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ABU DHABI - Cross-Community Session: Community Feedback on Concluding CCWG-Accountability-WS2 #  
Monday, October 30, 2017 – 10:30 to 12:00 GST  
ICANN60 | Abu Dhabi, United Arab Emirates

JORDAN CARTER:

Good morning, everyone. My name is Jordan Carter. I am the ccNSO appointed co-chair to the Cross-Community Working Group on enhancing ICANN accountability. Welcome to this high-interest community session to provide for some opportunities for community feedback on the concluding phases of the CCWG Accountability Work Stream 2 task. And it's good to see you in the hall. We look forward to the discussion and the questions to come from this session, which is that label.

And I bring a brief apology from Leon Sanchez, our third co-chair. And Thomas Rickert, the other co-chair, is sitting to my left, your right. And the other people joining us on this stage are rapporteurs for various subgroups.

A brief introduction to them in case you would like to know is David McAuley, and Niels ten Oever, and on the other side of the co-chairs we have Steve DelBianco and Fiona Asonga. And there will be other rapporteurs.

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And if there are any other rapporteurs for this session to join us on the stage, they may come up. For example, Sebastien Bachollet may join us on the stage.

What we're going to do this morning, ladies and gentlemen, is step you through three topics, if you like -- or two topics. We'll update you on the process that the CCWG is working through, an update on progress to date, and then the approach to complete the work in line with the end of our mandate by next June, the end of the financial year.

My colleague Thomas will give us a rundown, a sort of one-slide-per-topic-area rundown of the work of the nine areas that are listed on the slide in front of you.

So that's the way, in about 15 minutes or so, to get a highly concentrated summary of where all of the work of the CCWG is up to. And then we will work back and take questions on those topics.

And to allow for space for community questions and information sharing on all of the topics that are in front of the CCWG, we will run through to a maximum of three questions per topic in the first round. So when we come back to diversity after the content's been introduced to you by Thomas, if there are more than three questions on diversity, we'll only take three,

and then we will move to the next topic, guidelines for good-faith conduct, et cetera.

We think we will have time left at the end to come back for any other questions that get asked, but just to let you know in advance that that's the process we'll be working through.

The first item is an update on our progress and approach to complete the work, which I will just run you through briefly.

What's on the slide deck in front of you now is the timeline for this Work Stream 2 work. And we are here with plenary consensus as of Friday on all of the topic areas in the in the work program for Work Stream 2. And so what we are doing during this update, there will be some public comments opening on some topics over the next few days and weeks. And early next year, that second band of colored boxes on the slide in front of you will consolidate all of the Work Stream 2 recommendations and come to a plenary consensus on the whole package in the CCWG. And at that point there will be a public comment opportunity on the entire package of the Work Stream 2 progress.

The purpose -- The main purpose of that public comment period will be looking for inconsistencies between the recommendations, if there are any. And we hope we'll iron

those out, but it isn't necessarily the case. So if you have substantive comments and questions and input to offer on the detail of the proposals that are coming through in the recommendations, the best time to offer that is during the upcoming public comments for those areas that haven't yet received them. And that will be the time you can offer feedback and comments and input that helps shape the final recommendations. And if you wait until after next March's ICANN for the public comments on the final report, you may find it's more difficult for the CCWG to take your input into account. So that's a encouragement to keep an eye out for those public comments that are coming.

This is the green lines. They are all now green. The big black line is the threshold of 60% in the planning where we had to get to by last week in order to deliver this project by the deadline next year. And the one that's closest to the line is the jurisdiction project. And I'm sure that there will be questions on that, but the point is the CCWG is managing its work in time with the agreed work plan, and we are on track.

The top half of this shows the topics that public comments will be happening on in the next little while. Diversity, staff accountability, improvements to the ombudsman function, and the jurisdiction matters.

The second set of topics have already had public comments done.

So those are the topics where you'll have an opportunity to do public comment in the next little while, and we'd encourage you to offer your thoughts through that process.

And I think I've already described to you what this slide means. There's a public comment round for each area of the report. That's where we need the substantive comment. Some of those have already happened for various topics, and I just read out to you the four that that's going to happen in the next couple of weeks.

The working group will take all of the feedback, finalize recommendations, pull it all together into a report by agreement next March, and then have a chance for everyone to iron out any inconsistencies that may remain before sending to the chartering organizations and the Board for adoption.

So that's a brief recap on our process. If you've got any questions about the process of the CCWG, please feel free to ask anyone you see on the stage or any of the accountability staff. We would welcome answering and making it clearer for you.

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I'll now hand over to Thomas Rickert, one of the other co-chairs, to give you that brief sort of concentrated presentation summarizing where all of the work of the CCWG is at.

Thomas, over to you.

THOMAS RICKERT:

Thanks very much, Jordan, and good morning to all of you.

Now, I think I have to manage expectations a little bit, because the subteams have done so much work over the last couple of months, so I can't possibly do the substance of the work any justice. So what we've decided as co-chairs in preparation for this session is that we would have a slide deck with one slide each for every of these subgroups, and these will just give you a flavor, a few buzzwords of what the subteams have been looking into, because we trust that those -- that many of you are interested in special topics, so you might already know a little bit more about those topics or you might even have participated in public comment periods.

So if you have specific questions later on, by all means ask them, but also, if you think what's hiding behind this bullet point, you can also ask, because we have our able rapporteurs at the table or joining remotely, so they can shed some more light on what's behind those, you know, very, very brief slides.

So the first subteam that we're going to look at is diversity. Diversity was one of the topics that we wanted to look into more -- in more detail in Work Stream 1, and Work Stream 2 delivers on that promise.

So basically what we're doing is we're looking at defining, measuring, and supporting diversity. And that will be in seven key areas which I'm going to read out to you. That's geographic/regional representation, stakeholder group or constituency representation, that's language, diverse skills, age, physical disability, and gender. You know, and then the report breaks down in more detail how those can be achieved to increase ICANN's diversity, because as we all know, we're trying to be a very inclusive global organization, but yet we see too little diversity in many places. And the mere fact that you see my face on so many different topics worries me slightly.

Guidelines on good-faith conduct. I guess that sounds a little bit cryptic, but what's behind it is basically that we have a community power that we developed in Work Stream 1 whereby the community can come together and remove individual directors from the Board or even spill the whole Board. And the question is how can we ensure that the community members are brave enough to raise concerns with board members without having to fear that they will be sued by the affected board

member or that there might be other forms of retaliation or false allegations or what have you? And, therefore, we thought that if concerns are being raised about a board member, these should follow certain principles so that it's neutral, that it's fact based, and all that. So we've asked the subteam to work on good-faith conduct principles for removing directors, and the subteam has come up with a report on how this should be conducted, how concerns about board members should be conducted -- should be brought forward, and then actually there is a recommendation to develop a broader framework on how this community power can be implemented and also on guidelines as best practice for all such decisions, if they're not yet covered by immunity -- indemnities.

So basically, if you follow these rules, you can be quite safe that ICANN will protect you in case the board member in question goes after you.

Human rights. That's been a big discussion, and I'm sure that that's one of the topics that really takes ICANN to the next level.

Now, in Work Stream 1 we promised that we would come up with the human rights principle -- Framework of Interpretation; I'm sorry. And many of you might not know what's behind it, and I really do encourage you to use the link which is on the last slide of this deck. So all the reports of the subteams are linked



there. And what's behind this Framework of Interpretation is actually that you have a big table, couple of pages long, with all the legalistic terms that you find in the bylaws on the left -- in the left column, and then in the right column, there are explanations on how this should actually be operationalized and how this can be filled with life.

So it's basically translating bylaw language into operational -- into operations for our community. So I guess that's important.

I guess what should be noted is that there have been a lot of discussions about the U.N. Guiding Principles for business and human rights, but there was no consensus reached on their suitability for interpreting the core values. So please do take a look into that. I guess it's quite an interesting and important subject.

So I guess I should leave it there.

Jurisdiction. Another quite controversial topic, and there was discussion in the GAC the other day during this meeting, and there will be another session this Thursday. But I think what you should take away from today is that while the jurisdiction topic is huge and while there are diverging views on how jurisdiction should be filled with life in the ICANN arena, including requests to put ICANN somewhere else in the world rather than the U.S.,

our group, our subteam has tried to look into what issues there are, and then find tailor made solutions for the issues that we're facing. And within the time given, the subteam came up with two recommendations which I think really improve ICANN's accountability to the global multistakeholder community, and that is, number one, a recommendation on OFAC, because there are limitations for ICANN to contract with parties that are in countries that are on sanctions lists. And our recommendation actually requires ICANN to use best efforts to get a license so that players in these countries can enjoy the benefits of being a registry or a registrar, and, therefore, participate in the DNS as nonsanctioned countries do.

So that's one. So we're putting pressure on ICANN or we're asking ICANN to use best efforts to reach out to OFAC to get licenses. Certainly we can't predict the outcome whether those licenses will be granted, but so far, ICANN's efforts have not been mandatory but voluntary, and that's a big change.

The next thing is the choice of law. Although there is no choice of law provision in ICANN's registry agreements and Registrar Accreditation Agreements, the contract language, if you've taken a look at it, as quite some U.S. law impact. So the language is not familiar to those that are used to other legal concepts or other jurisdictions.

So the subteam has suggested what we call a menu option. There are other options on the table but that's the one that has been preferred and reached consensus in the subgroup, whereby ICANN should offer contract language not for each and every jurisdiction around the world but for a limited set of jurisdictions. And we're talking about one jurisdiction per ICANN world region.

So using an example for me, being from Europe, could well be that we, let's say, have one set of contract that is following Belgium law so that we have something that we can understand better and that meets our -- you know, our expectations. Because we do know, and these are not made-up examples that, there have been multiple new gTLD applicants that have not filed their application because they didn't understand what these contracts were meant to be. And though it's not an ideal solution, it's a huge improvement.

And I should also note, and I think that's going to be the subject for the session on Thursday in particular, and I see Thiago and Benedicto sitting in this room. There will be more room -- There has been room last Friday on the CCWG face-to-face meeting, but there will be more room to discuss the dissenting opinions by Brazil and other governments.

SO/AC accountability. So basically we have tried to work very respectfully to encourage SOs and ACs to increase their accountability. And that is broken down into several tracks. Very briefly, track 1 was to review and develop recommendations to improve SO/AC processes for accountability, transparency, and participation that are helpful to prevent capture.

So there are a lot of recommendations, 29 in total, but this is like the SO/ACs should make their decision-making processes transparent. They should, you know, conduct outreach efforts and such things. So I'm sure that Steve will be able to say much more about that, but that's in a nutshell so that the SOs and ACs are more accountable to their respective communities.

Having spoken about their respective communities, that takes me to the second track which was the idea of the mutual accountability roundtable. A great idea that got a lot of support during Work Stream 1 where one of our expert advisors said, Well, we should have one forum where we ensure that watch the watchers, that those who are the community are actually being transparent. But this has been discussed at length, and the result of that was that -- was no consensus formed on the establishment of a mutual accountability roundtable because these groups, the SOs and ACs, are primarily accountable to

their respective target groups and not to each other. So imagine we would ask the GAC to be accountable towards the GNSO and vice versa. So I think everyone wants to serve their own communities as good as they can, and that's more thing for Track 2 -- for Track 1 rather than for mutual accountability roundtable.

And then there was discussion whether the independent review process would be applicable to SOs and ACs. That also didn't reach consensus because those who are -- have issues should take the route which we have today already of the ombuds office.

Staff accountability. Now, this is a quite touchy subject as well because, as you know, ICANN staff is within the hierarchy of ICANN and they're primarily accountable to their superiors and to the ICANN management. Yet, we wanted to look at ways to improve the relationship between ICANN staff and the community so that disputes can be resolved at a much lower and then trying to escalate this within the ICANN organization.

So there are different areas which I would recommend you take a look into. But it's primarily about understanding processes better and looking at low-level solutions to disputes that there might be between the community and ICANN staff.

The ombuds office. And I think it's also -- you know, if you haven't noticed by now, we can't -- don't call them the ombudsman, right, because we want to keep that gender neutral. And I think that in itself is remarkable.

So the ombuds office which I should say is not the person but which is the function has been under review and in order to avoid friction and incongruency, we've asked the subteam to work closely in parallel with the independent ombuds review that was going on. And, basically, what the subteam did is analyze and then take on board most of the recommendations from the ombuds evaluation report. And I think maybe the most notable addition that we have -- and I'm sure that Sebastien Bachollet will be able to add much more to that -- is that we not only look into mandate training, transparency, planning, but we also are going to see an advisory panel where for the first time -- as you know, at the moment, the ombudsman is appointed by the board. And, therefore, that's the relationship. And we're having an advisory council that's going to be put between that that shall help the board in finding an ombudsman and also giving direction, not on individual cases but on the work as such.

Transparency. We're looking at -- or we have been looking at increasing ICANN's transparency and we actually were glad to approve via second reading the report of the transparency

subteam. And there are a couple of areas in which transparency enhancements have been worked. And one of that is the documentary information disclosure policy. So there's a number of recommendations surrounding that because some of you might have experienced or know that there's been a lot of unease with the way this policy was handled because most of the requests for information were actually declined.

Then we have recommendations on documenting and reporting ICANN's interaction with governments. So we want to have more transparency about at what level ICANN interacts with governments. And that goes beyond what needs to be disclosed according to California -- according to U.S. law for ICANN's activities in Washington.

Then something on board deliberations. And then we have recommendations on the whistleblower hotline and whistleblower protections.

The IRP-IoT as we have heard before is a remnant of Work Stream 1, and that basically deals with operationalizing the enhancements to what we've been called the crown jewel of the accountability architecture, which is the independent review process. So we're setting up or seeking to set up a standing panel of which panelists can be recruited. We're looking into the cooperative engagement process, the CEP process. That's work

underway. And a couple, few more things that I'm sure David McAuley will be able to ably explain to the interested audience.

So that's it, very broadbrush. I would -- although I've spoken for a couple of minutes, I would really like to take the time to read out the names of the rapporteurs for you because we owe them so much.

For diversity, we have Fiona Asonga and Rafik Dammak. For good faith, she's on the phone only, that's Lori Schulman. For human rights, Niels Ten Oever, over there. And then we have Greg Shatan, who is on the phone only. For ombudsman, Sebastien Bachollet. He's a little bit shy and doesn't want to join us up here, but maybe he will come up to the podium in a moment.

Then we have Cheryl Langdon-Orr over there, and Farzaneh Badii and Steve DelBianco to my left. Avri Doria for staff accountability, who will soon be placed on the ICANN board. Michael Karanicolas for transparency. And David McAuley for IRP-IoT. So that's the part I was responsible for chairing. Now we can move to Q&A.

Back over to you, Jordan.



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JORDAN CARTER: Thanks, Thomas. Everyone, I'm -- I know that's a lot of information that you've just been -- had thrown at you, especially if this was new. So thank you for working through that.

What we're going to do now is come back and give the opportunity for any questions on any of the topics. And we'll do that by just working through these slides again in the order that they were presented.

So, if you've got a question to ask or a comment to make, the way to do that is to come up to the microphones in the middle of the room at the front and to identify yourself, please, for the purposes of the transcript and to ask your question. And I would ask for these to be brief. We won't use a timer unless things get out of control. But if you can keep your intervention below two minutes, that would be very welcomed.

So on these diversity matters, are there any questions or comments?

Sebastien Bachollet.

SEBASTIEN BACHOLLET: Hello. This is -- I have a question that's very important, and I'm going to start with that. One of the items that is very important

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for diversity is language. So I am going to wait for everyone in the room to get their headsets so they can hear the interpreter and not necessarily read the transcript. So I can start. Thank you.

First of all, one of the reasons why I am not on the panel is that if we want to talk about diversity, we have to start with one's self. There are enough men at the table. Therefore, I didn't want to add one more. As Steve Crocker said during the opening ceremony, diversity is very important within ICANN. It's a complex subject with many dimensions. Recommendations are a point of departure, but I hope that public comments will help. I would like to say that it's not -- we cannot just use words. We have to act. Good practice of others are not sufficient. We need to act.

AFNIC last year gathered data on leaders of different organizations within ICANN. I just finished a study on the board and different organizations. I can present the results to anyone who is interested.

I'm very happy that the second part of the work -- the group who worked on diversity could propose the data and the actions that we can engage into. We need to organize. We need to act. We cannot just be happy with words. Thank you.

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JORDAN CARTER: Is there any response from you for this?

FIONA ASONGA: I think as the diversity group, we are more than happy to look at the data that you have collected. We have been receiving a lot of different information from different researchers around diversity issues in ICANN. And I think that is what has helped us reach where we are. There is still a lot of information that we do not have that we would be happy to look at and consider.

So I'll ask Sebastien to share with us his report on what he has collected and what he has observed, and we can add that -- get information from the ICANN to add into our final report and look at it in lines of our recommendations and see if anything changes. So we're more than happy to receive the data. Thank you.

JORDAN CARTER: Thank you, Fiona.

Are there any other questions on the diversity topic? Kavouss Aresteh. And then Pierre Bonis will be our third question.

Kavouss.

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KAVOUSS ARASTEH: Thank you very much. So you have introduced me, I don't need to say again.

With all appreciation and thanks to the group prepared this diversity issues. I think other international forum, they have long experience and they share the same views that there is a need to establish principles how to reply or respond to the diversity. But the result of those was it is quite difficult and complex issue that sometimes implementation would be extremely, if not impossible, very difficult. One thing that came out of that is the most important and overriding element is expertise and esteem. The remaining is very, very difficult.

You cannot talk about age. Do you exclude the people with age above X years? Do you exclude people age below some years? How you deal with age?

Language. What is the criteria to implement that? Geographically distribution and so on and so. All of these is very, very good in theory, but it is difficult in practice. So with thanks but we have always mentioned it is very, very difficult. And you need to look at the experience of others. Thank you.

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JORDAN CARTER: Thanks, Kavouss.

Any comments, Fiona?

FIONA ASONGA: I think my comment would be we are trying within ICANN for the first time to be able to have mechanisms of implementing diversity. We have started, and our approach to diversity is not about exclusion but inclusion. We need to include all the ages.

When we look at the database of those who have registered for this ICANN meeting, the age bracket is quite wide. The question is: How many rooms do you walk into and find representation across those ages? How many rooms can you walk into right now and find a representation across the different geographical regions? So it's more driving towards inclusion as opposed to exclusion. And we should read the recommendations with inclusivity as the goal.

If we factor in inclusivity, then we will find where the skills are less, we will put in more effort to develop those skills so that we have the right skills and expertise. Yes, there isn't that across the board in all the regions of the world, but we can work towards it.

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JORDAN CARTER:

Thanks, Fiona.

Look, we've got one remote question, which we'll done and. Then I will take the three who are in the queue. We will break our own rule at this point about only three questions per topic. But we will need to start sticking to that limit after this question and, hopefully, come back at the end because there may be some topics of that. Otherwise, we're going to run out of time without addressing topics.

So the first is the remote question. Could staff please read that out.

REMOTE INTERVENTION:

Hi. You will actually have time for a third question because it's just a comment from Tom. He says, the slide about Brazil's dissent should have mentioned that France also supported Brazil's dissent in addition to Argentina and Iran.

JORDAN CARTER:

Okay, thanks. We will take that into account when we get to the jurisdiction slides again.

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Pierre and Farzaneh and Bertrand, if you can keep to one minute, if possible, that would be amazing. Thank you.

PIERRE BONIS:

Promised. Pierre Bonis.

In French, it will be easier for me. I just have a question on the manner with which you decide on the principle -- the principle you have talked about during your work, how did this principle will be implemented? What kind of organization -- internal organization will allow you to make sure that diversity is respected within ICANN? I think that during the discussion, we were talking about a structure -- a perennial structure which would allow us to exactly understand which percentage of diversity they would be.

I would like to know what you're proposing on that subject. Thank you.

JORDAN CARTER:

We'll get Fiona to respond just at the end of these three interventions.

Thank you, Pierre. Next.

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**FARZANEH BADII:** Farzaneh Badii speaking. Diversity is not a theoretical thing, and it's quite achievable. And we are practicing it here at ICANN. Thank you very much for the recommendations.

It was hard to come up with the recommendations, but they are practical. And we should try and implement them.

On jurisdiction, I am surprised that some groups do not consider that users in some countries are actually affected by sanctions. And in day-to-day life, they're facing problems. And in jurisdiction, we came up with recommendations --

**JORDAN CARTER:** Sorry. We're going to do each of the topics one by one. So we're not at jurisdiction yet. This is just the section of diversity.

**FARZANEH BADII:** Can you just give one minute. I don't want to go back and forth. So I'm just surprised on all five recommendations that some do not support it.

**JORDAN CARTER:** Thanks.



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Okay. We'll move on to -- Fiona, do you have response to those two?

FIONA ASONGA:

Thanks, Jordan. Fiona Asonga for the record.

In response to the question on the structure of ensuring diversity, we had a long conversation on whether or not we should have quarters. And we figured we didn't want to have a situation where we are checking boxes within ICANN without real and tangible results. So we are going to have the ACs and SOs having to go through a process where they need to work with the entities, the individuals on board to ensure that diversity happens right from the membership to the leadership of the respective ACs and SOs. When that happens -- and that is what I was explaining and saying the skills development will have to be part of that. The mentorship programs that are running in some of the ACs and SOs are examples of activities that can be done to enhance the skills and to ensure that there is diversity. So we already have some tools in place. Though, some of those tools are in some parts of ICANN. And so when we are giving the recommendations, we have looked and seen what is working and what can work moving forward.

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If we allow for more inclusion, then there is going to be better results and better impact on diversity within ICANN and most sustained diversity that we work with quarters and have boxes checked whether or not there is language diversity, age representation, and everything else. Thank you.

JORDAN CARTER: Thanks, Fiona. I will turn it over to Thomas to do the next topic.

THOMAS RICKERT: Thanks very much. We're now opening the floor for questions or comments on good faith conduct.

So let me pause for a few seconds to give everyone the opportunity to step up to the mic.

And I see that Bertrand is coming. So Bertrand de la Chapelle, over to you.

BERTRAND de la CHAPELLE: Good morning. My name is Bertrand de la Chapelle. Just a comment. I wanted to pick up on what Thomas mentioned earlier and I hope I did in this portion regarding the accountability of SOs and ACs towards themselves only, basically. Is that a further part? Okay.

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THOMAS RICKERT: It's coming up later on. So do we have questions for Lori Schulman with respect to good faith conduct? 3, 2, 1. Sold.

So that doesn't seem to be the case. Then let's move to the next slide. That is human rights. Do we have any questions on the human rights framework?

HAORAN HUANG: Hello. Can I speak here? My name is Haoran Huang, and I'm also a member of the workstream 2. And I'm focused on jurisdiction. And I come here, and I have a question to human rights. And maybe yesterday Niels has already posted his nowadays milestone to us. And I just had the new question to ask about reflect human rights in PDP is a very good choice for ICANN to confirm the human rights. But, as we witnessed, that PDP nowadays are very, very long process. So how -- in the future, how to make the PDP and the policy making much more effective is my question. Thank you.

THOMAS RICKERT: Niels, would you like to take that?

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NIELS TEN OEVER:

I would really like to. Thank you. What we -- unfortunately, the answer to your question lies beyond the scope of the subgroup and the plenary's work.

What we've been able to do during workstream 1 is make a high-level commitment enshrined in ICANN's bylaws as a core value to respect human rights.

During workstream 2 we created a framework of interpretation for that bylaw. In that framework of interpretation and considerations document, we've said it's for all the SOs and ACs and ICANN organization to find ways to live up to that commitment to respect human rights.

So how this exactly will be part and parcel of PDPs and other processes still remains to be seen. And that's actually the next part, the next step of the work of which I'm greatly looking forward to work on with all of you.

THOMAS RICKERT:

Thank you. Do we have more questions? And while I'm giving everyone the answer to consider questions, maybe one sentence on the length of PDPs. And I think that you're specifically referring to GNSO PDPs. Part of that is that the process needs to be diligent. And the process aims at being very inclusive. So there are a couple of public comment periods during that

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process. And that brings the minimum length of the process to a minimum of 12 months. So I guess we can have it either done in isolation or done globally inclusive. And then we can't avoid certain minimum durations. So do we have any remote questions for Lars on human rights? There don't seem to be any. Thanks so much. That allows us to move to the next topic.

JORDAN CARTER:

Just the small matter of jurisdiction. I should note that we have identified a mistake on this slide, a versioning issue. And France should be listed as supporting the dissenting opinion of the Brazilians as a participant in the group.

And -- China as well has associated itself with that statement.

Are there any questions or comments on this? We've got the rapporteur for the group, Greg Shatan, on the phone. And the co-chair, Thomas, may be able to assist as well. Benedicto.

BENEDICTO FONSECA FILHO: Good morning to all and thank you for the opportunity. Actually, it's more of a comment than a question. It's in regard to providing some further clarification on the way we have seen this exercise proceeding. First of all, I'd like to make clear that the issues that are being addressed by us are of concern for us

and that have led us to this dissenting opinion do not have anything to do with moving ICANN outside the U.S. or changing the headquarters. Actually, part of the agreed framework for all of us -- this was agreed back in Johannesburg as the framework for discussions -- is that ICANN should remain headquartered in the U.S. and the California legislation should be the default legislation. However, also in Johannesburg there was an agreement that we could explore partial immunity that would address concerns within that overall framework, remaining a nonprofit incorporated entity under the U.S./California legislation. So that we're not talking about moving ICANN elsewhere or anything of that sort.

The second point I'd like to make is in regard to our dissenting opinion. We have 30% opinion or minority opinion clearly within the subgroup. We were in minority. That's very clear. There's no issue about that.

However, I'd like to say that the concerns we have expressed we are not 100% convinced it reflects only a concern on the part of Brazil and those other countries that have expressed. Because our main concern, to be very clear, we are talking about what should be the conditions that should rule the relations between -- among governments in the multistakeholder approach. We're not talking about giving governments a permanent role vis a vis

these are the other multistakeholders. The multistakeholder approach is fully accepted. We are talking about among governments in the multistakeholder approach to make sure that we have even conditions for everyone. As we see it as of now, in regard to the way ICANN is incorporated in the jurisdiction that applies to ICANN, there is a prominent role to, one, the host government, the decisions of which the tribunals or even regulatory agencies can impart on ICANN activities in a way that would be out of measure in regard to the other participants.

So this is our concern. That's why we have been pleading for the kind of partial immunity or limited immunity. So the dissenting opinion reflects our perception that this was not achieved through the work of this subgroup.

And, fortunately, we have been exploring some options. But there was no opportunity, because we were in the minority within the subgroup, to have lengthy or more extended discussions on that concept.

The provisions in regard to OFAC in a way tried to address this. We recognized and would like to refer to a point that was made why we are not accepting. It is very difficult for us. Because, according to the rules that we apply, in case we accept the authority, in case we accept the recommendation with regard to

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choice of law, we are accepting the full report as an adequate response to the mandate that was given to the subgroup.

So, because the main concern, the main point for us have not been -- we are forced, let's say, reluctantly and against our best, to also reject the recommendation. Because, if we accept this recommendation, we are saying they are sufficient to address the concerns. And we think they are insufficient as of now. So, just to provide some further clarification and we see that these two recommendations would provide for some incremental gains, but they are still insufficient to meet our main concerns.

JORDAN CARTER:

Thank you, Ambassador. Sorry. Unfortunately, we're unable to display a timer up front. So, if I could encourage the next speakers to keep yourselves within two minutes, I'd be very grateful.

Kavouss.

KAVOUSS ARASTEH:

Thank you very much. I think you better not to put any limit on this very important issue. Allow us to speak, please.



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JORDAN CARTER: Kavouss, sorry.

KAVOUSS ARASTEH: Please, kindly, let us -- this is freedom of speech. We have to express our views.

JORDAN CARTER: Yes, but we need to get to all topics.

KAVOUSS ARASTEH: I know. But there were other questions and other issues, there was no concern at all. So, please kindly, do not defend a particular group. Let us discuss.

JORDAN CARTER: Please discuss.

KAVOUSS ARASTEH: Not for you, it is for us important to discuss.

JORDAN CARTER: Please discuss.

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KAVOUSS ARASTEH: Thank you. Am I allowed? Thank you. Jurisdiction is an important issue. It's a matter within the governments mainly. So, if there are comments from government, should we not be seen as minority? We have difficulty to have minority and majority. Dissenting information or dissenting views is different from minority and majority. Our comment does not address the particular government or particular person. We believe that, when we had discussions about many things that we have disagreed, someone came to the meeting and proposed a compromise. Within that compromise, he announced that, yes, we will consider relative immunity for the ICANN.

But later on either that was changed or was not implemented. We are not denying that something has been done, but it is not sufficient. The issue that we have now that, one, the government -- we are not pointing to one particular government. No matter which government. If one single government prevailing its own rules and jurisdiction over other governments that seems to be not okay.

So we have to do something.

This immunity, whether you call them partial, limited, relative, and so on and so forth, needs to be carefully considered.

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The dissenting point made by Brazil and supported by Iran, now supported by Russia, by China, by France, by Portugal, by many other people, in the GAC we have discussed that. That needs to be taken into account. The issue is not finished. We need to continue and find a way to find a satisfactory solution for the people. Thank you.

JORDAN CARTER:

Thank you, Kavouss.

Just for the record and for Greg's knowledge, we'll come to a response from the rapporteur after these three interventions. Milton, please go ahead.

MILTON MUELLER:

Yes. This is Milton Mueller, Georgia Tech. I'd like to ground this discussion of jurisdiction on actual people on the Internet who are affected by jurisdiction. Many people in GAC and governments have very abstract notions pertaining to sovereign equality. But it's unclear how their notions affect individual Internet users. How are they actually affected by jurisdiction? What changes can we make that would make jurisdiction issues improve the lot of Internet users?

Well, we had a debate about that. And we discovered that there are two very specific ways in which Internet users are affected by jurisdictional issues right now.

One of them was OFAC sanctions, and the other was a choice of law and registry agreements. So we succeeded in achieving consensus on those issues.

Now, I, frankly, don't understand the position of Brazil that they tell us that these are improvements, these recommendations would make things better. But they don't support them. Because they didn't get these high-level, big issues addressed in a way to their satisfaction.

And here's the simple reason that they didn't. Number one: They did not have a feasible plan for achieving immunity. If they wanted immunity, some form of immunity, they needed to go into this working group with a specific proposal. And the only specific proposal we had was the American International Organization's Immunity Act, which would throw the whole issue in front of the United States Congress to debate and could potentially reverse the entire transition and blow up in their faces. So that idea did not have any consensus and was not feasible.

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The other issue was, essentially, can we redesign ICANN from the ground up in a way that doesn't have it located in California law? Again that issue did not have any concrete proposal. There was simply a general sense that some people, including Brazil, would like to have it -- somehow U.S. jurisdiction neutralized, but there was no plan on the table.

So I can't understand why we would forgo specific excellent needed reforms that help people, particularly in Iran, because we did not achieve Nirvana. Okay? So let's move forward with these recommendations. Thank you.

JORDAN CARTER:

Thank you, Milton. We're not going to take any more interventions on this jurisdiction topic now.

(Speaker off microphone.)

UNKNOWN SPEAKER:

Siva, is this on jurisdiction as well?

SIVASUBRAMANIAN MUTHUSAMY: No. In response to Milton.

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UNKNOWN SPEAKER: One minute. Keep it brief, please. We want to do justice to the other subteams as well.

SIVASUBRAMANIAN MUTHUSAMY: I'm Sivasubramanian, from the Internet society in Chennai. I support one aspect of what Milton said, that the accountability process did not look at the broader aspects and has not come up with a concrete proposal for overall improvements.

And I think that should take us to another workstream, but this time a very, very carefully designed workstream with its sights set very high on overall processes. Thank you.

JORDAN CARTER: Thank you, Siva.  
Benedicto.

BENEDICTO FONSECA FILHO: I want to be very brief. I do not want to go into polemics. I just want to say one thing. We work in a multistakeholder approach model, and we should respect each other -- each group's own internal situation.

For governments, what Mr. Mueller calls as an abstract concept of sovereign equality is the number one principle that guides relations among governments.

What we are doing in ICANN is unique but is not disassociated from the rest of the world. So, as a government representative, I think it's not only my case but the case of many other governments, representatives, there is a concern to be part of -- and to validate a framework that does not adequately address this, that sets a very bad precedent for governments to accept and to validate a framework in which there are diminished different levels of government participation. So we're not talking about, again, the relation with the other stakeholders. We're discussing among governments how -- and, if this is not understood by other parts of the community, I think it's very difficult to engage in discussion. Because this is, for governments, I would say, the main -- one of the main aspects, one of the main principles.

And I think part of the nature of the multistakeholder model is to make sure that each other understands and respects each other's position. We do not want to impose ourselves on private sector and civil society. But we want also for them to maybe understand some parameters and some principles that for governments provides the very basis for participation.

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We are accountable to our authorities. I cannot go back and say I participate in a framework in which we accept and validate a framework in which we have a diminished position. Thank you.

JORDAN CARTER:

Okay. Thank you. We'll close the jurisdiction topic with that. At the end, once we've run through all the slides, I think we'll have time to come back. No, no. You'll have to wait until the end. Sorry, sir. We have to move on with the topics.

Before we do, though, we have to give the rapporteur a chance to offer any comments. Greg Shatan, you're on the line. The floor is yours. Please, brevity would be appreciated.

GREG SHATAN:

Thank you. It's Greg Shatan, for the record. Thank you for all the comments from the floor.

I would just say that the group did spend quite a bit of time discussing various aspects of concepts of immunity. I would just add that in many cases the group or many in the group looked at the issue of immunity as being difficult to have consistent with the idea of being able to hold ICANN accountable in a forum and a court in which ICANN can be seen, which includes but are not



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limited to certain U.S. courts are a very important method of accountability.

So I think that, at least with regard to litigation immunity, there was not really the ability to find a common ground within the sessions that we had in the time that we had with regard to accountability to find a way for immunity and the ability to hold ICANN accountable in a forum to be consistent.

And, of course, the Brazil dissent suggests that there could be a multistakeholder forum or some sort of forum like the IRP arbitration forum. But that seems, you know, very late in the process.

Of course, discussions of jurisdiction will go behind this subgroup and this CCWG so that we will hear again about these concepts.

I do hope that -- I will support the work that we did, and we'll understand that reports don't always include everything that they put and that we focused most of all on concrete and achievable goals that really were fairly specific. Thank you.

JORDAN CARTER:

Thank you, Greg, and thank you all for those interventions. One of the things we did on Friday was there is obviously a transcript

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of the CCWG meeting. We're going to be adding the documented transcript of the perspectives table there over a couple hours of conversation adding it as an annex to the report, along with this dissenting statement by Brazil and others. And this transcript as well will help to add context to a discussion that didn't start with the CCWG about jurisdiction and won't finish with the end of the CCWG accountability either. It's an ongoing conversation for the ICANN community. So thank you for those. I'll hand over to Thomas to deal with SO/AC accountability.

THOMAS RICKERT:

Thanks very much, and let's move to the next subject and that is SO/AC accountability. And I trust that Bertrand is now going to ask his question or make his comment. And I'd really like to ask you to keep it to roughly 90 seconds so that we can take as many interventions as possible.

BERTRAND DE LA CHAPELLE: Yes. Good morning. My name is Bertrand de la Chapelle with Internet & Jurisdiction. It's a very simple question, actually. Thomas was mentioning the concept that SOs and ACs are fundamentally accountable only to their communities. My question is, what are the mechanisms that exist today and that are envisaged to make sure that the SOs and ACs are also

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evaluated against the global public interest in case that there is capture or that there is dissatisfaction in general with the orientation that the particular subgroup may have imposed by way of a majority. And I take the opportunity just to make one quick comment in the exchange that just took place between Milton and Benedicto. They might be both right. Immunities are probably a way to go, and Milton is right that bringing that to your Congress might be opening a can of worms. That's the reality.

THOMAS RICKERT:

So thanks, Milton, for hacking our speaking order. Thanks, Bertrand. Are there more questions before we go to Steve DelBianco as rapporteur to respond to this? Do we have any remotely? No. Steve, over to you.

STEVE DelBIANCO:

Steve DelBianco with the business constituency. And my co-rapporteurs on this group were Cheryl Langdon-Orr and Farzaneh Badii. I was chosen to sit up here because I'm, in a minority sense on my group, I was the only old white guy from North America among the rapporteurs so I'm here.

Bertrand, thank you for your question. You get at the very core of a key conclusion of which we had consensus, and that is the

SOs and ACs were created in the ICANN bylaws expressly to represent the interests and aspirations of specific groups, GNSO, ccNSO, ALAC, GAC, ASO. All of these groups are chartered to represent the public interest of the target groups that they serve. One moment, please. And because that public interest is in the eyes of gTLD space and GNSO, that public interest may well be different than the public interest that might be expressed by, say, the ALAC. Or the governments. And those differences in public interest are part of the diversity of a multistakeholder system.

The notion of reconciling differences in public interest occurs through the way in which the Empowered Community tries to achieve a consensus position to challenge an action of the board. And as you know, the bylaws are rather explicit at delineating how we balance the different commitments and core values of ICANN the organization as it seeks to determine the public interest.

So there's a recognition that not every group will have the exact same view of what is best in the public interest. We did design 29 good practices in the areas of transparency, participation, and accountability that are geared to allow entities within an AC and SO to hold that AC and SO accountable to its target group, to be sure that it isn't captured by a minority of entities who

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have somehow achieved the ability to win election after election within their AC and SO or a subgroup of entities who always sway the voting on policy positions. In other words, I'm describing the worst aspects of capture. And if that is transparently revealed and there are appeal mechanisms, including elections, we believe that each SO and AC can fight back against capture. But we did not expressly create a brand new notion that the GNSO would suddenly try to question whether the GAC is accountable to the public interest and vice versa. We rejected that mutual horizontal accountability but we added 29 measures that improve the vertical accountability within a group. And I appreciate your intervention on that. We'd be happy to explain more about it, but I think our report expressly takes on the challenge you've given us.

JORDAN CARTER:

Thank you, Steve, for that response. Our next topic is staff accountability. And the rapporteur is somewhere in the room, should there be any questions on this topic. If there are not, Avri gets a lucky escape. And we can move on to the next topic which is on the changes to the ombud's office. Are there any questions or comments on this topic area? I see no hands. I'm not advised of any remote questions. And we'll move on to the next topic area. We do have one. Farzaneh.

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FARZANEH BADI: Sorry about that.

JORDAN CARTER: No. Welcome back.

FARZANEH BADI: Thank you. Farzaneh speaking. I just wanted to reiterate my comment which I sent the ombuds group because they considered my comments in the end, and I just wanted to reiterate that independence of this office is important and integral for its function. And it should be enhanced and we should work on making ombuds an office and make it independent. So thank you.

JORDAN CARTER: Thank you. And Sebastien, is there any response that you'd like to make on that? Sebastien is the rapporteur for this group.

SEBASTIEN BACHOLLET: Thank you, Farzaneh. I think it's a very important question and really we try within this subgroup to enhance the independence of the ombuds and the different recommendation who came from the excellent review and the work we have done in the

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subgroup meant to do that. Can we do more? Yes, we can do more. One of the reason we are where we are is that if we want to implement the recommendation quite quickly, we need not to go through bylaw changes and it was one of the reason we came with this type of proposal, but I'm sure work is not finished. ICANN will still evolve and one day we will be able to change the bylaw to enhance even more the ICANN ombud's office. Thank you.

JORDAN CARTER:

Thank you, Sebastien. Thomas, over to you for the next topic.

THOMAS RICKERT:

Thanks very much. Now we're moving to transparency. Are there any questions for Michael Karanicolas who's the rapporteur of the transparency team? Let me pause for a second. Okay. Since we had no questions for the standards -- you know, good faith standards and also not for staff accountability and both those rapporteurs were not present in the room, I think we should give the opportunity to Michael to say a few words about the things that are -- that, you know, may be a little bit more into substance of what was particularly important in their transparency report.

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MICHAEL KARANICOLAS: Sure. I'd be happy to. Thanks very much for that. So as the slide shows, our topic was divided into four subtopics. One was improving the documentary information disclosure policy, which is basically the measure by which people access information. There's 21 recommendations for that designed around better practice, access to information, right to information, legislation from around the world that are in force, mostly at the governmental level because that's generally where you find standards, but also they are enforced by entities like international financial institutions and U.N. bodies and other parallel groups. So essentially it -- the recommendations at the moment target improving the DIDP to bring it into line with international best practices on this front. Generally it achieves that very well, and there are some very strong recommendations based on that to significantly improve the process for accessing information and to reduce the exceptions by which information can be classified.

There's also some recommendations on interactions with governments, mostly around disclosures of lobbying expenditures. There's some recommendations on transparency of board deliberations. That mostly, again, is built around better practice that we see in terms of corporate government -- governance as well as at the governmental level to ensure that



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redactions from board deliberations are grounded in DIDP exceptions, and there's a series of recommendations for ICANN's anonymous hotline in order to improve whistleblower protection, most of which were ground in an independent assessment that was produced, I believe it was in 2015 or 2016. So that's sort of a Cliffs Notes. I would advise you -- I would encourage you all to check out the report and the recommendations that are there. You know, there's -- in the subgroup we're very proud of the output, and I think it charts a good path forward for transparency. It's -- transparency is always going to be a moving target. So it's not the end of the road. It's always going to be part of a process, but these recommendations, if fully implemented, would certainly provide a very strong step forward and chart an important avenue towards greater improvement.

THOMAS RICKERT:

Thanks very much, Michael. Let's now move to IOT. Any questions for David? So this is just to give our rapporteurs the opportunity to at least make -- make a brief intervention, even if there are no questions. So David, maybe 60 to 90 seconds on your work and then we will open up the floor for all sorts of questions that you may have or comments particularly on jurisdiction that you could not bring forward earlier.

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**JORDAN CARTER:** Before you do, David, just a reminder that this IRP-IOT means the implementation oversight team to the new Independent Review Process. And this isn't a Work Stream 2 activity. It's just been done in parallel with Work Stream 2 and may extend beyond the Work Stream 2 deadline. It's an implementation process from Work Stream 1. Over to you, David.

**DAVID MCAULEY:** Thank you. David McAuley speaking. I will just mention that the IRP-IOT is underway and we're working on constructing supplementary rules to take into account the uniqueness of ICANN in doing and undertaking arbitration. The important things I'll say about what's going on with respect to IRP, for you in the audience, is to know that if you have an interest in this area, the bylaw section that you want to go to is 4.3. It's extremely important. This is a new IRP bylaw. The new IRP panel will have the ability to issue binding decisions. The new panel, the new standing panel from which an arbitration panel will be selected, has the ability to issue precedential decisions. So this is extremely important. The things that are underway right now, our team is working on creating supplementary rules, as I said, to take into account the uniqueness of ICANN. The first draft of the rules have been through public comments, and

we're now trying to finish off -- and we're very close to the finish -- of taking those comments into account.

The other things that will be happening very shortly is there will be an expression of interest released by ICANN to people who would like to apply to be members of the standing panel of arbitrators. It's -- the bylaw describes the qualification. The fact that they shall be independent of ICANN, the fact that they will be independent of ICANN underscores the importance of selecting a solid panel at first because remember, I said they're going to be issuing precedential decisions and the first panel will have an outsized influence in that respect issuing first binding decisions. The other thing that's going to be happening is the supporting organizations and the advisory committees are the groups that will be nominating panelists. They'll also be vetting applications. And so they will nominate the people to the panel. The panel must be at least seven, could be more. And when you get a specific case, the three panelists will be drawn from this standing panel. The ICANN board will have the power to confirm the nominated panelists, but they can't unreasonably withhold confirmation. There's much to it. It's important work. I'll be here, and you can discuss with me during the week. I see other members of the IOT in the office. I see Robin Gross. I see Malcolm Hutto. The lights may prevent me from seeing others at

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present. But please, seek us out. And I would urge you to mention bylaw 4.3 to your various constituencies. Thanks very much.

JORDAN CARTER:

Thank you, David. And we've got a few minutes now for any other questions. I know that Dmitri was approaching the mic over their jurisdiction topic question. Are there any other questions or statements? We have got about ten minutes. Kavouss.

KAVOUSS ARASTEH:

Thank you, Chair. I think when I started to speak in the first round I said that my comment does not address to any particular government, any particular person. But an individual after me referred to the people of Iran and defend the interest of the people of Iran. I think it is better to leave that matter in behalf of Iranian to defend themselves. We don't need any external intervention. So this is the second time that this distinguished person made the same comment, and we ask you respectfully to respect us and do not intervene in our internal affairs. Thank you.

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JORDAN CARTER: Thank you, Kavouss. Farzaneh.

FARZANEH BADI: I just want to respond to that. I am from Iran. The problems that we have reported are reported by the people residing in Iran. In their day-to-day life they are affected. There's no external involvement and there's no imperialism going on. These issues were not reported before this group was convened. We got the forum to report these issues after 19 years. There is no external intervention. Thank you.

JORDAN CARTER: Okay. Thanks.

[ Applause ]

Are there any other comments or questions on any of the subject matter that's before us today? Mary.

MARY UDUMA: My name is Mary. There is -- I will ask you a question on diversity. At the shift, the work that has been done and well done, in lots of considerations we are taking in coming up with the recommendations on whatever who's on the board. If you can -- asking question on geographic consideration diversity

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where the -- even as we look at geographic diversity where the level of development, economic development of such region -- such groups within the region was taken into consideration. Did I make myself clear?

JORDAN CARTER: I believe so. Fiona, do you want to respond?

MARY UDUMA: Fiona, do you get what I say? Okay, thanks.

FIONA ASONGA: Thanks, Mary, for your question. Fiona Asonga for the record. When we looked at the different elements of diversity, we were looking at the -- how they fit into the inter-ICANN structure. When we break them down, when you break down the geographic, the geographic is further broken down even in the responses from the different ACs and SOs. When we send out the questionnaire, for instance, ACs and SOs have broken down into less developed and developing and that kind of thing. So it's already been done because what we've -- from our questionnaire there's quite a bit of effort to enhance diversity within ICANN but wasn't a structured effort. It was haphazard here and there. So (indiscernible) and was put into the report.

So we ask you to read the detailed report, and then come back with feedback. However, we -- in our recommendations, we are not recommending that it has to be broken down. That not at this point in time. Why, because we are just beginning to put in - - put the structures in place. After the structures are in place, maybe -- because we ask for our diversity review to be done annually. After the first diversity report, once the recommendations are implemented, then we'll sit and say hey, we're seeing geographic diversity but it is not well-balanced. We need to look at the balance of the different countries represented within as one geography so that we don't end up like -- allow me to use Africa as an example. Where in Africa you have got more countries that are way more developed like South Africa than the others. We have more South Africans than we have, say, Zimbabweans. We need to ensure that there is a balance between the -- so that is going to come in another phase because we have put in place a review mechanism that will always give us the data and allow us to keep improving. We have taken diversity as an issue that we'll have continuous improvement over time. So eventually we will get there. We all have that dream of making sure it's really global. So we have the vision and we will work towards it in a gradual step-by-step process.

JORDAN CARTER:

Thank you, Fiona. And also, I'm advised that the public comment period for the diversity report is still open, so you have got thoughts or suggestions, please feel welcome to add those suggestions there.

In the absence of any queues in the line for questions, I think we're about in a position to start to wrap up. So I want to do that with thanking people. On the slide in front of you is the rapporteurs who have done an incredible amount of work and helping to steer the working groups of Work Stream 2 into the coherent state that we've gotten to so far. And all of you in this room have participated, either by learning something new or hearing views you already knew expressed or sharing some new ideas. And the members and participants of the CCWG are doing important work. You know, the work that the ICANN community does matters to the world, to the Internet, and we have to be the organization that's worthy of that trust. Having accountability right is absolutely foundational to that. So thank you for the interest today. Thank you for all the contributions. And we can wrap this session up a couple of minutes early. I hope you enjoy the rest of your meeting. Thank you very much.

[ Applause ]



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**[END OF TRANSCRIPTION]**