
ABU DHABI – Cross Community Session: Jurisdictional Challenges for ICANN

Thursday, November 2, 2017 – 13:30 to 15:00 GST

ICANN60 | Abu Dhabi, United Arab Emirates

THOMAS RICKERT: Can I ask all of you to be seated? We're going to start this session in a moment. Great. So can we have the recording started?

Awesome. Thank you. Good afternoon, everyone in this room. Good morning, good afternoon, good evening for the remote participants.

My name is Thomas Rickert with ECO Internet Industry Association, and I'm one of the CCWG co-chairs, and I would like to welcome all of you to the cross-community jurisdiction session. Before we move on with the presentation and discussion, let me just briefly explain to you how we're planning to structure the debate.

To start with, Sam Eisner from ICANN legal will speak for a little bit and then we're going to have two distinct sections of our panel where in the first one we're going to discuss the CCWG accountability Work Stream 2 jurisdiction recommendations. That part is going to be moderated by myself, and the second

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part will be a discussion on broader community concerns based on application of laws of ICANN's place of jurisdiction, and that will be moderated by the gentleman to my right and that is ambassador Benedicto Fonseca Filho who is the Brazilian GAC representative.

Let me also introduce you to the members of this panel. The first panelist which you can't see here is actually a remote panelist. That's Greg Shatan. He has dialed in and he will participate by phone. He's the Rapporteur of the CCWG jurisdiction subteam. We see John Laprise, Farzaneh Badii, David McAuley and Milton Mueller. I suggest the panelists introduce themselves in more detail as they go to the microphone for the first time.

Let me now turn to Sam. I was going to address the audience with a little introduction.

SAM EISNER:

Thank you, Thomas. This is Sam Eisner, ICANN legal. I just really want to --

[INDISCERNIBLE]

-- the participants today.

[INDISCERNIBLE]

I'm back over to the panel so you can start your discussion.

THOMAS RICKERT: Sam, excuse me. You're very hard to hear. You're breaking up and we can't even get things through the transcript or the live captioning because it says "inaudible."

Is there anything that the tech folks can do about the quality of the line?

Sam, I understand you're on a cell phone. Is there any possibility for you to use a land line?

AMY STATHOS: Thomas, this is Amy Stathos, also from legal. Sam wanted to say thank you for letting her participate today. This was something you already started so I think we're good to go to begin the discussion.

THOMAS RICKERT: Amy and Sam, sorry we couldn't hear you to be part of this debate. Then we can move to the first discussion item and that is me giving you a little bit of context of where we are in the CCWG process.

For those who are not too familiar with ICANN's acronym soup, CCWG stands for the Cross-Community Working Group. In this

case, it's the CCWG that seeks to enhance ICANN's accountability. We have worked on a lot of subjects in preparation for the IANA transition. We have areas still left open that are not directly related to the transition, but were still important components for cohesive and comprehensive accountability architecture for ICANN. And that is topics such as diversity, transparency, SO/AC accountability and more.

One of those subteams was the jurisdiction subteam. And this group has produced a report that includes two recommendations. And the way we're operating in the CCWG is that the subteams produce recommendations. They go through public comment and they are also vetted by the CCWG plenary. So the status of the report is the subteam has produced two recommendations. The plenary has adopted the subteam's report and that report is going to be published for public comment in the next couple of days.

The recommendations that we have on the table deal with OFAC sanctions and with ICANN's applicable laws for the RAA, either the registry agreement and the registrar accreditation agreement. So in order to give a little bit of detail for what these include, I would like to hand it over to Greg to please make a quite concise, give us a quite concise overview of the contents of these recommendations, which in the report are quite wordy, so I recommend you go read that. But Greg is going to give us a

flavor and afterwards we're going to open it up for comments from the panel. Greg, over to you.

GREG SHATAN: Thank you. This is Greg Shatan. Can you hear me okay?

THOMAS RICKERT: We can hear you all right, yes.

GREG SHATAN: Thank you. So with regard to the recommendation in our report, they fall into two categories. Those relating to OFAC and those relating to choice of laws and venues. The OFAC recommendations include, first, I'll be very concise in this regard. First is ICANN needs to commit with regard to potential new registry applicants. First, I'll start with registrar accreditation agreements for applicants. For applicants that are seeking to become registrar, that with regard to OFAC licenses, ICANN has to commit to using best efforts to apply for and OFAC licenses for any registrant that is affected by sanctions. And that, furthermore, ICANN needs to be transparent and communicate regularly with regard to the process and progress in securing that license.

Similarly, for future new gTLD registry applicants, ICANN would also permit to using its best efforts to apply for and secure OFAC licenses and to be transparent and helpful in the process, particularly for new registry applicants. We know that it was difficult to negotiate the process.

So in both of these cases, this would require strengthening language that if you're respectively in the terms and conditions for the application to become a registrar and in the applicant guidebook.

Third recommendation with regard to OFAC relates to the general license. The general license offers classes of entities or persons and types of transactions rather than covering particular transaction and a particular persons involved in a single transaction. So basically it's a wholesale permission, once even look at it as a form of immune at this from OFAC for an entire class of transactions involving types of person.

So the recommendations there is that ICANN should, as a priority, study the cost benefit, timeline and process for a general license. A general license is a form of regulation, so this would require working with the OFAC in the department of treasury which is where the OFAC resides within the U.S. government structure to introduce and make effective that regulation.

And if the study reveals -- sorry. If the study does not reveal any serious obstacles through that process, then ICANN should go ahead and go through that process to get the general license.

If ICANN is unsuccessful or if there are serious obstacles, then ICANN needs to explore other methods for reducing friction with regard to getting a general license or otherwise assisting in completing transactions involving individuals and entities that are subject to sanctions.

So that is the first step. I'll pause there and see if Thomas has anything to add.

THOMAS RICKERT:

I would suggest that you proceed briefly describing the second recommendation and then we take comments on both. Thank you, Greg.

GREG SHATAN:

Thank you, Thomas. I'll proceed. First with regard to choice of laws in registry, based registry agreements, currently the registry agreement has no choice of law provision. They're silent, the governing law or the agreement.

So here we suggest that ICANN adopt a menu approach which would present a series of options to ICANN and to the individual

registry that is entering into the registry agreement. There's a process for amending the registry agreement and we recognize that we can't override or supplant that process, so this is a recommendation that would need to be enabled by going through that process by the parties that are part of that process, which would be I believe ICANN and the registry.

So the menu option would include one country per ICANN geographic region or could include several countries per ICANN geographic region. It could also include the country of the registry's DOM file. It could include California and United States law and it could include the status quo, which is no choice of a law provision.

We consider this an implementation issue or at least an issue that would come in the further phases, so we don't have a specific recommendation as to what the menu should consist of, but we do believe that the menu approach is the one that has the support of the subgroup and now the plenary after the face-to-face meeting.

Similarly, for the registrar accreditation agreement, a menu approach could also be adopted following the same -- the process that is necessary to amend that base registrar agreement.

Next, with regard to choice of venue, there is similarly the recommendation that a venue menu could be adopted, noting that right now the registry agreement called for arbitration with a seat in Los Angeles, California. That instead there could be a menu with options for other potential seats.

In any regard, we would continue, I believe, with ICC arbitration, but the seat of the arbitration influences the *lex arbitri*, that is, the law applied within the arbitration, so it is important to consider having options there as well.

So I think that covers the recommendations that were made.

I'll turn it back to our chair on the circuit.

THOMAS RICKERT:

Thanks very much, Greg, for this comprehensive overview of the recommendations.

I should note that when we did our consensus call in the plenary, there were a few objections amongst -- from the Brazilian government against the report, so that's for full disclosure. Still, we have been able to proceed as our group works on the basis of rough -- of the rough consensus definition, so we didn't have substantial opposition, despite a handful of objections that have been made primarily by government representatives.

Now that we've received an overview of the contents of the recommendations, let me turn to the panel and ask for comments on, you know, do you actually think this is an improvement to ICANN's accountability, or do these recommendations not fulfill your expectations with respect to what could or could not have been achieved in this group?

Let me go to Farzaneh Badii first.

FARZANEH BADI:

Thank you, Thomas.

For a long time, dare I say since the inception of ICANN, the real issues that some face Indian is because of ICANN's jurisdiction were not discussed at ICANN. We got the chance to discuss them at the WS2 jurisdiction subgroup. These issues relate to day-to-day problem that domain-name registrants and other DNS customers face in countries sanctioned by the U.S. Arbitrary cancellation of domain names by some registrars has affected the registrants.

Also, it is extremely difficult to become a registry or a registrar if you are from sanctioned countries, and ICANN stated that it was under no obligation to request a license.

Participation ICANN is affected as well because of ICANN jurisdiction. DNS training might not be available to some countries that U.S. impose sanctions on them.

The recommendations of the subgroup can help resolve these real issues that DNS customers are facing due to ICANN's jurisdiction. The jurisdictional issues that we discussed in the subgroup are real and are not abstract, nor conceptual.

When we discussed these jurisdictional issues, we did not intend to fight with abstract notion of imperialism. We looked for solutions for real problems, and I do believe that the recommendations of the subgroup address these problems.

THOMAS RICKERT:

Thanks very much, Farzi.

John, would you like to be next?

JOHN LAPRISE:

John Laprise for the record.

I agree with Farzi on this, that the recommendations do advance the goal of improving jurisdictional responsibility within ICANN.

For our part, we have to recognize that -- and this goes to the question of some of the -- some of the comments in the discussions dealt with jurisdiction and sovereignty.

For our part, we think that ICANN is, at its base, a legal institution. It requires a legal environment to exist within. Choosing a jurisdiction, we're sort of stuck with what we've got for now. And we're content with the current choice. This addresses and mitigates the problems with the current jurisdiction, and we're satisfied with this as an initial first step to address these problems.

Thank you.

THOMAS RICKERT: Thanks very much, John.

David.

DAVID McAULEY: Thank you, Thomas.

David McAuley speaking here. I am speaking in my personal capacity. I'm also the designated member to CCWG.

To try and answer your question directly, Thomas, is this a step forward in accountability measures, I believe that the two -- the report and the two facets of the report could be -- and I'll speak most directly to the menu option or the governing law clause issue. What I'm getting at there is it could -- the results of this particular recommendation could affect how the governing law

clause and registry agreements and registrar agreements is fashioned. And that could lead directly to how the contracts are interpreted and enforced, and so that could indeed have some impact on accountability within -- within the ICANN context.

This all, by the way, is very consistent with the remit that we were given. And for those who are interested in annotations, our remit comes from the final report of the CCWG Work Stream 1, specifically annex 12. There are seven short paragraphs in there about jurisdiction that would give you the context that we worked in, and those were then later represented in Article 27 of the bylaws, and it was my reading -- and I will state right up front that there were different readings of this, but it was my reading that a remit was pretty much directed at trying to sort out dispute resolution questions and making sure that the accountability mechanisms that we fashioned in Work Stream 1 could, in fact, be enforced. And so I think the menu option or the governing law clause proposal makes great sense, and I think it will move the accountability forward.

With respect to the OFAC recommendation, I take what Farzi said -- and I understand the passion, and I think the results of that were good. And I think it's good to state -- I was basically in listening mode when it came to that particular recommendation because I'm not an expert in OFAC and not aware of the issues, but I understand there are issues. I think the recommendation

was fashioned quite well when it said this is on a best-efforts basis. ICANN, you have to report back and speak to progress and results can't be guaranteed.

I think that makes great sense, and so I'm very happy with the outcome in that respect. I think they could move the accountability ball down the field.

Thank you.

THOMAS RICKERT:

Thanks very much, David.

We have 17 minutes left for this part of the discussion. So we will hear Milton now, and then there's a question from a remote participant, which we're going to read out, and I think that question was directed at Greg.

And after that we're going to open it up for comments and questions from the floor. So please get geared up, microphone is in the middle corridor. You can make yourself heard.

Milton.

MILTON MUELLER:

Yes. Well, as you know, the jurisdiction subgroup was sort of a compromise to put jurisdiction issues in Work Stream 2 was perceived as a way of deferring issues that might be too complex

and long-term to have been resolved in the context of the IANA transition. And there were some issues in the early part of the formation of the jurisdiction subgroup in which some people might have tried to narrow down the scope of the work of the jurisdiction subgroup to the vanishing point, and I think that created some suspicions which may have led to some of the later dissent around the final recommendations.

But I think it's pretty clear that the recommendations themselves are perceived as good steps forward by almost everybody. I think Farzaneh has explained why the OFAC sanctions measures are needed and why they're extremely important. I think it's probably the most important step forward, in terms of neutralizing any potential accountability bias coming from U.S. jurisdiction because it allows people that the U.S. Government doesn't like to continue to have access to the DNS.

I personally have no opinion about the choice of law provisions. It's not something that I feel I have any expertise in and it's really a matter for the contracted parties to work out. I can see both sides of the argument, that the status quo is fine, that California law is all we need for the contracting base. But I can also see how a choice of law in different regions would be a good way of creating the kind of benefits that David was referring to. So I

think I'm happy with the recommendation. It seems like the people who are directly affected are okay with them.

THOMAS RICKERT: Thanks very much.

Can I ask for the remote question to be read out?

REMOTE INTERVENTION: Thank you.

We have a question from Esther Flynn: Why do OFAC sanctions apply to ICANN very directly?

THOMAS RICKERT: Thanks very much.

I think that Greg volunteered to respond to that.

So over to you, Greg.

GREG SHATAN: Thank you. Greg Shatan for the record.

The reason that OFAC sanctions apply to ICANN is that ICANN is incorporated in the state of California in the United States, and as a U.S. corporation it is required to comply with OFAC sanctions. It's really no more complex than that.

I would like to briefly mention, as I've stated in the chat, that there was one recommendation I did not directly read out. I'd like to do that quickly now, which is noting that some non-US-based registrars might be applying OFAC sanctions with registrants and potential registrants on the mistaken assumption that being in contract with ICANN requires them to comply with the OFAC regulations. Also, some registrars might be cutting and pasting U.S. registrars' registrant agreements and using it with their registrants and those registrant agreements would have OFAC clauses in them, which would not be appropriate for a registrar that had no U.S. context.

We recognize that neither ICANN nor the subgroup should be providing legal advice to registrars, so the recommendation is that ICANN first inform registrars specifically that merely being in contract with ICANN does not require them to comply with OFAC and, second, to encourage registrars to be aware of the laws with which they need to comply and to make sure that any interactions and agreements with registrants reflect those laws.

There were a number of specific situations discussed that related to this, but the overall point is covered in this recommendation.

And thank you.

THOMAS RICKERT: Thanks very much.

Do we have any further remote questions? Please.

REMOTE INTERVENTION: We have a follow-up from Esther Flynn, saying: Is it only through OFAC that U.S. jurisdiction may meddle with ICANN?

THOMAS RICKERT: Anybody from the panel inclined to respond to that?

So the question is: Is it only through OFAC that U.S. jurisdiction may meddle with ICANN?

MILTON MUELLER: Of course not. There are broader questions of jurisdiction which we'll get into in the second part of the panel. I think we'll discuss that then.

THOMAS RICKERT: Let's park it for later.

Are there any questions, observations, comments from the floor? There that doesn't seem to be the case, so let me give you the opportunity --

So we don't have a specific recommendations as to what that doesn't seem to be the case, so let me give the opportunity to the panelists to make some final remarks after they heard their colleagues speak.

David, please.

DAVID MCAULEY:

Thank you, Thomas. It's David McAuley again.

I just want to make one comment in response to something Milton said, and then just make one general statement about where we went in the group so people have an understanding of what -- how we arrived at these. And in response to Milton's comment where he commenced the contracted parties, I should have stated when I made my initial comments that I was very much a partisan in the discussion about governing law clauses. I was much a partisan for a status quo. That is the position that I thought made most sense because the registries, the registrars, and ICANN, who currently negotiating those contracts, are the ones who are in the best position to make that judgment. They have real street-level experience with what -- what this -- how this works, what it means, and what are the implications.

And so as I push that, ultimately that position was not adopted, but there were changes made in the recommendation about the

menu option that give a role to registries, registrars, and ICANN. And so I can support the compromise.

I wanted to say that. But I also wanted to let the audience know just how we -- we arrived at the conclusions we did, because we spent over a year doing this, and we made some examinations that I think are pertinent and should be understood.

One is we developed a questionnaire to be released to the public, and we harvested the answers that we got and we considered them. And that questionnaire said, you know, how has ICANN's jurisdiction affected you and your experience with using domain names?

The other thing we did is we examined what are called the layers of jurisdiction, the governing -- you know, the governing law of contracts, the governing law where ICANN is located, the governing law much ICANN's physical presences, because we just had a question about U.S. jurisdiction. ICANN has offices around the world, and there are other jurisdictions that have an impact on ICANN. We examined that. We examined meaning NTIA requirements. And these various levels we went through and they informed our work.

We also did an examination of all of ICANN's litigation, recorded litigation, and saw what were the arguments, what were the outcomes, what were the impacts.

And then finally we created this issues list that boiled down to these final two.

And so I thought it was a year's worth of intense, sometimes uncomfortable but good work by a group that was interested in this important topic.

Thank you.

THOMAS RICKERT:

Thanks very much, David.

Now, in conclusion, Farzaneh mentioned that the OFAC recommendation in particular had real impact on real users. So this is not just theoretic -- theoretical threat. And I would like to do a comparable thing for the choice of -- the menu option, because I do know first-handed from companies that are offering services that they had prospect TLD applicants within the new TLD program that finally stepped away from actually filing their applications because they could not deal with this U.S. legal language in the contract, although those contracts don't have a choice of law clause in them.

And thereby, although it's not a perfect solution, and although ICANN can't possibly offer contracts for every jurisdiction that we have in the world, the menu option with -- as we recommended one contract per world region or per ICANN

geographic region is at least a step into the right direction to make ICANN's approach to contracted parties more inclusive at the global level.

So unless there are further questions, of which I don't see any at the moment, I would like to thank you for your interest in this first part of the discussion and hand it over to my fellow co-chair moderator for this meeting, Benedicto.

Over to you.

BENEDICTO FONSECA FILHO: Thank you, Thomas, and good afternoon, everyone.

As we move to the second part of the discussion here today, the title of which is discussion of broader community concerns based on application of laws of ICANN's place of jurisdiction, we originally proposed this session but not the title that refers to broader community concerns.

I'd like, of course, to hear from the community what could be those broader concerns, but on our part, we have one very specific concern, and this is one which we would like to address and have feedback and maybe engage in some discussion. Also benefiting from the panelists that participate in the first phase, but certainly could enrich our discussion for that part.

So if I could just briefly refer to the first part of the discussion, because I think it's important to link with what I'm going to say. We understand that the -- the subgroup on jurisdiction prepare this draft report that is being submitted to the community with two sets of recommendations. And those recommendations, as we have been hearing, provide for practical steps that could be taken to further improve and to address particular issues.

We are not against that. On the contrary, we think those two sets of recommendation are very useful, very helpful. I'd like to acknowledge the tremendous amount of work that was invested in this through the work group, through so many hours of work and expertise that was involved.

So one point I would like to make is that we would be prepared to support those recommendations. The reason why we are not supporting the recommendation, that we have a dissenting opinion, is that the ground rules that guided our exercise implied that if we support recommendations and, therefore, we support the reports, it means that we are condoning the idea that it's over; that the discussion on jurisdiction is encompassed and addressed by those two recommendations. So -- And that's the reason why we oppose. It's not that we are against the recommendations. It's because we think they are not sufficient to meet our basic concern.

And this basic concern, if you allow me to say, was present from day one of the first phase of transition. I recall not only Brazil but other countries, I'll not name them because this -- but if you go to the record, you will see there were many expressions of concern. And the expectation that through the transition exercise we would address not only the issue regarding the U.S. government's unilateral oversight over ICANN, which is something that was completed last year, we know, and which we applaud. The Brazilian government has expressed its very sincere appreciation of that, and we think it was a very important initiative on the part of the U.S. government. However, we -- simultaneously, we expressed our understanding that this is part of what should be done but another important part would also be to address the unilateral jurisdiction exerted by the U.S.

So we are not talking about the U.S. government's oversight role. We are talking about the fact that the way ICANN is incorporated under the U.S. jurisdiction law -- and this was done unilaterally and this was not addressed throughout the transition process -- is something that still is the context we are in today. That this single fact also has implications especially from the perspective of governments that participate in ICANN.

In that regard, I would like also to comment that the approach we take to what we do in ICANN, we consider ICANN is a unique

place, a unique environment, but it's not dissociated from the rest of the Internet governance system or the rest of the international environment at large.

So we understand -- and I should be very cautious about this because I understand different governments take different approaches, and they are prepared even to allow and to validate a way of participation in ICANN that does not address that issue that some of you may think is very abstract that is the sovereign equality among governments.

But our government has taken the approach that what we do in ICANN should also be consistent with what we do elsewhere. You may recall that Tunis Agenda calls for governments. When it refers, for example, to enhanced cooperation, that the enhanced cooperation should be there to allow governments to carry out their responsibilities on an equal footing. So on an equal footing among governments is something that is very dear to us. We do not see it in ICANN. We thought that could be addressed through the jurisdiction talks.

So this is the main reason why we dissented, because we want to highlight this concern that was not adequately addressed. It does not mean that we are opposing the substance of the report, but we think it is insufficient.

If I can just also comment what our dissenting opinion is not. So it is the concern. It is not an attack on the multistakeholder model. I'm saying this for clarity because sometimes our position is confused and misinterpreted, and I think it's important to state that our concern relates to what takes place among governments in the multistakeholder model; does not have a bearing on how governments relate to other parts of the community. So we are concerned about how governments in the stakeholder model can have the even conditions and be on an equal footing.

And it is not intended to move ICANN headquarters away from the U.S. Sometimes also there is a confusion and people mix or proposal, say so you want to take ICANN out of the U.S. or you want to think about an alternate jurisdiction and tell us what is alternate jurisdiction. So I think this is not the point. The point is we accept fully what was done in the Work Stream 1 phase. So it is understood that ICANN should remain headquartered and the U.S., and the California legislation should be accepted by default as the legislation. However, in previous discussions, especially in Johannesburg, we had that kind of package understanding that we could consider that this would be the basic conditions under which we would operate, remain headquartered in the U.S., U.S. -- the California legislation by default, but we could explore partial immunity. That would give

particularly countries like my own and maybe others the comfort to operate in an environment which would not be in a diminished position towards others. That might seem maybe a little bit abstract or even not practical to some, but I would say from the perspective of government, at least from my government's perspective, that is the foundation for relations among countries.

So again, we are talking about an environment that is unique, but in which we do not want to set the precedent that is, I would say, very negative towards government. And again, I refer to the ground rules that were there. There was no flexibility to allow for a situation that we could accept the recommendations and express our concerns in a way that would, let's say, indicate that there would be some process to address. It was either -- It was very black and white. That's why we were stuck that kind of position.

So you'll excuse me for this very long introduction, but I thought it was important, maybe, to frame our position, to have it very clearly spelled.

We (indiscernible) the work that is being done within ICANN. Brazil, the Brazilian government fully embraces the multistakeholder concept. We have been adopting it in Brazil for more than 20 years. We had the multistakeholder model in

place in Brazil ten years before the WSIS conference. So before the concept was there, except that we were already practicing it, and we still uphold it.

So our concerns should not be interpreted as being something against the model but something that seeks to interpret it, insert ourselves as government in the model in a way that is consistent with what we do elsewhere.

So we'll look for a way maybe to address that situation that could allow us to -- to endorse and to go along, not to stop but to be -- to have any kind of negative assessment on what. But at the same time, we'd like to have that kind of concern expressed.

Sometimes we are told that it is not realistic, it's not politically viable to do it, and maybe there are ways to address it, thinking about something that would entail a process, that would not be some short-term goals.

If you allow me just to make a comment that sometimes I think in ICANN there is a problem. We try to address complex things. We try to come to quick fix to very complex issues. I take the point that was made by Professor Mueller that Work Stream 2 tried -- Work Stream 2 addressed an issue that was too complex and too burdensome to be addressed in Work Stream 1. But again, that was done in a very limited time frame, limited resources, limited scope. So I -- I would say maybe it's also not

realistic to think that you can fix very complex things through processes that have very, if you allow me to say it, artificial deadlines. There is no reason we cannot extend the discussion on this for some more time and to mature things and to let even the political environment to be -- or at least to have that kind of goal, that even if we cannot achieve on the very immediate horizon, it's something that should be there.

So this is, I think, part of sometime the challenges we experience in ICANN, trying to fix things in a very quick way, and we are -- but again, we are ready to contribute, to remain engaged, and to contribute to the extent we can to improving the model and to improving the environment under which we work.

So with this, I'd like to turn now to, I understand, for the panelists and then we go to the public.

I have previously before the session the indication that Professor Mueller would like to speak, but maybe first I can give the floor to Greg Shatan as the rapporteur of the subgroup, and then I will turn to Professor Mueller and other panelists and they'll take the floor.

So Greg would like to take the floor at this point in time.

GREG SHATAN: (Indiscernible) and thank you for the excellent introduction to this portion of our discussion. I think that point out that this is a --- and also that there were very strongly held views by many from all perspectives in the subgroup. And that even the most -- even a single sentence, one could ascertain (indiscernible) of view. For instance, in the end of the first section, we had a question that is OFAC the only U.S. government to meddle with (indiscernible). That is, of course, not a neutral (indiscernible).

BENEDICTO FONSECA FILHO: Excuse me, Greg. We cannot hear you very well, although we have the transcription I think is taking care of that. But maybe you could try to -- maybe to speak louder or I'm not sure what technical aspects would be improved but please go on.

GREG SHATAN: Thank you. I'll see if this is any better.

It seems to be an echo in the hall. So, in any case.

The point I was making is that by looking at the U.S. government as an active meddler in ICANN, one implies that OFAC was aimed at ICANN, which it was not of course, and also that we have -- that what the government -- that ICANN -- that the U.S. government, rather, can -- is actually, you know, taking an active

role with regard to its regulations and its courts in steering ICANN.

Another view is that OFAC is a general set of Regulations and that ICANN, in fact, has always succeeded in getting licenses, and that there's never been any process by which the U.S. government has actively enforced OFAC sanctions in particular against ICANN.

And the -- There's also the view that the community which is discussed quite often is the enemy of accountability, and that whatever we try to accomplish, we need to look carefully at the reality and the plausible fact of what ICANN's situation, being situated in the United States, means at this point in time and in the future and be able to look again at this with as much of a realistic viewpoint as possible. In particular, and I'll wrap up, the U.S. courts provide a forum for private parties to hold ICANN accountable for any and all of its activities.

And that -- I think the question there is whether having the U.S. as a forum, and it is possible for ICANN to be sued elsewhere, but having U.S. as a forum and admittedly the main forum for seeking such recourse and accountability of ICANN is problematic. And how one allows for all of those third parties to continue to hold ICANN accountable, and of course one of those third party assist now the empowered community, hardly a third

party, but one where the ability of both the empowered community and hierarchy complainants to seek to enforce in the United States courts or in a court these rulings was an important achievement of Work Stream 1. With that, I'll turn the microphone back. Thank you.

BENEDICTO FONSECA FILHO: Thank you, Greg. I think although we could not hear too well but the transcription made it for us. Just before I turn to professor Mueller, may I comment that one thing that is truly recognizing and is to the credit of the U.S. government is that the U.S. government has had over the years, this is our assessment, a very benign treatment towards ICANN seeking to interfere the list in its operation. This is something that is duly acknowledged. However, just like to reiterate the concern, it's not about the single government. It's more about how the symmetrical relationship and conditions of operation among government that prevail under ICANN. And one thing that defers the present phase we are in from the previous pretransition period is that before we worked on the rules that were unilaterally established. No one was asked or invited to comment or to endorse. Now we're moving into a phase which we're called to be a participant of the framing of the new condition and to endorse it and to validate it. So it's kind of a different threshold we're talking here. Maybe from the

perspective of the U.S. national, it might even be difficult to understand why, from a foreign perspective, having the resort to U.S. court or resort to -- is not sufficient. That we want to make sure there is some kind of more agreed framework. The agreement can be even to defer it to the U.S. and to ask the U.S. courts, because at the end of the day, anything has to be anchored in one single jurisdiction. This is understood. But how we get there and how we have it in a way that addresses everyone's concern and meets everyone's agreement, I think this is the point we have not reached that. Sometimes when I hear the discussion, it seems to me that from the perspective of U.S. nationals, I think some people cannot even understand why we do not -- we're not satisfied with the fact that by the end of the day we can resort to U.S. courts as a default solution.

But let me --

THOMAS RICKERT:

Can I get in briefly, just for the scribes. The previous statement has been made by Benedicto. As much as I find flattering his eloquence attributed to my name, I think he deserves to be correctly reflected in the transcript of this meeting. Excellent. Professor Mueller.

MILTON MUELLER:

I think we can move the discussion forward at this panel. And rather than hashing over what went wrong or disagreements or misunderstanding. Really Benedicto or Brazil, whichever personification he wants to adopt at the moment, is raising some very, very fundamental issues and I hope we can engage with them. From my point of view, we had always opposed unilateral U.S. control of the root, and we conceived of the transition as a move towards what I like to call popular sovereignty in cyber space. That is, we're not creating an intergovernmental organization. We're creating, in effect, cyber space's own jurisdiction. That to us was the driving motivation for the transition.

Now, we of course eliminated U.S. control of the root, but ICANN as a corporation, as an entity has to be rooted somewhere in some kind of law. So the idea of any of us was California is as good as any, but there still is, in fact, this possibility that the U.S. government will regulate ICANN. I mean, there's nothing stopping, let's say, a bipartisan majority of the U.S. Congress from passing a law tomorrow that says ICANN must force all of its board members to wear red shirts, just to choose a completely innocuous and stupid example.

So there is -- ICANN is not entirely eliminated from U.S. jurisdiction and it may not even be possible for that ever to happen. And also we know that wherever it's located, there's

going to be a government there that could choose to regulate it or interfere with its operation.

So how do we deal with that?

Well, the idea of immunity was, in fact, floated or some kinds of partial immunity were floated during Work Stream 2, during the subgroup. The problem with that was not so much the idea of immunity itself. The problem was that there was no viable model for achieving it. And you have to be very careful with the concept of immunity because in a traditional context of international organizations, immunity frequently means immunity from accountability. And since we were trying to make ICANN accountable, many of us were concerned about the concept of immunity as possibly releasing ICANN from the kind of accountability to basic forms of law that we want it to have.

So I would think that, to take this discussion forward, we have to think very carefully about immunity. Oh, the other aspect of immunity that was discussed was the international organization's immunity act within the United States. And for reasons that I made clear on the list, we thought this was a pretty bad idea because it would effectively be ICANN going to the U.S. Congress and asking for permission to exist in effect and asking for permission as to what kinds of immunities it would have.

And in the current climate, we think that would, in effect, be reversing the transition. It would be putting it under the control of the U.S. government once again.

So, I think what Brazil seems to be asking for is a continuing discussion about how to make progress on immunities, and I see no problem with that. I know that probably some people out there who are rolling their eyes and think we just had two years of transition and another year of Work Stream 2 and now these guys want to continue talking about this for another year or two, but, you know, I think if there's a group of people who want to come up with a viable plan for immunities and then take it to whatever entities such as the board have to adopt it or to the community as a whole, I don't see any downside in that.

As one important aspect of the jurisdiction debate that has not been mentioned before and it just hit me the other night, that this has to be introduced into the discussion. So during a transition, IGP, my organization, was a big advocate of separating the IANA from ICANN and having a contractual relationship between three parties and an independent PTI. As you know, we didn't quite get there. We had a partial sort of separation. Think about it this way. This is relevant to the jurisdiction debate because if the U.S. government goes crazy and starts doing bad things to ICANN, that option would create the possibility to move IANA out of the United States or away

from ICANN and the community would have to support this of course, but it's not an irrelevant factor when we're talking about a check or a balance regarding jurisdiction.

So let's remember that. So again, just to summarize, let's continue the discussion on immunity. Let's set up a separate cross-community group. Let's make sure it's cross-community and not governments. And I hope that people will see the value in that.

BENEDICTO FONSECA FILHO: Thank you, professor Mueller. Let me shortly comment and I hope I won't be seeing as abusing my position. The proposal to have the partial immunity was always trying to take into accountability measures. So except for some -- we're concerned that accountability measures should be there to make sure no accountability was lost.

And if you're saying there's no viable option, no viable proposal, one of the reason is that in the context of the subgroup, at least there was no traction to have a discussion on this. There was no legal opinion, no studies. I think it's fair and not challenging the process. I'm just saying that's a fact that the subgroup could not further investigate and explore and prepare a viable proposal. That's one of the reasons there's not any -- something more concrete. We could have (inaudible) right to develop. We

thought it would be important to develop it in a multicultural environment. Not only government but we could have tried to come up with something but we would prefer to do it together with the community.

May I ask the other panelists -- yes. Can go on, please.

FARZANEH BADI:

Thank you, Benedicto. There was a question that was asked in the previous segment that asked if OFAC sanctions are the only jurisdictional problem. It is not. And the other problem that we faced was once a plaintiff had to monitor a judgment against the state of Iran and they had a U.S. monetary judgment. So they went to court and asked the court to enforce this monetary judgment by attaching that IR the ccTLD of Iran to the plaintiff. And this created a lot of agitation in the community and especially within the community -- Internet users in Iran and they felt that they are going to lose all the data domain names. This was due to U.S. jurisdiction. It was because of certain laws that the U.S. has on Iran, and we brought this up and we reported this issue at the jurisdiction group. But we were told that this is an issue related to ccTLDs and it should be discussed at the ccNSO.

I would like to remind that they would like to discuss this issue. The other thing on the partial immunity. It's not that we reject

the idea. I even said that we support looking into it. It was under this group it was not feasible, but there is a paragraph in the recommendations already that says, and it was recommended by a GAC member, that says we should look into impartial immunity.

So I think support for these recommendations to go through is really needed for the benefit of people and residents of these sanctioned countries. Thank you.

BENEDICTO FONSECA FILHO: Thank you for your comments. Yes, David, you have the floor.

DAVID MCAULEY:

Thank you, Mr. Ambassador. I find the idea intriguing. Something that Milton mentioned strikes me. That is the concept of accountability and the concept of immunity seemed to be intention. So after three years of developing the mechanisms to hold ICANN accountable, it strikes me that the concept of immunity could be quite dangerous and that it could undermine some of that.

So I heard when we were recently discussing this in the subgroup, I heard one approach might be, let's discuss immunity with and then list exceptions to protect the DNS. I think that approach also might be flawed because it's almost --

it strikes me as humanly impossible to imagine the exceptions that would be needed.

So all I would say about this particular impetus is that we should recognize that tension and how demanding this kind of work would be. And two, recognize that ICANN cannot effect its own immunity, it can merely make recommendations in that respect. So those would be my observations to your proposal. Thank you.

BENEDICTO FONSECA FILHO: Thank you. Yes. John.

JOHN LAPRISE:

John Laprise. I want to echo Milton's comments. We're in agreement with him completely.

I'd also add that we're somewhat skeptical of the idea, though, that even limited immunity might be achievable. When we look around the world, we're skeptical that other governments in a similar situation would be likely to grant an organization like ICANN kind of limited immunity. So we are -- we look forward to further discussions, but we're -- we have guarded expectations.

Thank you.

BENEDICTO FONSECA FILHO: Thank you.

Are there any remote participants? Otherwise -- yes, yes, please, go ahead.

REMOTE INTERVENTION: Thank you. We have a question from Esther Flynn. Why would it not be realistic to try and obtain ICANN's immunity protecting its global functions from domestic law interference? And is it more realistic that it will be obtained immunity from OFAC sanctions?

And Greg has his hand up in the Adobe Connect room.

BENEDICTO FONSECA FILHO: Would anyone like to respond to that?

So I think the question relates to -- and I think this was raised in the list somewhere, why would the OFAC set of recommendations be more realistic than the idea of partial immunity in a comprehensive way.

Would someone like to address that?

Yes, John Laprise, please.

JOHN LAPRISE: I'm not a lawyer, but I can give a partial answer on this. That is, there are existing processes for applying and gaining an OFAC --

an OFAC ruling, whereas immunity would have to go through the whole legal process and go through congress, so it's a much different kind of progress.

BENEDICTO FONSECA FILHO: Thank you.

I think there's a second question from remote.

Yes, please. Go ahead.

UNKNOWN SPEAKER: Greg Shatan would like to respond, if he could get in the queue.

Greg, please go ahead.

GREG SHATAN: Thank you. This is Greg Shatan for the record.

The question as phrased had two parts. In terms of the second part, I agree with John Laprise, that the general license essentially provides a method for immunizing ICANN transactions relating to DNS management from the OFAC sanctions regime. So -- and that is a recognized path. And while it has its own complexities, it's not anywhere nearly as complex as immunity from suit or taxes or the like.

Of course ICANN is a nonprofit, tax-exempt organization, so taxes aren't the issue. But the immunities act actually exempts employees from taxes as well. So even applying the immunities act has a number of interesting twists and turns to it if we were to go down that route.

Secondly, there was the question of jurisdictional interference, and I think we need to continue to kind of press the point on what is meant by "interference." When in fact as Ambassador Fonseca noted, that the U.S. has been benign. And, further, in some points where there might have been issues, such as the case mentioned by Farzaneh Badii, the courts, in fact, protected the .IR ccTLD from attachment and in a very well reasoned opinion that this should have broad application.

So where the application of U.S. jurisdiction has been tested so far, it has been found helpful, recognizing of course that this is not guaranteed under all circumstances, of course.

And, lastly, the question of immunity from only a single country seems to be discussed. Would it not be necessary to immunize ICANN from the jurisdiction of all countries? Otherwise, you'd have a peculiar result that perhaps ICANN would be immune only in the U.S. and remain nonimmune, whatever that means exactly, everywhere else in the world. That can't be the result that anybody is looking for.

Thank you.

BENEDICTO FONSECA FILHO: Thank you, Greg.

We'll now turn to the queue. I'd like to give the floor to the distinguished representative of Iran, and I will invite all of those who wish to intervene to be as brief as possible so we can hear everyone. Please.

KAVOUSS ARASTEH: Ambassador, thank you. Thomas, distinguished panelists.

We would like to reiterate what we have told at the first round of discussions, that we recognize the good work which has been done by the subgroup. Several people they put their thought, their effort together through several weeks, if not more than a year, and they prepare to the best of their knowledge, to the best of their understanding, to the best of their time available, the results.

What we said in the previous session -- and we repeat that -- we believe that there is a need to continue this effort with a view to find a satisfactory solutions for those who have expressed their concerns. Their concerns should not be interpreted as

oppositions to the work. We recognize and appreciate very much.

I don't want to repeat, Distinguish Ambassador, what you said. We support your statement. And several other people in the GAC, they have supported -- people interested they could look into the GAC transcript, and there is a number of countries -- I don't want to name -- they have supported that.

We should think that in many areas still the issue is, I would say, to be put to the test. If I look into the choice of law menu, some of them may not be (indiscernible) at all. Having the law of several countries in Europe may work because they are European Union and others. In a region like Asia-Pacific of 75 countries, you can't find a single law that governs the situation. So it is difficult. You have to test that.

Equally for the others -- so it is just you have to put under the test of many others.

Now, coming to the OFAC we appreciate the vote of all people, in particular those who put their views into the jurisdiction resulted to have this accommodation. But still also that should be seen whether it is implementable for all countries concerned about the OFAC.

The measures are good. Applicability we don't know yet.

What we said, that I request GAC to kindly, if possible, read the message they sent to us this morning about amendment of this report, if possible. What we believe that we should do something, where to do it, when to do it, and how to do it. With permission of Professor Mueller, I allow myself to disagree with him that he directly or indirectly said, okay, you want to do it, immunity? Government, go and do it.

This is against the multistakeholder approach. And we don't want that to be put aside the government doing something and bringing it back to the ICANN board. ICANN says this is for government. Have we discussed as a community? Then he also said that, discussed is as community. That would be, again, difficult.

So we suggest that the same course of action that we have, having a community, cross-community approach, at some time, maybe after some time to see whether what we have provided is practicable. If not we have to do it, but through the same approach that we have, a cross-community, but that by government only. So that situation.

It was also said that the immunity may cause problems, release ICANN from accountability.

Maybe it is too early to say that. We have to see whether this is true or not true. So, once again, we believe that issue should be

continued where, how, and when we don't know. But we are not very much in favor of the ATRT. We prefer, if possible, we should have the cross-community approach, involvement of everybody and requesting all those who have been involved possibly could have involvement.

And thank you very much.

BENEDICTO FONSECA FILHO: Thank you. I thank the representative of Iran.

We have roughly 13 minutes to go, so my intention would be to listen to the queue and then give both the wrap of the subgroup, wrap of Greg Shatan remotely and the panelists an opportunity and my co-chair an opportunity to comment.

So I'd like to plead with you to be, again, as brief as possible so we can make this relative.

Please go ahead, sir.

ASHWIN SASONGKO: Thank you, Benedicto. Ashwin from Indonesia, and I'll try to do my comment very quick.

Looking at the points there, whether ICANN's reliance for proposal of alternative solutions, I think this was discussed since many years ago. If, Ambassador, you remember, that in 2005, as

the result of the previous WSIS1, we made the U.N. working group on intergovernance, and they make a study, and the study was presented during the WSIS2 in 2005. I remember that very strong because that time Indonesia started to develop the ministry of ICT and our ministry represented Indonesia in the WSIS2, and that is exactly what -- one of the six that my measures I have to review, was the results of the WGIT, working group intergovernance. There were several models at that time, four models, if I remember, if I'm not mistaken. One model is to keep ICANN in the U.S. but then the decision-maker should be carried out by some sort of working group on some sort of work council, intergovernance, something like that. We can go through all the models again.

But I think at this point, perhaps it is very good if we can look at that study again and see what we can get from them.

Now, at that time the study was divided. The WSIS was divided in two groups. One for this model. And because of that we have then the IGF, (indiscernible) U.N. visa. But I'm afraid until now, as far as I'm aware, IGF never discussed the results of the four models offered by the U.N. working group intergovernance. And perhaps if they did that in the next IGF probably it can be a good point where ICANN asks, okay, you, IGF, it is your job to look at the study of the U.N. WGIG, do it and let's see the results and we

can discuss it at ICANN61 next month, next month -- perhaps I think so. Thank you.

BENEDICTO FONSECA FILHO: Thank you.

Next online, please, Yulia.

YULIA ELANSKAYA:

I would like to thank you for the work that was done. We also agree that -- I'm from Russia, actually, GAC representative of Russia.

We also agree that the work was done. However, we see that -- we see some risks that were not addressed appropriately. We think that recommendation that was presented and proposed are not sufficient to address all problems.

We see here the good open discussion, and we see the risks of OFAC sanctions is heard and it's clear. We also took part in the consultation regarding this. We also see the risk, and we think this should be addressed appropriately and it should be addressed in according to the public interests and the mission of ICANN. And it should be addressed according to the understanding that there is a risk for the millions of people, actually.

And we do not like this approach that rough consensus is about that some kind of minor vision of people who do not understand -- do not agree with us. It should not be as approach for the countries with the hundred of millions of users which see them to be addressed with the risks.

And, of course, they are the minority. Thank God they are the minority. If you know the majority will be unsanctioned, that will be the real problem. So now we have, you know, minor problems. But we need to address it. We think it's very complicated issue. It should be addressed further in a complete way to see many options. The menu of options as was told and immunity issues should be worked around.

Thank you.

BENEDICTO FONSECA FILHO: Thank you.

You have the floor.

PIERRE BONIS: Thank you, Pierre Bonis, AFNIC, registry for the .FR, for the record.

First of all, I just want to say thank you to all the panelists and the group that works on this jurisdiction. Coming from the CC

community, this is something that is close to our business and our hearts because you may know that we are not talking about jurisdiction. We are talking about subsidiarity. We found the solution on our part.

And I see that this jurisdiction work goes in a way recognizing that they could be other legal system that could be accepted within the ICANN contract, and I think this is a very good step.

Just one comment on this opposition, Mr. Mueller, between accountability and immunity. I just wanted to draw your attention on the fact that, as far as I know, the accountability is towards the community, and this is what we have worked on for months. The accountability is towards the community, and as far as we talk about immunity, the immunity is towards the Californian court. And I'm not sure that the Californian courts and jurisdiction are representing the community.

So I don't think that ICANN players has to be accountable to courts. It has to be accountable to the ICANN community. And the immunity discussion doesn't change anything to the accountability that we owe the community.

Thank you.

MILTON MUELLER:

So I think it's not quite accurate to look at the California law as a reflection of the will of the Californian people, in the sense it's an incorporation law and that simply provides the legal framework within which ICANN makes policies and it provides legal mechanisms by which ICANN's community can hold ICANN accountable organizationally so that we can exercise our rights as an empowered community. So it's not, like, because the court is in California the judge is thinking, oh, how does this benefit California when they make a decision? They're thinking about how the corporate law is applied.

So I think you need to have a legal framework like that, and the real issue is whether this law is applied objectively and neutrally and can it be actually utilized by the community to hold ICANN accountable.

BENEDICTO FONSECA FILHO: Thank you.

We have to answer the last speaker, and then we will hear Greg Shatan and the panelists.

You have the floor, sir.

CLAUDIO DE LUCENA: Thank you very much, Mr. Ambassador. Claudio de Lucena, NCUC, Paraiba State University in Brazil. We have worked on a brief presentation on the sub -- and jurisdiction subgroup for the constituency for the NCUC, and I really appreciate to hear from the Ambassador Benedicto the reinforcement of the principles of multistakeholderism and in essence there is a recognition that the recommendations that are put forward in the subgroup are a step forward and the reason for the dissent is something more focused to the reason that he explained.

I would like to stress two points. If we are moving into immunity, it's interesting just to notice that there is a legal framework in place in the American jurisdiction through which this can be worked out. It can be that it was out of the arraignment of the subgroup at this moment. It can be because it was absolutely unfeasible, as it was put forward by the panel. But there is the legal Framework for that to happen.

And, two, the recommendation on generally license, on the intention of a general blanket license for the specific niche of OFAC sanctions can very well be a good and interesting exercise on how we do this for a complex a very different, a very complex issue of a general statutory immunity.

And the question I would like to leave, if we have any time to answer, had to do with Kavouss' statement. We had an email

from Greg this morning acknowledging the importance of the subject, but I'm also -- I'm also not very familiar with -- my second meeting here at ICANN, so I wouldn't know how after the conclusion of the plenary, how that recommendation, which could -- very much reduce the tensions in the final instance of the work of the subgroup, how does that play now that the work has finished?

Thank you very much, Mr. Ambassador.

BENEDICTO FONSECA FILHO: Thank you.

I will now offer the floor for Greg Shatan for his remarks. But just in -- maybe if you also want to address it, Greg, but my understanding is that we are -- we are not at the end of the role towards the finalized Work Stream 2. We have the subgroup. We now are moving to consultations toward the community. So maybe even my co-chair, who is the -- or the chair of CCWG may also comment on this as we go along to make clear that this is not the final opportunity for this discussion to take shape.

But may I turn then to Greg Shatan, and then I'll offer the floor for panelists for their final remarks and to my co-chair also to close the meeting.

Greg, can you -- you have the floor, sir.

GREG SHATAN:

Thank you, Benedicto.

First, I think this is a good segue from my -- from the question from the floor. The intention is that the additional statement, which I have pasted into the chat for all to read, would be added to the subgroup report and would be then part of the report as it goes out along with everything else for public comment.

And I'll let Thomas comment on the -- a larger task for the report as a whole.

I think that it is important to look at this path forward. I think there are a great deal of complexities. Whether the International Organization Immunities Act would achieve what people want to achieve and what it actually would achieve is something that needs to be looked at and whether ICANN really is an appropriate entity to be placed under that act. There are many questions just with regard to that and with regard to the existential issues of accountability and immunity and even what is the community to which we are being held accountable. Who is not in the community, that is, to which we are being held accountable?

So I look forward to participating in the future path for exploring the questions of jurisdiction. Beyond those we're able to resolve

in the subgroup, immunity may not be the only one. There may be others as well, but certainly having the right multistakeholder forum and the right support for that forum would be critically important in order to address this. Maybe some day we will have the definitive jurisdiction group, the jurisdiction subgroup of the accountability CCWG could not be that place, but I'm sure that we will move forward at least to the next place where this will be discussed.

Thank you.

BENEDICTO FONSECA FILHO: Thank you. May I enter into the panelists short final remarks. Starting with John, if you wish to take the floor.

JOHN LAPRISE: Yes. I think I want to put on my NARALO, ALAC hat and step back. When talking about the desired users, one facet of the U.S. jurisdiction, the just upholds by global standards extreme rights of free speech and expression. If I look around the world at end-users around the world, those are things that end-users value.

And so when we're considering jurisdiction, we're considering all these legal factors and immunity. Speaking as an ALAC member, this jurisdiction is -- supports the things that end users care

about in terms. Because most end users are not going to be in courts in lawsuits.

The U.S. support of free speech or free expression and free association is in line with end users' desires and that's demonstrated every day on the Internet. Thank you.

BENEDICTO FONSECA FILHO: Thank you. Farzaneh.

FARZANEH BADI:

Thank you, Benedicto. Just briefly. The OFAC issues that were created for the domain name users are where real issues. So let's focus on real issues and come up with real solutions and not have hypothetical stories and then want to find solutions for them.

The reason why we succeeded in providing a solution for the problem of OFAC was that the issues were real. So let's focus on real issues.

BENEDICTO FONSECA FILHO: Thank you. David?

DAVID MCAULEY: Thank you, sir. I just want to thank the moderators. It's been an honor to be on this panel. Thank you, Sam Eisner, for helping organize it. I would encourage folks in the audience as well as ourselves be on the lookout. The subgroup on jurisdiction report will be coming out for public comment in very short order and that's everyone's chance to get into it. Take a look and make your comments. So thank you very much.

MILTON MUELLER: Yes, I have no major things to say. I want to echo John's point that civil society we're concerned about freedom of expression, we're concerned about governance of ICANN that safeguards rights of free expression and the freedom of the Internet. And I think I'm not sure of the status of it, but I think Greg's latest amendment to the report which would authorize continued discussion of immunities would be something that should reconcile most of the conflicts that emerged around this working group.

BENEDICTO FONSECA FILHO: Thank you. I now turn to my co-chair, Tom Rickert, and co-chair of CCWG for his final remarks and also to wrap up the meeting. I'd like just to say as is my last chance to thank you very much. I think the intention we had on the proposal has been fully met which is to exchange views and to have our views maybe better

understood and to also have feedback on those elements. So I'm more than glad when we propose it initially, we're following the model that was adopted previously, particularly in Johannesburg when there was this Cross-Community Working Group on geographic names that was so -- that were our initial proposal for the format. They reflect that, but then we understood it should have a more cross-community nature, even if its preparation. We're very glad. I think I just have to say I'm very glad that this took place and thank you very much. Thomas?

THOMAS RICKERT:

Thanks very much, Benedicto. Let me conclude this by saying jurisdiction-related debates have been held even before ICANN was incorporated. And they will not stop when Work Stream 2 of the accountability work will end. But we as co-chairs had to make sure that we deliver on our promise, and that was to come up with concrete recommendations within a foreseeable time span and budget and that's what we're about to do. We're about to deliver our final report mid-next year. Having said that, during our work we would do as we did in Work Stream 1. We would listen to the proposals made and we would abandon those that don't promise and reach consensus in our group. But we couldn't discuss everything to the level of detail that we would have loved to.

Therefore, last Friday when the CCWG had its all-day meeting, we spent three hours in total allowing for everyone who wanted to go on record with their views on jurisdiction to speak, and we will publicize the transcript of that session with our report so that there is an archive that future discussions on jurisdiction can build on. But it is not for the CCWG to kick off this new process. We're providing information for future debates and I think the onus is on you as community members to request that further dialogues are being held and that budgets are made available to host those discussions.

I would like to thank the panelists. I would particularly like to thank the person that put a bottle of water next to Greg Shatan's name tag. I think he appreciated that.

Thanks, everyone. The meeting is now adjourned and I wish you great rest of the meeting and safe travels back home.

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