.

So that is the situation. It is very important. So at this stage I think we limit it to that, and then we leave it to the SO and AC Chairs. When they think that there is a need to initiate process and trigger that process, they will do that. Thank you.

THOMAS RICKERT: Would you like to respond to that?

STEVE DELBIANCO: On track three, Avri – I’m going to make sure my notes aren’t inaccurate. Did you suggest that the Ombudsman is not easier than an IRP?

AVRI DORIA: No. I’m just not so sure it’s an alternative way. But it’s okay. But the one I was saying is that the Complaint Officer had to be off the table.

STEVE DELBIANCO: Thank you. And the Complaint Officer is not in our report.

AVRI DORIA: Right, but you had said it.

STEVE DELBIANCO: Because it's a topic of the day, right? But it's not in our –

AVRI DORIA: Right. But you had said it was a possibility, so I just wanted to say whoa.

STEVE DELBIANCO: Got it. So if recommendation track three is as we have it on paper, don't use the IRP, consider things like the Ombudsman, you're okay with that? Thank you.

AVRI DORIA: Yes.

STEVE DELBIANCO: Thank you.

THOMAS RICKERT: Okay, thanks very much. Thanks for this very engaged discussion. I think what we can take away from this is that the report is fine for the first reading. We have some more discussion to have on track two, to see whether we're going to come up with a recommendation from the Plenary on some sort of community accountability or SO/AC accountability format. We don't know yet that, but we will bring it back to the Plenary soon.

So with that, I'd like to congratulate the subteam on this successful first reading, and yes, we can give ourselves a round of applause. That was excellent work.

I know we've reached the top of the hour and we've missed the opportunity to take 15 minutes to prepare for Göran, and therefore we're just going to give 90 to 120 seconds to Mathieu to outline what we're planning to do with Göran.

MATHIEU WEILL: Thank you, Thomas. I will speak very fast so that I can take the 120 seconds. So what we've arranged is a conversation where we have invited Göran. Our invitation was so successful that I understand we will be very pleased and have the pleasure of welcoming not only Göran but also Steve Crocker and George from [inaudible] so we'll have a panel with us for an hour of conversation.

The issues we had outlined for this conversation are related to our agenda, mostly we think it's with highlighted that it would be interesting to go through the staff accountability discussion, especially the part about staff engagement. I have suggested to Jordan and Avri that maybe they could explain their perspective on this so we can start the conversation on this issue.

I would expect and that was highlighted as well that we may have an update on the Complaints Office which Göran addressed in the previous sessions with our group.

Also a topic that we would like to spend a little bit of time on is the timeline of our group. As you know, we have later on our agenda the discussion about timeline extension and the potential consequences – especially the financial consequences – and the need for support, so that's also an item that we have identified as a discussion item. And then, of course, they may bring their own items, but I'm not aware of anything else.

That's what we have in the lineup so far. Avri, is that a new hand? No, it's an old hand. Okay. Sébastien, you wanted to say a word?

SÉBASTIEN BACHOLLET: Just maybe we can have the new Complaint Officer coming with us this afternoon. Thank you.

MATHIEU WEILL: I don't know. Everyone's saying [that he's] been appointed. I've not –

SÉBASTIEN BACHOLLET: Yes, the nomination, it's already [inaudible]

MATHIEU WEILL: I've not been notified, but yes, I think let's not confuse things. We have a session where we invited Göran and the ICANN leadership is going to be here. Let's have a conversation with the leadership, and conversation with the recently appointed officer. I don't think that's a very good welcoming gift to say, "Okay, come in front of the group and get grilled." That's not exactly the way to engaging constructive conversations.

So let's keep the session as we planned, and of course, seize the opportunity to congratulate Krista for her appointment. Thank you.

And with that, I think we have lunch served somewhere. Here? Is that here or outside? Here, and we reconvene at 1:00 sharp. Thank you.

TIJANI BEN JEMAA: You are aware of the budget. We can make the budget smaller perhaps but we need to continue the work. We don't have to hurry up to finish the work because we don't want it to be longer. Thank you.

MATHIEU WEILL: Thank you, Tijani. I think that the one thing we need to avoid would be to create some sort of incentive of delaying conversations. But apart from that, I do agree.

Greg.

GREG SHATAN: Thanks. My AC room conked out so I used my actual physical hand to be called on.

I think we have to avoid overstating the scope of Work Stream 2. I don't think we're actually... We're working on nine specific problems which are more or less specifically scoped. It is not the entire future of ICANN. It's nine problems of varying complexity, and I think that we need to look at each of them as something they were basically limited in scope and – I'm not going to give any particular examples of which I am thinking, but attempts to expand the scope of any group need to be looked at. I think if they're going longer, it's for various reasons and not I think that anybody's goal to extend things. I think most of us would be

happy to put Work Stream 2 out of its misery sooner rather than later, but we need to give the work the time it takes but I think that if it takes too long that means that we've somehow miscomprehended the scope of the group because I think these were intended to deal with specific problems and not constitutional or futurist concepts about wither ICANN.

Thank you.

MATHIEU WEILL:

Thank you, Greg, for not making any specific reference. No one followed exactly where you were pointing at.

I see a last hand from Jordan and then we'll take the break and reconvene with the second part after the coffee break. Jordan.

JORDAN CARTER:

Just very briefly. I do support us moving as quickly as we can. The set of topics was things we thought we needed to do to improve ICANN Accountability that we didn't have to finish before the transition but we didn't say we didn't have to finish them ever. And there is another framework through the ATRT 2 reviews that's meant to look at these topics, so I think it would also help – I don't know if anyone's got a very clear picture in mind about what the end of the work looks like. Is it a

consolidated package of recommendations being approved at an ICANN public meeting? Is it something else?

Certainly, if that's what it looks like, I think we should be aiming to do it either at the end of this year or at the first meeting next year. I definitely don't want to be sitting around doing this next June personally.

MATHIEU WEILL:

...a group is going to be a full package of recommendations or several packages. Well, you better come back after the coffee break, because that's our topic. So stay tuned. We're breaking for 15 minutes and will reconvene at quarter of two with that exact topic. Thank you very much, Jordan, for making this so clear.

Two minute warning. We're going to get back to the questions you've all been asking, trying to maintain some attention.

Okay. We have the quorum of co-Chairs now.

UNIDENTIFIED MALE:

What's next?

MATHIEU WEILL:

We are starting again. So, should we submit our recommendations as one package and one package only?

UNIDENTIFIED FEMALE: Yes.

MATHIEU WEILL: Or one subgroup set of recommendations on a subgroup by subgroup basis? Or is there another way? That's what we need to discuss here. We started this conversation at the previous plenary, and we have assembled a pros and cons document, summarizing what arguments were exchanged in these initial discussions.

Basically, arguments in favor of a single public consultation were: to avoid the possible conflicts or gaps between the recommendations of the various subgroups. So consistency is obviously a key argument here. The second argument was that some SOs and ACs may not want to focus their time and attention to nine successive sets of recommendations but rather focus on one single package.

On the other hand, we had arguments in favor of a more incremental approach, which included the fact that a single document with all our recommendations would necessarily be very long, very diverse, because we're touching on very different topics. So it's potentially very hard for individuals or even SO/ACs to consider as a block, as a package.

There was concern that, if one recommendation was rejected, it could imply that the entire unified report was rejected. But I think our charter allows for an SO/AC to deliver a recommendation-by-recommendation approval or rejection. That's something to investigate.

The fact that, obviously, if we wait until the last group is finished to submit our recommendations, then some will have finished earlier and might have to unnecessarily be waiting for approval and implementation. So it's creating delay for recommendations that would be useful for ICANN as a whole.

There were concerns about group motivation. Obviously, if a group is closed and waiting for all the others, volunteers may go to other areas and not be able to do the final stretch on selling the recommendations in the end.

I think that was the most pros-and-cons approvals. There was a suggestion to adopt a compromise approach where there would be, potentially, one big package or two big packages, or some subgroups might be submitted individually with the ones having the closest connection to each other being presented as a package.

That's where we were in the discussion. We'd like to advance this because it's obviously going to affect the timeline extension discussion and the work plan and also because we are going to

send correspondence to the SOs and ACs about timeline extension.

So this is a perfect opportunity to introduce to them how we are planning to do this chartering approval process and make sure we're in line and set expectations with them about this. Going to write to them, asking for an extension of the timeline, is a good opportunity to demonstrate that we're thinking about closure, about how we're going to proceed to closure and test that they're comfortable with the approach we're taking.

With this introduction, I'd like to hear whether there are any new arguments or perceptions about the way forward on this issue in the group. I'm happy to see this queue forming already. Greg, you have the floor.

GREG SHATAN:

Thank you. I think that holding everything completely open until the last group finished would be a mistake. I think there does need to be closure on each of the individual subgroups. I think that, once some of the subgroups close, that will actually allow people who are participating in multiple subgroups to concentrate further on others and help those to finish as well.

The question of whether we hold everything in a queue and submit to the SO/ACs as a single package for final approval I think is less important than the idea that we should bring each thing to closure and stamp it done.

I think, however, we should submit things in bundles because I think that, rather than a single bundle looking for critical dependencies, not relying entirely on chance – but where there aren't critical dependencies between those that are complete and those that incomplete, they should be submitted all the way through.

I think, at the time of the final bundle going through, there should also be a harmonization effort. Any harmonization issues should be brought back to the SO/ACs so that any changes to the already-approved reports could be made again. Or, for those where we don't think that will happen, those could be put all the way through for Board approval. Then there really wouldn't be a harmonization effort needed.

So we'll have to look at each of the nine carefully. If there's one that's largely independent – let's say the Good Faith Group – that could be put all the way through to Board approval without having to wait for, say, the Jurisdiction Group to finish its work. I don't think one has any bearing on the other, and there's no need to hold that up even for harmonization purposes. Thank you.

MATHIEU WEILL:

Thank you, Greg. The next in the queue is Niels.

NIELS TEN OEVER:

Thank you, Mathieu. I'm very happy to say that in concur largely with my colleague, Greg. Consistency is extremely important, but finishing the work is at least as important because [inaudible] is very consistent, and that's that we have nothing.

I suggest sending the reports in batches. If we are going to look for critical dependencies, then we'll see that almost everything will be dependent in some string or the other. That means that we will still have to wait until the last thing is done. I think that is quite risky because we are losing participation. We had a bit of an uptick at the beginning of Work Stream 2 of getting new people in, but it is really getting less and less. That will not increase the quality of the work.

So I think we should go with the split approach because, with the individual approvals, there might be issues. We can set a deadline or two deadlines for when we submit it to the chartering organizations.

MATHIEU WEILL:

Thank you very much or making very clear what your preferred option is. That's very useful.

Robin is next.

ROBIN GROSS:

Thank you. This was an issue that we discussed in our Non-Commercial Users meeting last month. I think we all seem to be coming to a violent agreement, if you will, on this sort of split approach that would have the individual topics be tied up as they're done, and they go out for a public comment individually and then they can be tied up and we can work on the other issues.

At the very end, there's a big public comment period on the report as a package; the issue of harmonization and making sure that parts are not in contradiction with each other and that things haven't changed around too much.

So I think doing the split-way approach is the best of both worlds because we can have the issues neatly tied up early on, as soon as possible and they can wait. We won't be in a situation of horse trading where we've got some groups saying, "I'll give you what you want in diversity if you give me what I want in transparency." So we would have this horse-trading going on if things were left open until the very end.

But then, at the end, we can have this one, singular package out for comment that makes sure everything works together as one harmonized set of recommendations. So it's the best of both worlds. Thanks.

MATHIEU WEILL: Thank you very much, Robin. David?

DAVID MCAULEY: Thank you, Mathieu. I will be a little bit different. As your notes on the screen show, I was supporting a harmonized approach, a single approach, and I still do, perhaps not as forcefully as I used to. I do think the need for harmonization and consistency is extremely important. Otherwise, we're going to put the Board in a very difficult decision.

I think to split into separate reports – I don't think that decision really needs to be made until ICANN 59. In other words, if we plan on going forward with one report now, maybe the best way to proceed, if we find that the operations of the different groups are diverging so much – the decision to split could be made at ICANN 59. I don't think any group is ready to report out finally right now. Nothing is before the Board. So that would be my recommendation. Thank you.

MATHIEU WEILL: Thank you, David. Cheryl? Just so everyone knows, I will close the queue after Kavouss. Cheryl?

CHERYL LANGDON-ORR: Thank you, Mathieu. I'm also now a supporter of a split approach, but unlike David, I don't see the split approach as an alternative to a single package at the end. I think being able to tie up our work groups as they're able to be is very important, and I'm very much keen on that happening. But I've been envisioning it very much as "And then as chapters get bound into a book, the product of these individual pieces of public commentary and work team product can be 'bound' into a single product at the end."

However, I do hear from the interventions that have gone before me that there may be a rationale for being able to see those that do not have a high risk of needing harmonization and great work. Those could be closed out earlier, but I'd still want them bound in the big book at the end, for want of a better word. Thanks.

MATHIEU WEILL: Thank you, Cheryl. Thomas?

THOMAS RICKERT: Thanks, Mathieu. I guess we have to bear in mind that we have two processes that need to be managed. One is the process to get our work done with public comment periods, where we also have the question: what do we put out for public comment, and

how do we deal with the final package? I guess the way to approach that that makes most sense is to put things out for public comment as we get them ready and then offer the final package for public comment, but only accept comments on inconsistencies so that we don't run the risk of people trying to get a second bite of the apple or disentangling everything in the very last minute. So we would have incremental work until the package is done and then only ask for inconsistencies of the whole package with public comments.

We could ask the chartering organizations to take a similar approach. We send the individual items to them for their support as they get ready so they could define their own time plan of approaching this, hoping that all of them deal with the first things first and approve as much as they can as we move on, and then only have a final approval from them that deals with the inconsistencies. Because I think what we can't afford is sending them the final package and them wanting to re-discuss or reopen discussions on an item that, at that point, we will have closed like a year ago or so. I think we can just propose it. We can't dump it on them.

I guess such an approach would give them flexibility to fit their approval process to their own scheduling and it reduces the risk of failure at the end.

MATHIEU WEILL: Thank you, Thomas. Jordan, I see you.

JORDAN CARTER: Thanks, Mathieu. I think I agree with Thomas. The priority, I think, is to give the SOs and ACs the chance to consider the topics we're dealing with about making them consider all nine at once. We don't want to overload them, nor do we want to take nine ICANN public meetings to work them through the nine topics. At least I don't – some of you might. It's up to you.

If we can get, say, groups of three topics through a public meeting – or maybe four in one; I don't know – to get the substantive input and feedback and then at the end avoid a negotiation between the various topics or trade-offs through the SO/AC approvals, through the kind of overall stamp that Thomas talked about, that makes more sense to me. I don't want to force nine topics down everyone's throat at one meeting.

MATHIEU WEILL: Thank you, Jordan. Now, Kavouss. I think we have something shaping up here.

KAVOUSS [ARESTAH]: I want to add something. There is a tendency for incremental or several or two steps. For some SOs and ACs – I say “some” – it may be difficult to examine a bulk of recommendations because of the lack of time that they have. In particular, I’m sorry to our GAC people that we are always deciding in a physical meeting because sometimes it may be difficult to go outside that. So it would be beneficial if we have two steps. That means we have less number of recommendations to discuss and examine at one meeting and then the rest we can discuss at the others. This is another [inaudible].

However, I think that there seems to be some tendency for two steps plus what Thomas has mentioned: if there are any discrepancies, we mention them in the last part. Thank you.

MATHIEU WEILL: Thank you, Kavouss. I think there’s a general direction that is being sketched here, which is quite consistent. It’s pretty much captured in the chat by Robin and actually with a nice, big color – so that struck me – that we need a final package. There is a need for a final package. The more incremental we can be with these chartering organizations about the intermediate packages so they can have time to look at it and also provide their feedback, the better for the quality of the end result.

So I think what we'll do is, as part of our correspondence to the SOs/ACs on the timeline, we will try to highlight this approach to the chartering organizations to make sure that their expectations are set and to collect, if need be, any concerns or objections that they would have with this approach.

Is that agreed? Any objections to that?

Okay. So we have an action item to draft the correspondence on the timeline. Thank you very much for a very productive discussion. We've come from two different positions and found some useful compromise here. It's good to see that face-to-face meetings actually produce this. It's food for thought for further, more difficult discussions.

Oh, I'm going to share the next item as well, but I'm going to call David McAuley to the table for an update on an implementation team. It's not a Work Stream 2 subgroup, but it's the Work Stream 1 implementation that we're talking about here, with the IRP Implementation Oversight Team. Do I get – yeah, I think I got the IRT acronym correctly here.

David will be able to provide us some visibility about where we are with the public comment and the next steps because there's actually a lot of work still ahead of us in the IRP implementation.

David?

DAVID MCAULEY:

Thank you, Mathieu. Yeah, there is a lot of work, and we're a bit of a hybrid – Work Stream 1, Work Stream 2, and then Bylaw Article 4.

My name is David McAuley, and I'm the lead of the Implementation Oversight Team for the new Independent Review Process. Next slide, please.

Let me just give a background of where the IRP stands and how it's moving forward – next slide – to put this all in context for us.

The new ICANN Bylaws that went into effect on October 1st of last year actually established the new standard. That's in effect right now – the new standard by which the IRP will operate. So it's no longer solely really a procedural examination. It now involves substance and enforceable substance.

There's reference to the Bylaw section for all of you that would like to become conversant with it. It's Section 4.3. It's very involved, very important to this community. Next slide, please.

The IRP on this slide and the next – I'll show you what it can review. On this slide, it's really looking at things to test whether, as a claimant will argue, ICANN staff or Board have gone beyond the Articles of Incorporation or the Bylaws. That's really the standard by which they'll be judged.

These five things which I've listed are the subjects into which that examination can take place; first of all, generally, claims exceeding the scope of the mission; secondly, claims regarding action taken in response to input from an SO or AC.

Third would be claims resulting from decisions of process-specific expert panels. This is an important addition. As we know from the New gTLD Program that was adopted and began in 2012, there are legal reviews. There are other kinds of reviews that we have expert panels for that look into where there was some contention and there was no real appeal mechanism. Now there will be an appeal mechanism for these expert panels.

It will also cover claims resulting from a response to a DIDP request that a claimant is unsatisfied with. This is new as well. A claimant to a DIDP request that's unsatisfied could go to the Ombudsman, could go through the reconsideration request process, but if they feel that the violation or the rejection of their request amounts to a violation of articles or Bylaws, they also have IRP available to them. Then there will be claims that the Empowered Community can bring. Next slide, please.

There are going to be two additional rounds that the IRP can look at. If I could have the next slide, please. These next two are not really bound by the standard of whether the action went beyond the Bylaws or the articles.

The two are that ICANN has not enforced contractual rights with respect to the IANA naming function and that claims for IANA naming functions customers that they have not been treated fairly. Next slide, please.

This is nothing more than a statement of a provision in Bylaw 4.3 that actually established the Implementation Oversight Team that we're participating in in this particular group. While we came from Work Stream 1, we now have a separate existence. We are not quite a subgroup. When there is reference to the nine subgroups that doesn't include the IOT, we're the 10th group that's working along in this effort. But we have our own separate, established place that we come from, where we germinate from, and this also contemplates us ongoing because we're going to be supporting people that are working in establishing the IRP panel. Next slide, please.

This is the important slide. It's really the update as to where we are. First point: the new Bylaws went into effect. The new standard is in effect. There is a new IRP now.

Secondly, there's an admin support organization that we need to have; that is, a Secretariat that supports the IRP. Well, ICANN can retender and go out and find one, but there is one in place for the IRP panel that has been existing. It's the International Center for Dispute Resolution. That's in place.

The third point is the rules of procedure. That is in process. One of the people I've very thankful to is Becky Burr, who's now a member of the ICANN Board. Becky led the team – she had the position that I now have – through the creation of the draft of the new rules. Then Becky, for some reason, went and stepped onto the ICANN Board, and she stepped back from the role of leading the IRP team. Happily for us, she's still a member of the team.

So these rules are in process. The rules are out there and they have been subject to public comment. Our group is a small group of 25. We are now going through those comments and grappling with what they presented to us. We'll come back with a redraft of the rules that take into account those comments. They are very interesting, complex comments, rightly so, and that's what we're involved in right now.

The next point I have on here is a request for expressions of interest that needs to be done. I'm going to ask Sam Eisner to actually speak to this point because the Bylaws say that ICANN will release this expression of interest. What we're talking about here is putting out an expression of interest to the public, seeking expressions of interest from those people who would like to serve on the standing panel.

I don't see Sam – oh, there she is over here. Sam, if you would kindly give us an update as to where that stands right now.

SAM EISNER:

Thanks, David. This is Sam Eisner from ICANN Legal. On the expressions of interest, we're very close to having a draft completed. One of the things we will be doing is sharing it with the IOT before we put it out. We think it's important to make sure that the IOT agrees with the form of what it is and make sure that they're comfortable with the content of it.

We've been juggling with trying to present enough information to get a meaningful response and to give a sense of what people are going to be participating in but not giving too much information that makes a call a bit unruly and might defeat the purpose. But we're very close. We were targeting to have it to the IOT prior to Copenhagen, but I think at this point we'll probably have it before the end of the week. It's something that, depending on the amount of time the IOT would like to spend with the document, we could see going up possibly by the end of March or the middle of April.

DAVID MCAULEY:

Thanks very much, Sam. The final bullet on this particular slide is the select standing panel has to be done. I refer to the new IRP

process as having three really important parts like a three-legged stool. These aren't the only parts, but these are the important bits. One is to get a new set of rules. That's in process, as I just mentioned. Two is to have an admin support in place to support the IRP as a Secretariat would and as it has been. That's in place. It may be changed, depending on ICANN looking at this process and deciding whether they want to retender.

The third point would be the establishment of the standing panel. Under the new Bylaw, there will be a standing panel of members that will be the arbitrators, basically, from which claimants in a case will select three persons to establish a panel to hear any one case. The standing panel under the Bylaws has to have at least seven members. There is a Bylaw dealing with how they'll be selected and that they will be diverse in the sense of geographic region, gender, legal training, and things of that nature.

So those are the three things that are in process that need to be done. When the expression of interest goes out, there will be a whole bunch of, I would assume, interests expressed. That will then cause the [sifting] of these applications to decide who will be the Standing Panel.

One of the jobs of the Implementation Oversight Team is to assist in this process, but as this slide shows, the expression of

interest will go out from ICANN. Then the nominations to the panel will happen by the SOs and ACs. All of those in this room who are in SOs or ACs, understand that you have a role in this process as well. That is, you will have the job of selecting people to nominate for a Standing Panel.

The IOT has sent letters to all of the SOs and ACs explaining this fact, and we will be there to support and help in this effort. But it is under the Bylaw and SO's or AC's job to nominate, and then the ICANN Board has under the Bylaws the job to confirm the panel. So that's the process going forward.

With the new standard and the new established IRP, in my personal opinion I think it's important that we try to move this process as quickly as possible. It's not a process that easily lends itself to moving quickly. It's fairly complicated. My hope is that the SOs and ACs will be looking at this and preparing themselves to deal with these applications when they come in. Next slide, please.

Currently, as we're looking at the rules, we have many, many good comments. These are some of the issues that we're dealing with. They're not the only ones, but these are the ones that take up the lion's share of the commentary.

These are the time limitations within which a claimant has to make a claim or lose it. That's one issue. Retroactivity of the

rules to existing IRPs is another. Parties is another issue that we're grappling with, and that is: who can be joined as a party? Who can join? Who can get involved that's not the claimant but has an interest in a case? Discovery, hearings, and consensus policies – how they'll be handled – are other issues. As I said, this is not an exclusive list. There are other things we're grappling with, but these are where we're putting our time right now.

Next slide, please. Whoops. That's it. My apologies.

I would like to ask for questions, but let me just, before I do that, thank certain folks. One, I'd like to thank our staff: Bernie, Brenda, Yvette, and Karen. The staff has done a wonderful job for us and continues to.

Secondly, I want to thank Becky for the lead. She got this group rolling. She got the rules put together. So thanks to her.

I would like to thank the people that submitted these comments. Many, many thoughtful comments are in there.

The final thanks goes to the team. I want to thank the IOT team for doing its work. But that comes with – I'm going to channel Jordan and Avri from this morning – an exhortation for our group to become even more active as we go through the rules. Let's try to move these on and get this thing done. It's

complicated. It's going to take a little bit of time. It's in all of interests to get it done as quickly as we possibly can.

Having said that, Mathieu – I don't have this in front of me – in case there's a queue, or –

MATHIEU WEILL:

Thank you very much, David. I echo your thanks for staff, for the group, but also for all the work you're doing on making sure this process is moving forward. It's very important because we don't have all the legs of the stool right now. This is important because IRP cases can show up at any time. It's obviously an ongoing process. The faster we set this up, the better for ICANN's accountability.

Are there any questions for David? I see Niels has a question.

NIELS TEN OEVER:

Thank you so much, David, for this terrific work, which is in part some of the teeth of the accountability work. Thank you so much for going about this so thoroughly. I had a question about the parties bullet point. Would it be possible to submit amicus briefs to the IRP? Would that be an option?

DAVID MCAULEY: There's no answer to that yet, but that has been raised as an issue under the parties topic. Parties deals with joinder and statements of interest, so amicus briefs is very much on the table. In the comments submitted, in the public comments, that is very much a part of it. We're looking at that right now. There are very good comments to that effect. I can't tell you what the outcome will be, but it looks like amicus briefs are going to get a very good look.

So I can't tell you what the end will be, but thank you for the questions.

I can't hear you, Sébastien.

MATHIEU WEILL: Sébastien is asking whether you can repeat the question.

SÉBASTIEN BACHOLLET: And while you are talking, can you go a little bit further down to the people who don't understand what –

MATHIEU WEILL: Rephrase for someone who doesn't know anything about legalese.

NIELS TEN OEVER: Amicus brief is Latin for a friend of the court, so it is an external, voluntary advice to the court on a specific issue. So it would be a voluntary piece of advice that would be submitted to the IRP so that the panel could then choose to consider. An amicus brief could be requested or unrequested advice from any third party.

DAVID MCAULEY: That was a very good question, Sébastien. I forget sometimes that this IRP business gets legally dense. Niels correctly explained it. A friend-of-the-court brief is basically from a non-party. The parties to an IRP will be ICANN defending a claim and a claimant on the other side making a claim – perhaps two claimants or more. But a friend-of-the-court brief comes from somebody that’s not a party, but they do have an interest, and their interest may be academic and it may be substantive. They want to proceed by a friend-of-the-court brief rather than get involved with the expense of becoming a party or something like that.

So that’s what we’re grappling with. I couldn’t give Niels an answer to the question, but that’s what’s involved. Thank you for reminding me that this gets a little thick at times.

MATHIEU WEILL: Thank you very much, David and Sébastien. I think that addressed Sébastien’s concerns, so that’s very good. Certainly, if you raised the question, Sébastien, I’m sure a number of other participants in the room were facing the same question.

I’m not seeing any other questions. Do you have a final call to action for our Plenary, David?

DAVID MCAULEY: My final call to action is to the IOT. By the way, I’ll be here throughout the meeting until next Friday, so if anybody on the team wants to see me to chat about what might be a good interest – I’m asking people to take the lead in the team on some of the issues in the comments – I’d be happy to discuss it. I have my trusty list of issues and comments, and I can try to help people pick things to lead on. But I’ll be here and happy to discuss it. Thank you.

MATHIEU WEILL: Excellent. We’ll be looking forward to hearing from this summary of public comments and the way forward from the IOT group, as well as to the expression of interest announcement, which are very important steps on the way forward.

Thank you very much, David.

DAVID MCAULEY: Thank you.

MATHIEU WEILL: Now I'm turning to Leon for the subgroup updates.

LEON SANCHEZ: Again.

MATHIEU WEILL: The other subgroup updates.

LEON SANCHEZ: Again.

MATHIEU WEILL: The other very important subgroup updates.

LEON SANCHEZ: Thank you very much, Mathieu. We might as we do these quick so we can have some of your time spared. We have some groups to provide updates. This would be the Jurisdiction Group, the Guidelines on Good Faith Group, the Ombudsman, and the Human Rights Group. I will be calling or inviting the rapporteurs

for each of the groups to provide us with a very quick update on where you're standing.

The first group I would like to invite is the Human Rights Group. For that, I would like to invite Niels to provide us with a quick update on where the Human Rights Group is standing.

Niels, would you like to join us here in the front? Or would you prefer to just do it where you're sitting?

NIELS TEN OEVER: I'll stay with the people.

LEON SANCHEZ: Excellent. Thank you very much, Niels.

UNIDENTIFIED MALE: So we're not people?

LEON SANCHEZ: Good. Thank you, Niels. If you could please provide us with a quick update.

NIELS TEN OEVER: Excellent. Would you please be so kind to load my slides? My very accountable slides.

Oh, the pictures went away? Those were some beautiful slides.

UNIDENTIFIED MALE: Yeah. I wrote to you, Niels. I couldn't get the pictures in there easily.

NIELS TEN OEVER: Okay. There is sadness. The Human Rights Subgroup: where are we going? Quo vadis? We are at an interesting point, and that could actually be seen as a bit of a tale of the hare and the tortoise, where we were sprinting ahead as the Human Rights Subgroup, almost seemingly to get done as a simple topic which no one would have expected before. We were up or a surprise.

Then reality caught up with us, luckily in time to ensure that we really did what was asked of us in Annex 12. The two documents that I'm talking about were the Framework of Interpretation documents that you will all have seen because we have had two readings of that in the Plenary. But, upon careful reading in Annex 6 and Annex 12 and fighting the discrepancies between that, we came to the understanding that the considerations that we were asked to provide should be an inherent part of the Framework of Interpretation.

So we retracted the Framework of Interpretation and continued working on a Considerations document. We are doing that with a very active and committed group and also with a very active and committed Drafting Team, without whom this work could not be done. I want to spell out their names. Many of them are here: Tatiana Tropina, Anne Aikman-Scalese, Jorge Cancio, David McAuley, Greg Shatan, and Matthew Shears, who, really between the calls, are making the progress and integrating the comments that people make during the weekly calls and helping us get forward.

The Framework of Interpretation document is pretty much done. For the Considerations document, we have two working sessions of the Drafting Team planned this week. I have good hopes that we are converging there. We might even reach Drafting Team consensus during this meeting. Then we will of course take this back to our group on the Tuesday after the meeting to see how the group thinks about that. Then we need to see whether the new Considerations document changes something for the Framework of Interpretation document. Then we merge the two, and then we can agree upon that, and then we submit it to the Plenary.

The topics of contention – where we are now – are the mentioning of the U.N.-guided principles for business and human rights and how and where and if they are relevant and at

what level of the process. We have come to the conclusion that it might not be best to use them in the interpretation of the core value part, but it might be useful – that’s part of the discussion – to look at it when we’re looking at operationalizing the core value.

That is where we are right now. We will probably make use of the language of the guiding principles themselves to see that they guide the operationalization so we will not recommend signing up to the Ruggie principles but see what we can learn from there so that the work that comes after us doesn’t go into the blind.

We’ve also concluded that the different SOs and ACs ICANN organization and the Board will probably all have to establish their own procedures to actually live up to the core value. But we also saw that as outside of our mandate to tell them how to do that. Since all these bodies are quite different in structure and with different processes, they should consider themselves how they do that so we don’t need to do that.

So that is currently where we are with the subgroup.

LEON SANCHEZ:

Thank you very much, Niels, for this thorough and quick update. Are there any comments or questions on this update?

I see Kavouss’s hand is up. Kavouss?

KAVOUSS [ARESTAH]: First of all, thanks for Niels for the way he conducts the meeting very kind and very, I would say, neutral with everything and with a democratic manner and so on and so forth – always kind with people.

I am not very comfortable with [inaudible] starting the work. People did not succeed to reject totally any reference to the Ruggie principles in the first round and join the consensus. Now they find an opportunity to come back and put everything into question. We need some sort of agreement in a very neutral language with respect to the reference to the Ruggie principles in the first round, Annex 6, and now in Annex 12 we about to totally reject that, saying that there was no consensus to refer to them at all.

Niels tries to put something or tries to have some way, but there's still some people who totally reject it. It is not very comfortable for us. That's number one.

Number two: even though in Annex 12 a reference was made to the GAC that should or must or need to – or whatever – respect human rights, this doesn't mean that the other two groups' recommendation should not follow that process. They provide recommendations based on the PDP, and GAC provides advice.

If the GAC advice must respect human rights or should respect or so on and so forth, that's no problem at all. It must be.

In fact, one of our colleagues pushed for that, which I also don't appreciate. I won't name him. The PDP produced by the GNSO and the ccNSO should also in one way or another respect human rights. Unfortunately, the group rejected to mention that, saying that Annex 12 only asks about GAC. Yes, but that doesn't mean that we should not mention that because there are two parts before the GAC talking about how this recommendation and PDP are prepared, and we have not referenced that.

So I think I have mentioned this several times. We have to really treat all these groups equally. If human rights should be respected, they must be respected by GAC and must be respected by the PDP of the GNSO and the ccNSO. Otherwise, we have serious problems. Thank you.

LEON SANCHEZ:

Thank you very much, Kavouss. Niels, do you want to follow up?

NIELS TEN OEVER:

Thank you very much. Leon. Thank you very much, Kavouss. I think we should not go in too much detail and start discussing issues from the subgroup here, but I have very good news, Kavouss. In the next version of the text, we have addressed the

GAC and other parties that come for the Board. So that is done. We're not there until we're done, but I'm very confident that we'll get there all together. I think that's very worthwhile and that might then take a bit of contention, but when we get there together, we will have something stronger afterwards for the future.

LEON SANCHEZ:

Thank you very much, Niels. And just one thing I would like to highlight just not to give the impression that we are not addressing the very important point that you're raising, Kavouss, is that the rapporteurs are only providing updates at this point and we would like to actually go deep into any of the subjects for decisions as this is something that needs to take place in other forum. So I have Steve DelBianco's. Hello.

STEVE DELBIANCO:

Thank you. Steve DelBianco. Niels, when I was reading the most current Google Doc and it's very challenging to read it, my question is not of the detail but of a direction. The second block under Considerations puts up a direction that maybe if you examine the policies and procedures in place at ICANN and some of them had a gap between what they say and what the commitment to human rights is, that there is a need to develop new policies to honor that commitment. And that's a very

different direction than suggesting that as we do our work at ICANN, we're developing a new policy for opening up gTLDs, for instance.

As we do our work. Oh, we have these considerations with respect to HR and those considerations inform the work we're already doing. That's a very different direction than saying that ICANN would have some commitment to undertake work to deliberately address a human rights consideration. How would you say that direction is going to work out?

NIELS TEN OEVER:

Thank you very much for putting that point up because I think what we... There is actually a problem there as been pointed out by Greg and by Anne is that there is a mistaken annex because there is no commitment to human rights because the commitment is a term of art in the Bylaw and it is actually a core value that needs to be balanced with the other core values. So I think that your point needs to be considered when we do our work is the right implementation and I think that's also the implementation that facilitated by the Framework of Interpretation and the Considerations document. But if I'm wrong on that, I'm very happy to turn to the other members of the subgroup to correct me if I'm wrong.

LEON SANCHEZ: Thank you very much, Niels. So I don't see any other hands up. I would like to thank again, Niels, and Human Rights Subgroup for these updates and for all the work that you've done. Thank you very much, Niels.

So our next group for update would be the Ombuds Group. I am seeing Sébastien. So Sébastien, could you please sit with us here? Thank you, Sébastien.

SÉBASTIEN BACHOLLET: Gracias compañero presidente. Thank you very much. I don't know if I will be an amicus curiae in this discussion about the Ombudsman, but I will try to give you my report of what is happening within the subgroup now. We are at the, I don't know, I have to... Okay, I will follow in my on-screen. Next slide, please.

Let the participant of the group and what I want to raise as an issue for all of us is that one-third of the participants participate and more than one-third of the meeting or only one-third. I really want to thank those eight very active participants, but I really think that when we put in front of you that we have 23 active participants, it's not really the case, and that's a pity but, thankfully, we have a core group of very active participants and that's good. Next slide.

It's a slide you already got with dashboard and it follows what is happening in all the subgroups and I wanted to give you this one just at the end of February, we were looking at who will be the reviewer and I will give you more information later on. Next slide.

We are, as you know, having a lot of interaction with other subgroups. I hope that we get all those information useful but please let us know and let me know if we need to take more issue or target some specific items from your subgroup within the ICANN Ombuds Office Subgroup. Next slide, please.

And now we can talk about the external review of the ICANN Ombuds Office as staff announced us last Monday that Cameron Ralph was selected to do this review. Next slide.

It's a consultant firm with good knowledge of Ombuds. I learned a new term for that Ombuds scheme. That's very good to be in the ICANN group that you learn some new expression. They are based in Australia and as it's happened, it seems they already have done some interaction with some one of the member of the ccNSO, [inaudible] not to name it and I also discover that last Monday. Next slide.

The two consultants will be Phil Khoury and Deborah Russell and they will be at this meeting, they will arrive tonight, I guess, and they will be four or five days. If I don't have the element,

maybe staff can help me with that, but if you want to be interviewed face-to-face with them about the ICANN Ombuds Office, please feel free to either tell me or tell to, I would say, Bernie for that matter – Bernard Turcotte – to tell that you want to be interviewed and staff will try to organize that during the next four or five days, either here. It's important that they get wide array of people from different organizations, different points of view, diverse groups to summarize, and we will thank you if you are able to do that and give some feedback on that review. Next slide.

That's the current short planning. Our group will work in more details about the global planning now with this review on the on track. The review is supposed to be very short because at the end of the month, we're supposed to have a draft report in middle of next month to have a final report. I hope that it will be feasible or, otherwise, we will come back to you and discuss this issue in the broader timeframe for the Ombuds Subgroup. And I guess, no. Next slide.

And then, okay, you didn't put the last slide, then I will stop here. Thank you.

LEON SANCHEZ:

Thank you very much, Sébastien. Are there any comments or questions on the update provided by the Ombuds Group? Okay,

so seeing no hands and no comments, I would like to thank again, Sébastien, for... Merci mon ami.

Okay, so our next subgroup to provide input would be, I think, the CEPs. Is that right? I don't remember the order in the slides. The CEP Review. So for that, I would like to invite F or if you'll feel more comfortable [inaudible].

EDWARD MORRIS: If this will be short, Leon, we'll do it here.

LEON SANCHEZ: Okay, good.

EDWARD MORRIS: We need your help. We put out a call about a week ago for folks in the community who have actually been through the CEP to let us know if they'd be willing to talk with us, because we've had some problems. Channeling my inner Jonathan Zuck, it's been hard getting data because CEP proceedings are closed. They're not nontransparent. Nobody knows what goes on inside them except for the people who have been there. So as we were plotting along in our group, we sort of realized, took a look around.

I'd been through one CEP but nobody else that was active in the group had ever been through one. So we have the blind in some ways leading the blind. So we put out the call last week, we have an e-mail address, cepreview1@gmail.com. We've got a great response. It shocked me a little bit. Community members are coming forward to talk about their experiences there.

So what I'd like everybody in the room, everybody online, if you've been through a CEP, know somebody who's been through a CEP, and you'd be willing during the next week to talk to myself or Anna Loup, another member of the group who has volunteered to talk to folks, we'd like to know your experiences and any suggestions you may have for making the process work better. So that's where we're at right now. We're still data gathering, we're trying to get a hold of folks that have been involved in the process.

I'd like to thank Sam. We'd ask ICANN Legal for a list of folks and corporations, basically, who have been involved in the process. We finally came through about a week ago. I'd like to thank ICANN staff, Karen and Bernie. I'd asked for a book called Structured Negotiation, which I couldn't get in the UK, and here it is, brought to Denmark. So I'd like to thank staff, I'd like to thank ICANN Legal, but most of all, I'd like to thank the members of the community who are now stepping forward. About two

weeks ago, I was about ready to throw up my hands. Now I think we can be able to get this done. Thank you.

LEON SANCHEZ:

Thank you very much, Ed, for your continued work and commitment that's been quite challenging to lead this group and we would like to thank you for that. And, of course, encourage everyone to continue to contribute to these efforts and as Ed has rightly pointed, please provide information on these e-mails that's being published, and any information would be greatly appreciated to feed into this process. Thank you, Ed.

So next, I would like to invite Lori Schulman to provide us with a quick update on the good faith guidelines. Lori, could you please?

LORI SCHULMAN:

Good afternoon. I will speak more slowly, Kavouss. I apologize when we were on the call last week, I think it was. But I'll go slower and more clearly today.

Good news is our report has been published and I think the comments close April 24th or the 27th. Bernie can clear up that date for me. 24th, okay. Just to remind the group, the task was to create a set of guidelines to meet good faith standards for

community behavior under the indemnification clause in ICANN's Bylaws. That's been done.

The philosophy of the group was to keep it simple and flexible, to have it apply to all Board seats, whether they are NomCom or SO/AC. To respect SO/AC processes and to meet the legal standard without creating cause for Board removal in keeping in line with the report from Work Stream 1.

We received an opinion from ICANN Legal, which basically said we should be okay with the guidelines as written. As an addendum to that, I did ask ICANN Legal for backup, if there were any opinions, case law, anything that substantiated that we should be okay, and I just received some backup this morning that says, really, what was looked at were the requirements under the California Code specifically, and that there wasn't any specific case law, but there were some guidelines in the Code. As I said, we've been approved. If I could have the next slide, please.

Okay. These are just the guidelines to remind people. I won't read them aloud, but they were written with flexibility in mind to apply to any situation, including red pants or green pants or yellow pants. Next slide, please.

That's the second part. This is about SO/ACs having procedures. Again, we don't want to dictate the procedure, but there should

be procedures, there should be publicized, transparent and documented. Next slide, please.

There are two standalone recommendations and this is something the group really hadn't talked about, but I wanted to remind the group that we are recommending that a standard framework be developed and used to raise the issue of Board removal to a respective body, whether that's the SO/AC or the NomCom, when it comes to decisional participants of the Empowered Community. We were hoping that these framework discussions would be broader. My understanding is there may be broader discussions about we're developing policies, but we certainly need implementation procedures and a framework in order to make some of these policies work.

We also recommend that the community consider implementing the guidelines as a community best practice. We believe that they are broad enough that where other questions arise within the community in terms of what would be considered a good faith discussion or issue, that these guidelines would work. An example that we thought about is if the community decided to reject a budget or reject a proposed standard Bylaw. Should there be a good faith process attached to it?

Now, we were tasked with doing our group's work because there is a specific indemnification inside the Bylaws that requires that

we do this work that's not required for the other decisions, but it may be a good idea for consistency and for clarity to have a good faith standard apply to any EC discussion. And I think that's done. I don't think there's a next slide. Any questions?

LEON SANCHEZ: So are there any questions or comments? Mathieu has a question. Mathieu.

LORI SCHULMAN: Sure.

MATHIEU WEILL: Thank you very much, Lori. Actually, it's more of a [inaudible] when listening to the standardization on recommendation in connection with the discussion we had this morning with SO/AC Accountability. This recommendation could easily be on the Good Faith Group or on the SO/AC Accountability set of best practice and recommendations, and I wonder whether we'll have to discuss at some point whether we attach it one package or another or maybe to both, but it seems to me that it fits very well with what we've been discussing earlier this morning and maybe, Steve, you have a thought on this.

STEVE DELBIANCO: Thanks, Mathieu. Of the 25 best practices that we reviewed in our draft report this morning, a good many of them are things that could become obsolete over time. A good many of them are highly specific to the activities. Now, some of them are very good general practices but a lot of them are specific and some could be out of date. So I wouldn't want to put forth those 25 best practices as eternal truths the way that what I've just read from Lori strikes me as sort of eternal truths for how you would conduct yourself if you're going to undertake to remove a director. So it might be a different flavor of best practices.

LEON SANCHEZ: Okay, good. Thank you. So is that an old hand, Mathieu, or a new hand?

MATHIEU WEILL: I'm an old hand.

LORI SCHULMAN: Yeah. I just wanted to add that I know we're discussing whether or not we want to put all of the reports together as a package or whether we want to look at things one by one. Would that speed up or slow down the process? One thing I think it would be smart to do, even if we ultimately decide not to present the whole package is at least to do some sort of matrix where we at least

see where there is crossover, and I think these would definitely stand on that matrices and, to Mathieu's point, could definitely be attached to other work. So whether it's formalized in a report or whether it's just a working matrix that the plenary decides is necessary, I think it could be useful.

LEON SANCHEZ: Thank you very much. I see Kavouss's hand is up. Kavouss? Oh. Yes, Kavouss.

KAVOUSS ARASTEH: Yes. I want to also to add my voice to what was said before. This recommendation [inaudible] is entirely different from the recommendation of SO/AC. This is not to be considered, this is to be more or less take into account. In fact, it's not a [inaudible]. I think it is higher level of recommendation than those we discussed this morning that to be considered that means totally optional. Although it is recommendation but it is some sort of the, I'd say, it is a moral obligation. It should be taken into account, so it's not the same category. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. Steve?

STEVE DELBIANCO: Steve DelBianco. Lori, does the group have a reticence against updating Article 20 or is that why you want to park it outside the Bylaws? Or is there even a consideration to say that you would put this recommendation into the ICANN Bylaws in the section where we address Board removal?

LORI SCHULMAN: Yeah. To be honest, we haven't talked about whether or not we think it ought to be in the Bylaws. My thought is it doesn't have to be, and the reason. If you talk about the standalone recommendation or the actual guidelines, which you're talking about? These standalones?

We haven't had that discussion. If that's a discussion that the Plenary would like the group to take up, we certainly could. I mean, I don't think we've considered any of these as Bylaws changes as much as maybe procedures to accompany the Bylaws. I think it's important. I mean, our Bylaws are complex, as you very well know, Steve. So I think to consider is not amending the Bylaws but creating a procedures guide to accompany the Bylaws. So when there is a need for interpretation or an understanding about why something is the way it is, we have guidelines for implementation. That's actually a practice that many organizations use whether they'll keep their Bylaws relatively simple, which in the case of ICANN, couldn't

necessarily be done, but maybe we keep them contained into where we suggest a process, procedure, or a guideline for behavior that becomes sort of a standalone side-by-side manual. That's what I would recommend. I would leave the Bylaws alone to the extent that we can.

LEON SANCHEZ: Thank you, Lori. Next in the queue we have Alan Greenberg.

ALAN GREENBERG: Thank you. Just in response to that, I think it's a bit late for us to keep our Bylaws simple. Like about 200-and-something pages too late. But I would strongly support what Lori said. There's just no need to put this kind of stuff in the Bylaws. It needs to be somewhere we can find it, but that's true of a lot of stuff. Thank you.

LORI SCHULMAN: Excuse me. I think this goes to the issue of framework. If we decide that the framework is actually a procedures guide in order to implement the Bylaws, then that would be the framework, and that would support our first recommendation. We may be in the second round after our comments or maybe I'll write this comment. I don't know. Maybe that's the

recommendation that we have a procedures guide versus some other methodology regarding the framework.

LEON SANCHEZ: Thanks, Lori. Kavouss?

KAVOUSS ARASTEH: Yes. Once again, we're dealing with a very sensitive and important issue, removal of the Board, and Bylaw [inaudible] do not suggest that we modify the Bylaw, but should be some sort of reflection or cross-reference to these recommendations. Otherwise, it should not be something that just will be written with so many [inaudible] and then later on, nobody implement that. It should have been implemented so we have to think there are the ways and means how to deflect that as a cross-reference or as framework of [inaudible] implementation somewhere. So again, it is very important recommendation very important issue. There is a need to look at it what sense you have to give further power or enforcement to this recommendation, but not simply as a recommendation as such. Thank you.

LEON SANCHEZ: Thank you very much, Kavouss. Are there any other comments or questions? Alan, I thought it was an old hand. I'm sorry. Alan?

ALAN GREENBERG:

No. It was a new one. Remember. This is here primarily to make sure that if someone thinks they're being indemnified, they are, and they don't end up being sued. That doesn't have to be in the Bylaws. It's also there peripherally just to remind people that they should be civil and nice and whatever, and again, that doesn't have to be in the Bylaws. So though it's strongly, it has to be somewhere and I trust we have staff who will put together the right procedure manuals to cover all of the stuff we're talking about, not only this. So I don't have any real worry about that.

LEON SANCHEZ:

Thank you very much, Alan. Okay, so seeing no other hands up, no other comments, I would like to thank Lori again for the work that you've done and thank you for this update.

So I guess we are missing just one last subgroup for update, and that is the Jurisdiction Group. And I would like to invite, last but not least, I would like to invite Greg Shatan to provide us with an update for that.

GREG SHATAN:

Already a hot mic here. Hi, this is Greg Shatan, co-rapporteur, I guess, of the Jurisdiction Subgroup. I want to give a brief report on current state of our work.

As many of you already know, the Jurisdiction Group has spent quite some time putting together a questionnaire, which was published on February 9th, and the purpose of the questionnaire is to collect factual inputs from the broader Internet community. Not only our own stakeholder groups and stakeholders, but as broadly as possible. For that reason, we had the questionnaire translated into each of the ICANN languages. Also, left a good deal of time for answers to come in, so that GAC members could discuss the questionnaire at this meeting and then disseminate information about that back in their respective areas. So the deadline is not until April 17th, but we are welcoming earlier responses and we are reviewing responses as they come in. That is on a rolling basis and we have a small group that is initially reviewing the comments and then we'll present them to the subgroup. So that would be a sub-subgroup that is doing that work.

I'd like to encourage all members of the CCWG and anybody listening to this meeting or anybody still listening to this meeting to review the questionnaire and to respond to the questionnaire if you have any inputs to make. I also would encourage all members of this group to publicize the

questionnaire in their groups, both their ICANN groups and their non-ICANN groups, and then on any Internet governance-related list. We would like the questionnaire to be disseminated as broadly as possible so that we get as many responses as we can that are on point. The link is in the slides there on the last bullet point. Having reached the last bullet point, we can go to the next slide.

Another aspect of the group's work that is underway is a review of ICANN's litigation. All of ICANN's litigation history with links to the pertinent documents and some of the impertinent documents is posted on ICANN's website and it can be found there, allegedly. No, it can be found there on the website in spite of the lack of a document management system, they are there.

We have developed a standard chart for group members to use to summarize the cases and to be able to compare along the standard set of data points what different cases say and how they worked out and what they have to say about jurisdiction-related issues. So that is being done by a number of volunteers from the work, and I have to say that one of the most active volunteers has actually been Mathieu Weill, our tri-Chair, and really do appreciate the fact that he descended from the Deus to do this important work along with us.

So if there are other volunteers who would like to join Mathieu and the rest of us doing that, they are more than welcome to join. Of course, those who have already volunteered are also welcome to pick up more cases and summarize them. We have picked up some new volunteers from within the subgroup already and I thank them and their names are all listed on a tracking sheet where we are tracking who is volunteering for what. I really appreciate all of those volunteers and it's important, again, to have this input so that we can operate from a factual basis as to what the experiences have been with ICANN's jurisdiction as it relates to actual disputes.

We've also put together a set of questions for ICANN Legal. Those were transmitted to the tri-Chairs and then thus the Legal, or thence to the Legal Committee, and after that, it was approved by the Legal Committee and they've now been submitted to ICANN Legal, which has... Somebody's mic volume is on their computer, computer, computer. Today, today, today. I am the luckiest, luckiest man, man, man.

In any case, the questionnaire is now in the hands of ICANN Legal. They have acknowledged receipt. They have been asked for a time in which they think they'll respond, and I believe we're still awaiting that time estimate and I know how difficult it can be to estimate the time for legal work to be done and it usually is

an underestimate, although the clients always believe it's an overestimate, but in any case, I digress.

So in any case, we're looking forward to the answers to those questions, which will provide us with another set of inputs for our work, so that brings us to the end of this slide. And next slide, please.

So as noted, we have three ongoing inputs to our work: the questionnaire responses, the litigation review, outlines, and summaries, and the questions to ICANN Legal. As a result of the need to consider these, we have reduced the emphasis on two documents that we are currently working on so that we can await the responses from these inputs and work them into these documents.

First document has the mellifluous title of The Influence of ICANN's Existing Jurisdictions Relating to Resolution of Disputes, i.e. Governing Law and Venue on the Actual Operation of Policies and Accountability Mechanisms. And we believe that the responses from ICANN Legal in particular will help improve this document.

We're also working on the first hypothetical, which we've amusingly titled Hypothetical Number One, and in that case, we are waiting, particularly, I think for responses to the jurisdiction questionnaire, but for each of these two documents, all of the

three inputs I think will further inform our work and we will, of course, be continuing a pace with this important work as we go forward.

I believe that's the last slide and that, thus, summarizes the work of the Jurisdiction Subgroup for the moment. Are there any questions?

LEON SANCHEZ: Thank you very much, Greg. So, okay, so Thomas.

THOMAS RICKERT: Since nobody wants to ask Greg questions, I have one for you. Do you speak as fast as you did now when you are paid by the hour as a lawyer?

GREG SHATAN: No. I speak much faster when I'm paid by the hour as lawyer because I'm a New Yorker, and as a New Yorker, I have to speak as quickly as possible so I actually slowed down quite a bit for this meeting, but thank you very much for the question. Anybody else have any questions? Thank you. Next?

LEON SANCHEZ: Thank you, Greg.

THOMAS RICKERT: I'm so glad we don't have translation services today.

GREG SHATAN: I wholeheartedly concur.

LEON SANCHEZ: So I see Steve DelBianco and next is Niels ten Oever, so Steve.

STEVE DELBIANCO: Steve DelBianco. Greg, I'm very sympathetic to the complexity and diversity of views you have on jurisdiction. I have attended only a small fraction of the calls but I am exhausted after they're over. The question I have is first bullet up there talks about the influence on not only operational policies, but operation of accountability mechanisms. When I went through the Bylaws Drafting Team for GNSO, it occurs to me that the operation of the new accountability mechanisms, particularly, the EC, the Empowered Community, are phenomenally complex and very new. Just Bylaws we just approved in October.

So at some point, do you anticipate going through all these Empowered Community powers and deciding the extent to which California existing jurisdiction enables or limits the exercise of those powers as well as if you changed, how would it

undermine the exercise of those powers? Because it's more than just accountability mechanisms that everybody's used to. It's not your grandfather's accountability mechanisms. These are new accountability mechanisms that take up many, many pages of the new Bylaws. Thank you.

GREG SHATAN:

Thank you, Steve, and thank you for volunteering to head up that important work of the Subgroup. Knowing that you did, in fact, do so, I will answer more seriously. Yes, I do anticipate that we will look at that, although not necessarily granularly, but as a concept. We will look at the fact that the current Bylaws contain new accountability mechanisms and that many cases, they were fashioned with California law specifically as a driver and framework for those. We can't avoid considering that issue.

STEVE DELBIANCO:

One follow-up. Should we assume that because the lawyers involved in CCWG and all of ICANN Legal and our outside counsel worked on those bylaws drafting, that when they drafted the new powers, they didn't review the old. When they drafted the new Empowered Community powers, that they did so sort of fine the California law supports the exercise of those powers. And they said nothing about how escaping California might undermine it.

GREG SHATAN: Thanks, Steve. I would have to look back at the outside counsel opinion, but we did have an opinion on how the new accountability mechanisms worked under California law. I'm not sure that they considered the issue of how they would work under any other legal framework, but one would have to find another framework where there was a sole designator concept or one would have to change the sole designator concept, which would in turn potentially change the Empowered Community and from there, the entire framework of accountability.

So there is a kind of a knock-on effect, I think, to any consideration but since our work is very much in progress, I wouldn't presuppose any particular recommendation, but I think that is an important aspect of the review, which I hope that we will get to with all deliberate speed.

LEON SANCHEZ: Thank you, Greg. Thank you, Steve. Next on the queue, I have Niels.

NIELS TEN OEVER: Thank you very much, Leon. And Greg, I would really like to commend you and the group for undertaking this journey. Being a bit of a sprinter myself, I have tremendous respect for people

who run marathons, but this seems to be or become an ultramarathon. When I talk to people who train for ultramarathons, they say that the division of your energy is crucial, and for that, you should say how much energy you spend at which time. But that importantly implies that there is an end to the marathon. Do you foresee an end to this marathon, and if so, where and when would that be?

And relatively funnily stated or maybe not, should this be part of the Work Stream 2 work or should we even break it out because we see that this might be a continuing discussion that might go on for a certain time or will we limit the discussion or will we set a chronological time or a systematical time or how do you intend to deal with this? Because I'm just getting, ooh, dazzled.

GREG SHATAN:

Thank you, Niels. Could you restate that in Latin, please? In any case, or, perhaps, with the reference to marathon, you could do it in Greek, but in any case, I do see an end. I think that we do have time now as we are awaiting these inputs from ICANN Legal, the questionnaire responses, and the legal history review to consider our work plan and to put some definition on that.

As I remarked from the floor earlier, these are specific questions and while I wouldn't say we have complete agreement yet on the scope of the Jurisdiction Subgroup, I don't believe that the

work that we have in front of us is so endless or amorphous that it would require being split out. I do think that there are many questions about jurisdiction one way or another that are not within the remit of this subgroup, and getting more clarity around the margins, if you will, I think will help us to define our work.

And I think we have tried to give a full amount of time to consideration of things, even those that may or may not be within the confines of the group's remit in order for there to be an appropriate development and for people to feel that they have had the full chance to develop their concerns, but I agree that if one can use this as the open field for discussions of anything that begins with J that it could go on forever, and that's neither the remit nor the intent of the group. Thanks.

LEON SANCHEZ:

Thank you, Niels. Thank you, Greg. We are about to hit our time limit for this section, so I have Kavouss and then Sam and I'm closing the queue with Sam. So Kavouss, you're next.

KAVOUSS ARASTEH:

Greg, I have raised this question with you several times. It's where we are, beginning of the end, or end of the beginning? Thank you.

GREG SHATAN: Thank you, Kavouss. I think we are actually at the pivot point between the end of the beginning and the beginning of the end, which I think puts us in the middle of the middle. However, I do think it is, in fact, a pivot point where we can leave behind the beginning and begin to see the end, and I do hope that we will all do that together, recognizing this is neither the first nor the last time that the words ICANN and jurisdiction will be uttered in the same room or virtual room, but that we do have important work that has been tasked to us, which we will [inaudible].

[THOMAS RICKERT]: Can we get that as a quote for the co-Chair statement?

GREG SHATAN: Oh, you may use any of my quotes with attribution and a copyright notice, and an appropriate license. I'm represented by ASCAP. No. So I will actually grant you full and complete rights as I give my time for free here. I will also give my quotes for free to our tri-Chairs. Thank you.

LEON SANCHEZ: Thank you very much, Greg. Thank you very much, Kavouss. So next in the queue I have Sam Eisner. Sam?

SAM EISNER:

Hi. This is Sam Eisner from ICANN Legal. I just wanted to follow up on the question that Steve asked earlier about the design of the accountability mechanisms through the Work Stream 1. They were actually very specifically designed to California law. If you recall, back to 2015, I believe it was, when we were going through the process of selecting counsel with the working together with the CCWG, we specifically hired two firms because one of the firms, Adler & Colvin, had specific expertise in California not-for-profits, and we used their expertise to build California-specific mechanisms, meaning that we knew that they would be legal and work within the statutory code there.

So we didn't look at any other jurisdiction as we were doing that because from the outset, we were building as an improvement on ICANN and not a move to take ICANN somewhere else.

GREG SHATAN:

Thank you, Sam.

LEON SANCHEZ:

Thank you very much, Sam. Thank you very much, Greg. And I see that there are no more questions or comments on this issue and I would like to thank again Greg and all the team in the Jurisdiction Group for their great contributions and the hard

work that you've carried out throughout these last months. So thank you very, very much.

GREG SHATAN: You're most welcome. It's been a complete pleasure.

LEON SANCHEZ: All right, so that concludes these agenda item and I would like to turn now to my co-Chair, Thomas, for the next agenda item. Thomas?

THOMAS RICKERT: Yes. Thanks very much, Leon, and this can actually be brief because this is more or less the wrap-up. And I think we can best enshrine what happened during the day if I give you an outline of what I think in going to a co-Chair statement because that should be more or less a fair representation of what we did today.

So I haven't really written the full document yet. I better leave that to experts. But I guess the points that should go into the statement are that we had a good and productive meeting today. We should specify how many attendees we had in the room and remotely. We should mention that the SO/AC Accountability first reading was successful and the major

takeaway of that document or that piece of work is that SOs and ACs are accountable to their respective communities and that there's a need to be transparent to everyone. And I guess that this was at least something that very much resonated with us co-Chairs and we do hope it's the same for you.

We gave guidance to the Staff Accountability Group for them to continue their work and we had a good discussion with Göran, Steve, and George on the roles of the CEO staff and the community and how to make the collaboration more accountable. We agreed that there will be a pilot for collaboration with the Staff Accountability Subteam and the goal is to see whether systemic improvements can be achieved in the course of that work.

The CCWG discussed how to best finalize its work and it will do so by issuing reports by the subteams for public comment and improve them as they get ready, and there will be one final public comment period only to ask for comments on inconsistencies between the various individual reports. I guess that's brand new because so far, we haven't gone public with a view on how we think we can wrap up our work.

The CCWG will reach out to the chartering organizations to recommend the same staggered approach to them for approval. The groups made progress, yet it is certain the group will not

finish its work by June this year and extend its work beyond the end of the fiscal year 2017. The discussion on carrying forward resources to the next fiscal year has been initiated, but it is expected that the CCWG will stay within the budget initially proposed.

So basically, what we are asking for is that we just spread the budget that we are responsible for beyond the end of this fiscal year. And I guess that's an important demarcation because our budget, the budget that we can control, for example, does not control cost for staff. That's somewhat different. And also, you might remember and we've discussed this during one of our last plenary calls, we have arrangements with ICANN. We have agreements on how we can reallocate individual budget positions within our budget. We don't need to ask anybody's approval for that, but what we haven't considered at the outset of this is whether we can take money that we did not spend to the next fiscal year. And what we heard from Göran today was quite encouraging. There will be a way likely to do that but I think we should be transparent with the community that we're going to do it that way.

So I think that's pretty much my summary. Did we miss any important topics for the co-Chair statement? I don't see any hands in the Adobe. Maybe by now, everyone is quite exhausted except for Sébastien.

SÉBASTIEN BACHOLLET: Yes. I was a little late when the discussion about how we will produce our work, but I would like to link with the presentation of the topic about the Complaints Offices and maybe you can add in your summary that overarching issue, not just to be sure that there are no differences between single document but they could, we could have overarching issue to take care of the last moment in the final report. Thank you.

THOMAS RICKERT: I'm coming to you after the meeting. I'm not sure whether I accurately captured it. I need to discuss it with my colleagues. Okay, but that's understood.

I think one of the takeaways of today's meeting is that we need CCWG beanies and scarves because it's so cold in here. I'd like to thank all of you for your attention for being here, for being so active. Our excellent staff I would like to thank. I'd like to thank the remote participants in particular. We actually folks that were with us all these hours and you know how hard that is to follow remotely. And I'd like to thank my fellow superstar co-Chairs, Leon and Mathieu. So enjoy hopefully successful ICANN 58 and see you soon.

[END OF TRANSCRIPTION]