
ABU DHABI – At-Large Public Interest Working Group
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SATISH BABU: ...very quiet for our leadership team.

We have had very successful meetings of the Public Interest Working Group. My name is Satish Babu. I am the co-Chair of this group. The Chair of this group is Wolf, who unfortunately could not make it to this meeting. He's probably not also able to join us online because he's not well. So it is a bit difficult for us because Wolf actually has most of the information about the plans with him. In his absence, we do have a bunch of information that we will share now.

Of course, we are lucky to have Ergys here, who has been in all our meetings before Hyderabad, Copenhagen, and so on, and who will take us through the major part of this meeting.

I'd like to apprise you of the status of this group and some of the discussions that we've had about its structure. Now, public interest is a cross-cutting concern in ICANN. It is not just At-Large, which is interested in public interest. There was interest from other parts of ICANN as well.

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We had this discussion as to whether we should create a cross-community structure for this group. Now, the existing cross-community structure, which is the [CCWG], is more a heavyweight kind of structure. It requires a charter and a bunch of other support. We were not convinced that, for this group, the CCWG was the right way to go.

We have been informed of another alternative structure, the CCC, the Cross-Community Committee, which was a much more lightweight structure which we could get started without too much procedure or procedural requirements.

At this point, we are exploring the conversion of this ALAC working group into a CCC. We would like your inputs on what you think about this idea.

With this introduction, I'd like to welcome all of you to this working group meeting. Our primary discussion is going to be on Agenda Item #3, which is what Ergys is going to present to us. Ergys has been there for all our meetings, and he's very much connected with the objectives of this group and what we've done so far.

I will also request for him, for the benefit of new participants here in this room, to kindly take us through what has transpired in our other meetings when he speaks about the main agenda for today.

It's now over to Ergys.

ERGYS RAMAJ:

Thank you, Satish. It's a great pleasure to be here with the group to continue engaging in this very important discussion. I don't have much in the way of updates since the last meeting, but along the lines of what you have touched on, I will go through a quick overview over what has happened over the course of the past year/year-and-a-half across the community – all the discussions that have been taking place. I think that would be a good opportunity to open up the floor for any questions and continue our discussion.

I would just quickly like to react to the notion of having a CCC (Cross-Community Committee). I think that's probably a very good decision. I think it's important to involve other groups, other communities, within ICANN so that this truly becomes a cross-community discussion with input from all the different groups that have an interest in this particular topic.

If we can have the slides up, please. Next slide.

This slide provides you with a visual of most of the key activities that have taken place to date at ICANN. I will start as far back as 2014, when the Panel on Public Responsibility Framework – at the time it was one of the strategy panels that was put together

by ICANN the organization to take a much closer look at what it is that ICANN needs to do in the public responsibility space and that the outcome/recommendation of that panel, one of those was to create the department for which I work today.

In addition to that, the panel came up with a proposed definition of the public interest in the context of ICANN.

At the same time, unfortunately, for the purposes of this process, the IANA function stewardship transition was taking place, and there was a lot of fatigue around the community. There was a lot of volunteer burnout. Most of the focus essentially needed to shift towards all of the activities that were taking place on the transition side. Therefore, there was a period of about a year-and-a-half to two years where the discussion on the public interest, which really had picked up prior to that somewhat slowed down.

In March 2016, after the multi-stakeholder community submitted the proposal to NTIA, there was a renewed effort to take a closer look at the public interest within ICANN's remit so that we can continue as a community to engage in a bottom-up dialogue and really understand what it is that this means in the context of ICANN. More specifically, can it be operationalized? If so, how do we go about and who do we need to get involved in this process?

The first major step to continue this conversation, or at least start the building blocks, was at ICANN55 in Marrakech. At the time, we had what used to be called high-interest topics session, now it's cross-community session. And the intent of that was to really explore what the public interest was in ICANN's remit and what it means. We had an opportunity to take a closer look at the European context. Wolf, who co-chairs this group, had provided some very interesting input and research that the EURALO folks had put together, going as far back as hundreds of years in some cases, and really understanding how it is that the concept itself is operationalized in the European context.

Subsequent to that, this working group was created, which is the only and the most active group within ICANN the community as far as public interest in concerned. We have had, as you mentioned, Satish, quite a few very engaging sessions over the course of the past two years. One of the things that has been lacking, unfortunately, is a high level of interest from the rest of the community on this particular topic. We've been having quite a bit of difficulty in getting people to be more interest in this specific topic.

We also had another hit session at ICANN57. Again, this is the equivalent of today's cross-community sessions. There we took a much closer look, since we were in India, at the Indian context and how that is understood and operationalized in India.

Since then, again, one of the most active parts within the community has been this working group to try to understand how we further the conversation. I will touch a little bit later on what it is that we have discussed specifically.

In terms of the resources that we have available, there is a wiki space that features a lot of the desk research that the staff has undertaken to date. We of course have a mailing list which, for the most part, remains somewhat dormant. There hasn't been a lot of traffic. Of course, myself as staff support, as facilitator of this particular topic across the organization and also within the community. Next slide, please.

Here on the screen you see the definition of the global public interest that was proposed by the panel. This is as it relates to the Internet and not ICANN specifically. I will not read this verbatim, but I'll give you a few seconds to look at it and digest it in case you have any questions for me later on. If we can go to the next slide, please.

The discussions to date. More specifically, what is it we have touched on? What is some of the consensus that we have seen? Although, again, because most of the discussion has taken place within this particular group, with the exception of the high-interest topic sessions that we had at ICANN55 and 57, I don't know if we can characterize it as consensus but as at least some

of things that we have noticed that have received approval, if you will, by large segments of the community, or at least those who were involved in those conversations.

The main thing has been this argument between two different schools of thought: whether we need to have a strict definition of what the public interest is or no definition. With the first school of thought – having a strict definition – a lot of the advocates claim that a definition provides people with structure. You know exactly what it is you're talking about. This provides you with a reference point, and it's a lot easier to have something tangible to point to, rather than being very abstract in what it is that we're referring to when we discuss the public interest.

The other school of that is that there should be no fixed definition. The reason behind that is that the concept itself is highly context-driven, so you can't necessarily a definition, a one-size-fits-all sort of solution, to this particular problem.

The second topic that has been discussed quite extensively is how this, the concept itself, is understood and applied in different contexts. As I mentioned a little earlier, we have explored to date the European situation and also the Indian one as well. There is a lot of opportunity here in subsequent ICANN meetings to continue building on this by taking a much closer

look at other regions. That's something, of course, for the community to determine which region and when and how. So there is an opportunity there to continue on the knowledge that we already have as a community.

The third overarching theme has been the notion that everything that ICANN does is in fact rooted in the public interest. Some of the examples that have come up are the development of best practices in multi-stakeholder systems, as well as the efforts to improve and enhance diversity and stakeholder participation, which is an ongoing thing at ICANN.

The fourth theme is the security, stability, and resiliency of the DNS. Of course, diversity is but one element of the public interest. At ICANN57, we had a very good panel put together, which also included the Chair of the GAC. One of his observations was that, when we are referring to the global public interest, essentially what we're saying is that that is the aggregate of all special interests. That concept itself has resonated quite loudly with many of those who are part of those discussions.

The public interest is, of course, a very abstract notion. Of course, this goes back to the definition versus no definition schools of thought. In order for it to be successful, it needs a

process that is somewhat adaptable and not necessarily something that's very fixed and firm.

The last thread that we have observed over the course of the discussions is the notion that the way in which the public interest is currently included in the Bylaws is really designed to be self-executing. If the bottom-up multi-stakeholder process is followed and is followed properly – of course, the end result of those discussions are supported by the community; there is consensus – then, by definition, the global public interest is automatically served.

I think what's important to really highlight here is the idea that the public interest in the context of ICANN can only be determined by the multi-stakeholder community. What we are doing here today is part of the process in that much larger continuum. Next slide, please.

I would like to put these questions out there to guide our discussions and for you to consider as we can hopefully engage in a productive discussion today. As I mentioned earlier, there has been a lot of inactivity on this particular topic from the community. We know, of course, there is a lot of bandwidth that's lacking. Of course, there are other issues that the community is grappling with at the moment. There are a lot of issues that are coming down the pike that will continue to take

away a lot of the bandwidth that the community has at its disposal.

For the purposes of this particular work that we are all involved in, I wanted to see what your thoughts are in terms of what it is that we can do, both from a staff perspective but also from a community perspective, to ensure or at least try getting individuals more actively engaged and participating in this across the community. The Cross-Community Committee – the idea that Satish mentioned earlier – would be a very, very good opportunity and one step in the right direction.

The second bullet here actually touches on that particular point. We had discussed this extensively when we were looking at the different options. We had agreed that a more formal structure is something that, at the moment at least, cannot really be attained – again, going back to the lack of bandwidth that exists within the community. And there’s a number of other initiatives that, at the moment, need to be prioritized over this.

I will stop here. I hope that we can engage in a discussion and identify some areas of interest and potentially next steps, both from a staff perspective but also from a community perspective.

SATISH BABU:

Thank you very much, Ergys. That did outline the work that we have done in the past and also the pertinent questions in this context.

As we open the floor for questions and comments, I'd like to state that one of the most troubling aspects for me vis-à-vis the multi-stakeholder model is the assumption that it is a necessary and sufficient condition for the public interest objectives to be met by merely following the ICANN multi-stakeholder model.

I'm not sure whether this is fully true. What happens if some stakeholders are less visible, less vocal? Does the present system offer any safeguards that will ensure that there is equitable participation across the spectrum of stakeholders so as to be implicitly taking care of the assumptions of upholding the global public interest? That's a personal concern that I had.

The floor is now open for your questions and comments.

Evan, please?

EVAN LEIBOVITCH:

Thanks, Satish. This is Evan Leibovitch from NARALO. I've been coming to these public interest meetings now for the better part of ten years, and we're not a whole lot further along than when we started. This kind of topic churns and churns and churns, and these exact same questions that came up on your slide every

time. Meetings end and nothing is resolved until the next meeting, where we start it all over again.

I guess what I'm asking is there is a desperate need within At-Large to do things within the public interest rather than spending a lot of time on churning. "Do we define it? Do we not? If we define it, how do we define it?" and on and so forth.

Policy resources within At-Large are precious. Volunteer time is precious. I guess what I'm asking is: is there a way to channel this and get beyond the hump of what the public interest is. Do we need to spend time defining the public interest? People are coming here representing ALSes as individual members. They have family members that are outside the ICANN bubble that have an idea what it means to use domain names and to trust them and not be abused by them and so on.

The ICANN Bylaws are very clear in giving At-Large the ability to speak for end users, which is the 99% of people that will never buy a domain. Can we not take this energy that is being brought to meetings like this and start to channel that into getting beyond that hump of defining the public interest and now start to think, "Okay. What do we do to satisfy the needs of the people that come here and the communities that sent us"? Thanks.

SATISH BABU: Thanks, Evan. Yeah, [inaudible]. Heidi, then I'll have a comment, and then Ergys, please.

HEIDI ULLRICH: Hi. This is Heidi for the record. I'm the staff support for this At-Large working group. It is Wolf Ludwig who's really the primary person chairing this working group. He was unable to be here, so he has asked his co-Chair, Satish, to take this.

Evan, feel free to go ahead and follow up with the two co-Chairs, and in particular Wolf, to move this forward.

EVAN LEIBOVITCH: Thanks, Heidi. Just as a follow-up, Wolf knows very, very well my point of view on this.

SATISH BABU: That's quite right because I've been also reading Evan's e-mails on this topic. My only comment, before Ergys responds, is that this questions is really for the community to answer and not for Ergys himself. So he's actually helping us, and we should not burden him with this issue.

ERGYS RAMAJ: Yeah, I'm not going to add much more substance to the answer that you gave. This is, of course, up the community. As staff, my

role is to facilitate and help enable what the community wishes to do moving forward.

SATISH BABU: Thanks for that. Are there other comments?

UNIDENTIFIED FEMALE: [inaudible]

SATISH BABU: Holly, you want...?

NIELS TEN OEVER: I am rather new to this discussion, even though I have followed this as a lurker and sat in on several sessions. Especially the high interest I followed with great interest.

I think what would be interesting and I think we discussed it in earlier stages, but now that the discussion on the human rights core value has progressed quite significantly – namely, we have a core value – and now that we almost have a framework of interpretation for the human rights core value, human rights in the public interest and also in the academic literature have been often touched upon and co-integrated, and it might be interesting to look at the human rights core value as at least a partial solution of what we would be doing here.

Perhaps it would even be of interest of this group to public comments on the CCWG on Accountability from that framework to see whether we could kill two birds with one stone, so to say. So I would suggest that as a stepping stone to get through a next step because human rights are of course the most widely accepted norms we have in the world. To that extent, that seems to be the best or the most widely accepted definition of public interest that there is in the world. Thank you.

SATISH BABU:

Thanks, Niels, for that input. The alignment between human rights and public interest that I also feel we can pursue. But let's also hear from the others on this particular aspect.

Holly?

HOLLY RAICHE:

I think I'm somewhere in between. I take Evan's point that nobody has any sort of spare bandwidth – not at any ICANN meeting. That said, there are probably many issues. I think the GDPR is right in front of everybody's face as this shining example, but there probably are others. If there were an agenda for this group, I would think it'd be more of an ad hoc one. What are the issues that are facing ICANN? As they arise, then we identify them and maybe talk about them, but not necessarily

say we're going to meet every meeting – I mean, don't make this into yet another working group that is going to meet just because it's going to meet. There isn't time for that. The time that we have ought to be spent thinking through what the perspective is of the things that are on our plate that we got to think through anyway. That'd be my suggestion. Thank you.

SATISH BABU:

Thanks very much. Yeah, I of course completely agree with Holly's suggestion that we move onto something that is concrete and actionable. Of course, that's what Evan had said yesterday as well.

Now, the question that is really open at this point is: what are really the action items that we can start with that will advance the agenda of what we're trying to do here?

It's unfortunate that Wolf is not here because he has some concrete ideas on how we should be going forward, but even with his absence, I think we can discuss this particular point.

Alberto?

ALBERTO SOTO:

I'll speak in Spanish. We've also discussed with Wolf this quite thoroughly, even outside our meetings, and we have reached

the conclusion that Evan and Holly have described. I agree with you that the issue is why can't we reach a definition of public interest?

A study was carried out for Europe and India. I think it is very difficult to reach a public interest conclusion because public interest, human rights, and many other issues in ICANN have a social connotation, a religious connotation – all those connotations that apply to specific communities. It is very difficult to reach that.

Since we cannot reach a definition nor be pragmatic, to move forward we should do something that Evan had us do a few days ago. What are we doing? What do end users want? End users don't know what they want from ICANN because they realize they have an issue when the issue comes up. It's us who know about this who have to capture that issue and try to solve it within this environment right here. That is the way we have to represent end users. We have to be the translators of those needs.

When those needs come up, if I tell an end user something about network neutrality, he will not know what I'm talking about. They will tell me, "There is an ISP who wants to charge me too much for a service." The end user is talking about net neutrality,

but they don't know what it really is about. We see that as network neutrality.

I think that one way of moving forward is to take up those issues and to move forward with this issues in our meetings. Today we talk about GDPR. Some people are only talking about the need to have data because you have to fight crime. Well, I think it's perfect. That's part of public interest as well. Well, let's take up those issues. Let's see how we can move forward here in this group.

As Holly said, we will not have a perfect final agenda, but at least there will be issues we can work out throughout our meetings. Thank you very much.

SATISH BABU:

Thank you, Alberto, for those points. On the first point – whether we should have a definition for public interest – and the second, the watchdog rule of this working group in anticipating public interest violations as they come up in different emergent programs of ICANN, Ergys, would you like to respond to this now?

ERGYS RAMAJ:

Yeah. I can offer some observations based on the discussions that have taken place to date. Let me just start from the

beginning. The decision on whether or not to have a definition rests with the community.

Now, some of the concerns that have been raised with regard to having a fixed definition are along the lines of the concept of the public interest is highly context-driven, so anything that's fixed defeats the purpose. It's not fit for purpose because you cannot have one definition that would be good enough to cover all the eventualities and all the specific things that could arise of a specific situation. That has been the real struggle with having the community agree on having a strict definition.

Now, I do have to say that, when this conversation first started, that was the goal. A lot of people were proponents of having a fixed definition. Over the course of time, as this conversation evolved, the notion of a fixed definition became somewhat less desirable, and there was a shift in the other direction.

The short answer is: it's up to the community. If that is seen as the appropriate next step and the right thing to do, then, again, my job specifically and ours as an organization is to facilitate the work that the community is doing, rather than dictate what the community should and ought to do.

SATISH BABU: Thanks, Ergys. To add to that, one of the reasons why we went ahead without having a formal consensus on the definition was that it was taking us too long. We were bogged down. Different people had different perceptions on the definition. Finally, there was a feeling that we were spending too much time getting bogged down and unable to get started on this whole issue of definitions. That is why there was an effort to keep it aside for the time being – we’re not discarding it entirely – and move ahead with the other agenda items.

Ricardo – sorry, you want –

RICARDO HOLMQUIST: I guess Evan has an answer because he’s –

SATISH BABU: Oh, sorry. I’ll come to you. Evan, please go ahead.

EVAN LEIBOVITCH: Sorry. I guess I find the answer of “it’s up to the community” to be increasingly unsatisfying when the answer you’re getting back is “The community is deadlocked or inclusive, or can’t come up with a consensus.” How long do you spend waiting for that consensus before saying, “Okay. Let’s go to a Plan B and move on”?

One of the things that was on your slide was the option that said that the public interest is just the amalgam of all the different interests that are here. So rather than agonize and wait forever for that consensus that may never come, why not just work with what we have, which is “These constituencies do their thing. These constituencies do these things We hope that, when the ICANN Bylaws are considered, all the different constituencies and stakeholders that are there will sufficiently represent the public interest,” and just move on from that? That means, essentially, that our job in fulfilling this is essentially doing our job in representing end users and not getting caught up in the broader thing.

I’ve been at this for ten years, and the lack of consensus doesn’t mean we keep waiting for a consensus. That’s just my point of view on this.

ERGYS RAMAJ:

If I may react, thank you, Evan. It’s a very, very valid observation. What I would like to respond to that is that we’re not just waiting for consensus. What you articulated in letting the communities continue to do what they’re doing – in fact, that is what’s happening. We’re not in any way, shape, or form interfering with what the community is doing and ought to do.

The reason I am here today from staff is because this working group exists. From my point of view, it exists because it is trying to solve for an issue that is important for this particular community. So I wouldn't to dismiss the lack of consensus, if you will, as the community's inability to make progress on this particular point.

Again, from my point of view as staff and in the role that I have been given, I am here to serve you guys as the community. I understand that perhaps this overused, but the alternative to that is for me to come up with a plan and say, "This is what we're doing. This is how we're doing it." I don't think that would play out very well." So there are some choices to be made. But, yes, I understand your point of view and it's a very valid concern.

What I would like the group to take away from this is that I am here as a resource. If the community, again, does not wish to continue this conversation because there's a lack of bandwidth, a lack of interest, that's up to the community. But we as staff cannot dictate the terms of that conversation, nor can we dictate next steps.

SATISH BABU:

Thank you, Ergys. The queue at this point is Ricardo, Siva, Niels, and Alberto.

RICARDO HOLMQUIST: I will speak Spanish, if you don't mind. There is one thing I pointed out in ICANN57 in Hyderabad. The ICANN Bylaws have been created or set up in California, and we should see what California law states as to what public interest is. At least we should bring the definition, put it up on the screen, and understand what public interest means in California.

Secondly, as to expanding this group, well, I have my concerns there. We have not reached an agreement in this group. In theory we represent users, so I can't imagine, if governments have to sit at a table, they will have a totally different definition of public interest that might eventually affect users much more than the definition we currently have. Reaching a definition of public interest in my country means that everything should be [expatriated] by the government. This would be terrible in my country. This is why I believe every country has a different point of view here. Thank you.

SATISH BABU: Thank you, Ricardo. Siva?

SIVA MUTHUSAMY: Sivasubramian from ISOC, and that's an ALS. The problem with the definitions and the work not getting started or proceeding

further due to lack of consensus about definition should be resolved, either by starting with the definition on the table, which is still not agreed upon, or by taking external advice. ICANN has had some limited experience when it comes to engaging external advice, but in matters like this, which are broad, it is better to take external advice and rely on external advice where a consensus is not reached easily.

By definition, this is an undefined topic – public interest, global public interest – and when you get down to the various aspects of public interest, there are terms that are undefined due to the fact that the Internet is new and also due to the fact that the multi-stakeholder is new and also due to the fact that the whole concept of global public interest is relatively new.

One of the most important tasks is to work on definitions. The time that it takes to arrive at definitions should not deter us from thinking about public interest. The lack of definitions should not be used by those who oppose public interest to restrain discussions on public interest.

So these are some of the observations. Thank you.

SATISH BABU:

Yes, please, Ergys.

ERGYS RAMAJ:

Just to quickly react – I think this is an important point that you’re raising – I don’t think the process has stalled because of lack of consensus over whether there ought to be or should be a definition or no definition. From where I’m standing, it looks as if it’s more of a lack of overall interest and/or urgency to move this particular topic forward – that coupled with the fact that there’s really very limited bandwidth in the community.

Given that there are very limited resources, a prioritization process has to take place. As Holly mentioned earlier, for example, GDPR is coming up. It’s very active. So there is a bit of a give and take, but again, I don’t think that the lack of progress can be traced back to the fact that there is no agreement over the definition versus no definition.

If you recall from when I was presenting the slides, that was one of many threats that have been discussed to date. So I would say it’s not a fair characterization to say that that is why the conversation has stalled.

SATISH BABU:

Do you have a follow-up? Yes.

SIVA MUTHUSAMY:

A quick response. I’m not saying that the discussion is stalled, the process is stalled, but I repeatedly come across participants

who are opposed to expanding the scope of ICANN or expanding public interest by retorting or reacting to any discussion on public interest by saying, “Okay. How do you define public interest, and what is public interest? That is ambiguous, so it’s not within our remit,” and so on.

They point out the fact that it is very ambiguous, the terms are ambiguous, it cannot be defined, and certain minor terms cannot be defined. That is used as a reason to restrain any possible steps on discussions or a rule in public interest. Thank you.

SATISH BABU:

Thanks, Siva. We will now move on with the queue. The queue is now Niels, Alberto, and Aida. Please go ahead.

NIELS TEN OEVER:

Thank you very much, Chair. I think I have to kindly disagree with Evan because I actually think that public interest is not the same as the interest of all publics. I actually think the most important part of the public interest is the interest of those who are not represented here because, if we just say, “Public interest is the interest of all those who are gathered here,” then we don’t really need the public interest because we’re already here defending and advocating for our interests.

EVAN LEIBOVITCH: Sorry. That’s not what I said.

NIELS TEN OEVER: Oh, I’m very sorry. Then it might be limited understanding and faculty of the English language. But I think we need to really ensure that it’s those who are not here. At the same time, it’s very hard to do that because they are not here. That’s why I tried to refer to existing norms: trying to come up with what other people think is very hard if people are in the room, but it’s nearly impossible if they’re not in the room.

SATISH BABU: Thank you for that intervention. Evan, do you want to respond right now?

EVAN LEIBOVITCH: Yeah. Just to be a little clearer about what I did say, of course the billions of people that use the Internet are not in this room. It would get very crowded if they did. The point behind what we are trying to do as members of At-Large is to try to represent the interests of that.

We’re also very aware – this came up in the Saturday session – that most people don’t care about ICANN. They care that the

DNS and that the names and numbers work. That don't care that it's ICANN doing it, just in the same way that most people don't care that their sewage system works. But they really care that there is somebody taking care of it. In fact, they elect politicians to do that.

So we're here trying to represent that public interest. Because the billions are not here, it's our task here, charged in the Bylaws, to try to represent that interest. Do we do a good job of it or not? That's always up for discussion, and that will never end. But that's not to say that the interest of those billions are not designed in to be represented within the ICANN Bylaws.

So you have that 1% that is the domain interest, that is the governments, that is all the consultants, and so on, and then you have the 99.99% that will never own a domain but are impacted by ICANN. That's, according to the ICANN Bylaws, the territory we're supposed to cover. Whether or not we do that well and whether or not we're properly resourced to do that is a different question. Within the ICANN Bylaws, is the provision for that point of view to be expressed by this thing called At-Large?

As you say, is it the amalgam? Maybe not. I mentioned it was because it was one of the slides as one of the options. It may be a fallback if there's no consensus on a definition. It's just as I was saying before: we can either get caught up in trying to achieve a

consensus that may never come, or we may say that the next best thing is to recognize what our mandate is in this room and move forward with that.

By the same thing, Ergys, I'm not saying that this effort and your time isn't needed. I'm suggesting that perhaps it has been rechanneled from "What is the public interest?" – trying to get past that hump – to, "What is it we're trying to do in At-Large in representing that 99.9%, and how do we make that more effective and better?" Thank you.

SATISH BABU:

Would you like a short follow-up? [inaudible] coming back.

NIELS TEN OEVER:

Thank you very much for your reply. It makes me think a lot because I fully agree that it's the nature of infrastructure to hide itself from the public view. But at the same time, it is also infrastructure that largely dictates how we are in the public space. Increasingly, the Internet is now mediating the public space, ranging from voting to the public debate. So we need to be very careful about that.

Your notion that the public interest is exactly what At-Large is doing... You mentioned that At-Large is here to give rise to the opinions of those who use it, and that would be what the public

interest. That would be an even more complicated conflation of mission and objective. I understand the complexity of the question, but then again, I would say let's not try to reinvent the wheel but fall back on what we already have in academic and international literature.

SATISH BABU:

Thank you very much, Niels. Let's discuss this point further as we move down the queue. The queue is now Alberto, Aida, and Andrei.

ALBERTO SOTO:

I'm going to share an example along the lines of what Ricardo said. If a given government says that – I've mentioned this example several times already – it's of the public interest to build a very long highway in the country, just because it says it's a public interest, maybe it will expropriate all the land necessary to build that highway.

Let's assume now that a given government says, "The Internet is a public interest." Let's not talk about ALS in Europe but let's talk about countries that are not even part of the world economy. If they say the Internet is of public interest, it's highly likely that they will do so with the goal of limiting freedom of

expression. By this, I'm trying to say that it's quite impossible that we will reach a definition of what public interest is.

My suggestion is: let's leave this aside. I think Goran said this yesterday. He asked about this and he said, "I don't have a definition, but that's why I'm holding these sessions." So let's do something. Maybe at the next meeting, I'll submit a motion that we should [leave aside] the issue of having a definition or not. Let's keep on moving forward with what we have to do. Thank you very much.

SATISH BABU:

Thank you, Alberto. It makes perfect sense to me – this addition of yours. We now move on to Aida.

AIDA NOBLIA:

I am Aida Noblia. I am from an ALS in Uruguay. I've been listening to you attentively, and I think it's a very interesting subject. This brainstorming has been very interesting, too. Though I've not been part of this group as long as you have been, there's also much burnout for myself.

I believe that public interest is an abstract concept which becomes concrete in practice through many actions. I believe here there is a discussion on whether we have a definition first

or whether we go into the field, into a practice, or how long we will keep on discussing this.

The point is that there are two ways of approaching the issue. I believe that, if we have a plan and a general idea, public interest is coming true in thousands of actions. In the long run, it changes, too. I believe it's a term which governments use very often. They act on behalf of a public interest. It was said that there are people that are not involved presently in this group, and that term refers to multi-stakeholders. The multi-stakeholder model is taken up by ICANN, so this would be related to this term. Multi-stakeholders, whether they are here, represented and involved, or whether they are not here so their public interest becomes important.

Governments won't say that building a highway is of public interest because in theory they have analyzed all the interests of all the parties, and the public interest has prevailed. It's as assessment they carry out, which includes several steps. I believe it's a useful concept because somebody mentioned the word "structure." I believe that, if actions follow a plan, first we should have a plan with some concepts and ideas. We'll move to an action. If the action is wrong, we correct it.

The approach is the idea of people who go into practice first and there's a problem. They fall into a hole. They say, "Have I had a

problem here?” They go back to their plan and they amend the plan.

I believe it’s important to have at least a basic idea of what public interest. I think it has been shaped somehow by all the comments. I believe that we should take into account many interests of those who are here and those who are not here. This is a basic idea. Maybe after that we could say, “This can be applied to human rights,” or to this field or to this other field.

This is my opinion. It’s a wide-ranging issue. We are here, going between theory and practice. Whether we should go first to practice and, after that, develop the theory, there are elements that have been mentioned that involve a theoretical foundation. We defend the interests of people who are present and people who are not present. We should assess those who are underrepresented as to include everybody.

So this is my point of view. Thank you very much.

SATISH BABU:

Thank you, Aida. We are not, of course, saying that public interest is undefinable. We’re just saying that we can perhaps have a working definition and go ahead. The point that we should not make it a stumbling block or a kind of impediment is the real value of the discussion.

Andrei, please?

ANDREI KOLSENIKOV: Thank you very much. I finally can speak. I think that's the most boring subject among all our discussions over the years, but I always, at these discussions, repeat a few things every time. I represent the public interest – I'll be brave enough to say this – because I know how the Internet works. I've been there for 27 years. I know how DNS works. I know what people do with the Internet. I know the problems. I'm representing their interests. I don't have any problem with that.

I don't need any written law or rule saying, "What is public interest?" I don't care. I just don't want to spend time on doing this. We're all here spending our time discussing blah, blah, blah. Every year, it's the same old story about what public interest is.

Remember, I am a public interest. If you have questions, ask me. I will explain to you. Thank you.

SATISH BABU: That's a very concise way of defining public interest. Do we feel that we are approaching a consensus on that? We understand that, as Ricardo pointed out, governments do define public interest.

UNIDENTIFIED MALE: [inaudible]

SATISH BABU: Yeah. So let's then take up that motion that we don't necessarily have a 100%-agreed-upon definition of public interest. But we should, on the other hand, go ahead, if possible, with a working definition. Otherwise, with the set of activities that we are to do uphold the global public interest – do I see consensus on that?

We don't see any opposing views at this point. Ergys, would you like to respond to that?

ERGYS RAMAJ: Just a quick reaction. I think it's important to make any definitive statements, considering that we are a very small group here today. Also I think that it would be very useful to continue to engage and, depending on however the group wishes to make a determination – but I would caution against coming to definite conclusions here today.

NIELS TEN OEVER: Can I propose something?

SATISH BABU: Yes, Niels.

NIELS TEN OEVER: If we consider the role of At-Large Structures and ALAC as watchdogs to protect the public interest – because that’s a real function. It’s not theoretical function; for example, the jurisdiction questions and abuse questions. [In] all kinds of problems, which may cause the end users having problems. That may be a right function to focus on.

You know what I mean? Everything is smooth. Everything works. Domain names work. It’s a good market. It’s smooth. It’s available. People use it. But if something goes wrong, maybe that’s a role of the public interest: just to be watchdogs if something goes wrong. Then it might become more specific. You know what I mean?

ERGYS RAMAJ: Thank you for that – oh.

ALBERTO SOTO: Please don’t hit me in the face, but I don’t fully agree. The consensus we may reach today is not a final one because, if there is a later discussion, we may change it. But based on the experience we have in our working group – and I am a member

of many working groups and have been so in the past – I would like to tell you that, one day at 2:00 a.m. in Argentina – I always happily get involved in all calls, and I write in English, “Hello, everybody,” with several exclamation marks. Somebody asked me why. Because there were four of us on that call, four of us participating, and one of those four people was therefore— the second time we were just three people throughout the call. So I believe that is a very extreme example.

In all of our working groups, if there are 25 or 30 members enrolled, it’s only seven, six, or five who actually participate. We wait for everybody to agree. Our consensuses are always reviewed. So if this has to be changed, we may change and amend it. But I think we have to move forward and start working. Thank you very much.

SATISH BABU: Thank you, Alberto. Ergys?

ERGYS RAMAJ: Thank you, Alberto, for following up on that. Just very quickly, mine was just an observation.

What I would like to touch on very quickly – I think it was mentioned earlier – is this idea of bringing in external advice. This is not the first time that we have heard this, but there has

been a lot of hesitation in the past to bring external advice into the community for various reasons.

Since we have about 25 more minutes, I think it would be, at least for me, important to touch on this and dig a little deeper. What would that be? What would be the purpose of going out to seek external advice? Is this something that we as staff can do, both in the short and medium term? Again, it could be something along the lines of providing some more literature review, understanding the cross-section between, as Niels mentioned earlier, human rights and the public interest – anything we can potentially be as specific as possible if we can. I think that would be very good and something very tangible for us to look into, rather than continuing having this very abstract conversation.

SATISH BABU:

Thank you. Before I come to you, Siva, I observe that many of us sitting here are veterans of this group. They have been attending many meetings, and there is a palpable sense of frustration and not being able to cross this barrier. A need for a consensus on this I think is important so that we can park it aside. We are not closing the discussion. We are just saying that we need a working definition. It's good to have a working definition, but let's not get fixated or obsessed with that.

Siva?

SIVA MUTHUSAMY:

The external advice that I’m talking about is not for this working group but for ICANN in a broader sense. There was an exercise to have external advice for the accountability and transparency or CCWG one or two years back during IGF Istanbul by staff. That proceeded and that succeeded and some external advice was taken. Such an exercise could be taken up without much conflict again. So there was some conflict last time – let me finish that.

The external advice that I’m talking about is for two reasons. One, for a topic as abstract as this, and for a topic abstract as accountability, different perspectives are needed from outside DNS. Non-technical advice is needed. Perspectives from great thinkers are needed – maybe from think tanks like Chatham House or Freedom House is needed. Views from different cultures are needed. So external advice would be valuable.

Secondly, to get past [deadlock] where two different groups pull the definitions of something else in two different directions, somebody external could say, “Okay. Let’s have this on the table and let’s start on the basis of this definition,” or, “Let’s proceed from this position.” So that would other external, neutral advice. That is how it could be valuable. Thank you.

SATISH BABU: Ergys, and then Yesim.

ERGYS RAMAJ: Thank you. That is very, very helpful. Just to be very specific, I guess what I was getting at with what I mentioned earlier was that, for us to undertake such an exercise, we would need a staff to have the mandate or action by the community.

SIVA MUTHUSAMY: I'll quickly react to that. Again and again I'm getting a response from staff and the Board when certain [broader] suggestions are placed before them. "Okay. You have to go to the community. It has come to us from the bottom up." Why do you have to shy away from taking proactive responsibility? You're the CEO. You're a member of the ICANN Board. You're the Chair of the ICANN Board. Take some proactive steps and take a stand. Take an initiative. Then the community will support you. You don't always have to say, "Let it come from the community." Thank you.

ERGYS RAMAJ: This is not about being reactive and not being proactive. We have had many, many situations in the past where actions were

taken without necessarily consulting the community. If I were to be very specific, I personally feel that this is the purpose of this group: to empower the staff to say, “We have a deadlock. We’re not making any progress. We think that you should go out there and seek advice from a third party.”

I don’t think it’s a question of the organization not taking action because it’s a very challenging situation – being a facilitator, which is what we are. We are facilitators for the community. We are not leading the discussion.

As frustrating as it may sound at times – having staff take that position – I think the legitimacy of the process will be called into question, should staff take action on something that it feels strongly about, regardless of what the topic is. Which is why the community is there in place: to guide staff on what it is that it needs to accomplish.

If this group were to agree that external help would be needed, then I would take that back and consider it and I will come back with a reply.

SATISH BABU:

Siva, ten seconds.

SIVA MUTHUSAMY: Quick, quick, quick. [inaudible] to what he was saying, the action by staff could be on two different levels. One is community support. Community [inaudible] before takes action.

Secondly, on certain areas, staff could have the discussion to initiate something which could be later ratified by the community. So the community-[approved] process could act in different ways. Thank you.

SATISH BABU: Thank you. We will move on with the queue. The queue is now Yesim, Alberto, Andrei, and Evan.

YESIM NAZLAR: Thank you, Satish. Yesim Nazlar from At-Large staff. We have a comment on the AC chat from Harold Arcos. He says, “In Morocco, we agreed that we will be moving forward to a framework, not a [monolithic] definition.” He add, “On definition, we agreed to work with external lawyers to start the definition of public interest for ICANN, based on its mission. Thank you.”

SATISH BABU: Thank you very much for that observation. I think that’s perfectly right, and we also have agreed to that.

Over to Alberto.

ALBERTO SOTO:

Thank you. A gentleman told a lawyer, “I want to have my legacy on paper. I want my will.” The lawyer said, “I will take care of your will.” The main said, “Well, I want to leave something with my family as well.” What was missing there? The definition of what he wanted of the scope of what the advice should be of the profile of the company I’m going to hire, just like our ecosystem. Do we have any experience with multi-stakeholders and so on and so forth?

So if we need external advice, we first need to define this. Once we define all of that, we will know whether we need external support or not. Thank you.

SATISH BABU:

Thank you, Alberto. Andrei, please.

ANDREI KOLESNIKOV:

Alberto, you’re such a polite person. I’m polite again. Look, a multi-stakeholder and the public interest is a dogma. In order to have a detailed dogma, you have to hire priests, not the legal guys. We’re not asking, “What is multi-stakeholderism?” And we should not, “What is public interest?” because it goes without

saying. It's a dogma, guys. That's my opinion. Or at least we have a target, as Alberto said – a written target that we all understand and agree on – because now I'm not in agreement because, for me, public interest is a dogma. Thank you.

SATISH BABU: Thank you. Evan?

EVAN LEIBOVITCH: I think I rather like the idea of calling a priest as the external help. That may actually get us by some of this. I absolutely agree with the comment that this is dogma. Again, the necessity – we have so much to do to support the needs of the constituencies that are ALSes that they bring to us.

I guess I also got stuck on the term of “if the community wants it,” because that is also a bit of an amorphous blob of the community. Does that mean that all the SOs and ACs have to agree on it, or does that mean a preponderance of them? Or does that mean the Board, which supposedly represents the community, does that?

Defining the community in some cases is as difficult as defining the public interest, so it's an amorphous definition chasing another amorphous definition, which takes us even further down the whole.

Is there something we can do here as At-Large to say, “Look, we have interests of our community which are defined in the ICAN Bylaws as being the end users, which is the 99.9% of the public”? Resign ourselves that we won’t represent that other 0.1% and get to the job of how we help ICANN better reflect that part of the global population.

SATISH BABU:

Thank you, Evan. At this point, we have about 15 minutes left in this session. Mindful of the time and the fact that we have to also discuss this issues that are outlined here, I’ll request that the further interventions be concise.

Siva, you have still a point to make? Please go ahead.

SIVA MUTHUSAMY:

Yes. Just one point. The external advice that I was talking about clearly talks about not having more lawyers. I do respect the lawyers participating in ICANN. We have too many lawyers and too much focus on the legal process. A positive way of saying that is: bring more multi-faceted advice from different cultures, from think tanks, and so on. A negative way of saying it is reduce the number of lawyers. Reduce your focus on the legal process, and move away from the legal process. Then, automatically, even without external advice, this discussion takes shape.

Sorry again. I'll repeat. I have a lot of respect for the lawyers taking part, but there is too much focus on the legal process. Thank you.

SATISH BABU: Thank you, Siva. Is that a new hand? Okay. Alberto, please go ahead.

ALBERT SOTO: Sorry. I'm too persistent today. If we follow Ricardo's recommendation, we could take one definition to start working, which is to finish the definitional state of Florida. If something changes eventually, then we can analyze it differently, considering different jurisdictions. But at least this is a starting point. It is not final. We know it is not final, and it will not even be valued globally as we would like it to be. Thank you.

SATISH BABU: Thank you, Alberto. Are there any other comments?

ALBERTO SOTO: I'm sorry. I said Florida, but it's the state of California. I meant California.

SATISH BABU: Ergys, do you have anything to add to this discussion on the definition?

ERGYS RAMAJ: No. Nothing in terms of substance to add. I think, in the year-and-a-half that I've been in charge of helping facilitate discussions across the community on this topic, this has been the most engaging session I've attended. So I'm very grateful for everybody's contribution and for the passion you guys have shown.

SATISH BABU: Thanks very much for that. As of now, we are going to park the discussion of definition. We will take up this working definition. Whether it's California or something other place, we're not going to get bogged down by that particular issue.

The other topics that we have to discuss: how do we get more active participation and engagement in this particular group, and what structure shall we adopt for the future? We already discussed a possible structure, the CCC and also the question of how we would get more people to participate.

Are there any comments or questions on either of these?

Niels, please go ahead.

NIELS TEN OEVER: A very minor administrative point. You might consider a cross-community working party, which has worked fine with the cross-community working party for ICANN’s corporate and social responsibility to respect human rights, because, if we create these informal, loose modules, it might help if we do not give them different names because that might create more unclarity in the acronym soup that we’re already all getting boiled in.

SATISH BABU: Thanks for that, Niels. I’m not clear. Maybe Gisella can give some input. Gisella, do you have any inputs on CCWP, CCWG, and CCC? Do you...cross-community working party.

GISELLA GRUBER: Sorry. I didn’t know we could add CCWQ. Sorry. I’ll follow up on that, Niels, because I’m not aware of the P and the C and the G and how we would then fit it in there. But I’ll follow up on that.

ERGYS RAMAJ: Well, the – sorry. I didn’t mean to jump ahead. Okay.

The Cross-Community Working Group would have to be chartered by the SOs and ACs, so that’s very, very formal.

SATISH BABU: Yes.

ERGYS RAMAJ: What Niels is referring to as a working party is a lot less formal, and it's a lot lighter as a structure. The Cross-Community Committee is also similar to that in terms of how it operates and whether or not it's chartered. It doesn't have to be chartered. It's very, very light.

SATISH BABU: Thank you, Ergys. So we have the two alternate [inaudible] of the Cross-Community Working Party and the Cross-Community Committee.

Alberto, please go ahead.

ALBERTO SOTO: The lady first, please.

GISELLA GRUBER: Thank you very much. I would say "gentleman" [inaudible]. Yes, but we can move it over to the CCC. That would be a fairly easy shift, just because of what Ergys mentioned. I'd just like to confirm that if that it is one of the decisions, then it's fairly easy to do. Thank you.

ERGYS RAMAJ: The other decision alongside that or in parallel would be to identify who these other communities are that would like to join the Cross-Community Committee before the decision is made to actually go in that direction.

SATISH BABU: Thank you, Ergys. We have in the room Olivier, who may also be able to add to this discussion.

Olivier, we are having a very big discussion about the definition, as usual, but we have now decided to park that issue on the side and go ahead with the activities and the structure.

Now, at this point, what we're discussing is that we have two alternate structures proposed. One is the Cross-Community Working Party and the Cross-Community Committee. Gisella will find more details about this, and we will be deciding on one of these as an action item.

The point that Ergys just raised is about how the other constituencies are that we would like be brought into this discussion and this working group assuming that we have one of these structures that we have mentioned.

OLIVIER CREPIN-LEBLOND: Thank you very much, Satish. Apologies for being very late, but there was a meeting with the Board on SSR-2 just across on the other side. As it happened, it happened at the same time as here.

On this issue, I think we really need to invite all of the ICANN communities – all the SO/ACs, [SGC] – and not just the GNSO Council but the different component parts of the GNSO. There might be some parties who have voiced in the past that they don't think that they want to be involved because they don't even want to think, "Well, we're already doing this." But there will be others that will be here.

From experience, as soon as you do get a sudden critical mass, suddenly the ones that are not taking part think that they need to take part one way or another.

Regarding Cross-Community Committee or Work Party, just call it any name, as long as you, I would say, have a charter with clear milestones as to what you want to achieve. One of the biggest problems with many of these groups is not having an actual work plan because you'll find that people will want to go in all sorts of directions. I've experienced that on several occasions and have been burnt by it. But I'm to assist if there is a requirement. Thank you.

SATISH BABU: Thank you, Olivier. Alberto?

ALBERTO SOTO: Thank you. I agree in that it should be the least bureaucratic format and the least formal group because this will help us do more work. In the Ombudsman Subgroup, what we did was, out of our full list, have a list of observers from the other eight groups. So we have liaison from other organizations. Those people would report about the progress made in the other groups. That moved quite fast and there were no issues. There were many people present in several groups. Thank you very much.

SATISH BABU: Thank you, Alberto, for that intervention. We now have the basic consensus on three of these points. The first was about parking the definition for the time being. The second is about CCC, which seems to be the most agile and lightweight structure that we have. The third is that we should be inviting all other constituencies within ICANN to join this group.

Now, does this sound all right? Can we take this as action items?

Olivier, please.

OLIVIER CREPIN-LEBLOND: Thank you very much, Satish. In your invitation, I would recommend that perhaps you set out a certain, as I said, work plan – not a detailed work plan, but at least what you’re trying to achieve because the biggest question I’ve seen in previous time, including Marrakech was not confusion but a number of questions as to what exactly is your end point. Why are you doing what you’re doing?

There often is suspicion in this part of the world about one’s real intentions, so it would be really helpful to lay this out. It might actually bring more interest, rather than them saying, “Oh, God. It’s just another working group. It’s just going to look at its own tail and chase it.”

SATISH BABU: Thank you for that, Olivier. Ergys, would you have any closing comments?

ERGYS RAMAJ: Again, not in terms of substance. I would just like to thank everyone who participated in the discussion today. As I mentioned earlier, this has been the most engaging session we’ve had in the past year-and-a-half. I would like to thank you all for your comments and for your views. I’m leaving with quite a few takeaways and a lot things to think about over the course

of the next few weeks. I look forward to continuing to engage with this group and together defining next steps. Thank you, everyone.

SATISH BABU: Thank you, Ergys. Last intervention from Yesim.

YESIM NAZLAR: Thank you, Satish. This is Yesmin Nazlar, At-Large staff. We have another comment from Harold Arcos on Adobe Connect. He says, “About the kind of work group, that proposal was raised since Morocco. We will need a decision soon to move forward here or after this meeting.” Thank you.

SATISH BABU: Thank you for that intervention. We have arrived at the consensus that will follow the Cross-Community Committee structure.

With that, as we come to the end of this session, I’d like to first of all thank Ergys for his inputs. He’s been a very strong supporter and a pillar of support for this group throughout the discussions. He’s provided a lot of content. We hope that he will continue to provide that in the future as we have a more structured way of working. Thanks very much for that.

I'd like to thank everybody here for the very lively discussions that we have had in this one-and-a-half hours. We hope to be getting back with the work plan that Olivier mentioned, which should be in place as we start inviting people to join our CCC.

Thanks very much – sorry.

UNIDENTIFIED MALE: Sorry, Satish. Just know, it will be in the mailing list, or will it be in the wiki? How do you plan to follow up?

SATISH BABU: It will be on the mailing list, most likely. Thank you. Thank you very much.

[END OF TRANSCRIPTION]