PANAMA – CCWG-Accountability WS2 Face to Face Plenary
Sunday, June 24, 2018 – 08:30 to 17:00 EST
ICANN62 | Panama City, Panama

TIJANI BEN JEMAA:     Good morning, everyone.  Okay.  Can we have the recording started?  Okay.

So good morning here in the room and good morning, good afternoon, good evening for the remote participants.  This is the plenary of the CCWG Work Stream 2 accountability.  And today we will start with a short introduction and make the SOI update, et cetera, and then some administration issues.  After that, we will go to the current situation, the review and confirmation of implementation guidance, and then a coffee break and any other business.

So, first of all, is there any SOI update?

>>BERNARD TURCOTTE:     Can we move the slides, please.

TIJANI BEN JEMAA:     Next.  Okay.  Next.  Okay.

Any update on the SOIs?  I see none.

Okay. Let's go now to remind you that we have to stick to the standard of behavior in this meeting.

Now, some administration issues. I will give the floor to Bernie.

BERNARD TURCOTTE: Thank you, Tijani.

Next slide, please. Next. Next slide. Okay. Thank you.

All right. This is probably our shortest administration item we've ever had in the Work Stream 2. Hopefully our last one because there are no meetings going forward, and there is no budget going forward. So the budget for Work Stream 2 ends on June 30th, and there is obviously some budget for the implementation of the various things. But the continuation of the plenary, there is really no staff support. There is nothing else. That's it for me. Thank you.

TIJANI BEN JEMAA: Thank you, Bernie. And I will give the floor to Thomas for the next agenda point.

THOMAS RICKERT: Thanks very much, Tijani. Good morning, good afternoon, good everyone -- evening, everyone.

I see Sebastien's hand is raised.  Sebastien, do you want to speak?


SEBASTIEN BACHOLLET:    Yes, please.  Thank you very much. Sebastien Bachollet speaking.  I raised my hand that you will start asking if anybody has something to change to the agenda.  I know that we may have time to send you, but I don't understand really what is under the subject of reviewing the -- can you put the agenda up, please?  Because I don't have it in front of me.

But reviewing the implementation, if we are not yet at this stage for some of the issue, I think we need to have some time to discuss most comments where -- we didn't have a chance to discuss the comments of our report and we are going straight to the part of the implementation.

I would like to suggest that we give some time to discuss comments we received on our report.


THOMAS RICKERT:    Thanks very much, Sebastien.  And you are talking about the agenda item between 9:00 and 10:30.  That is the point where we are going to discuss the various points about implementation guideline.  That will be an opportunity to discuss in depth the

concerns but also other comments that have been made surrounding the remaining four open items.

So even if we're talking about implementation, that will be the part where we're going to discuss the remaining questions surrounding the final points. I hope that makes it clear.

Now, I'd like to add one or two sentences to what Bernie has said. You know, you may have wondered why we didn't have plenary calls before we convened in Panama and why there is no plan to schedule further plenary meetings.

Now, as you know, all of our subteam reports have gone through public comment. As you know, we have put everything together in one cohesive final report and we've asked the public about concerns regarding inconsistencies. So we're now in the process of being ready to have the chartering organizations approve our recommendations or our final report.

And during that process, it turned out that the Board had concerns with very limited number of recommendations that we put forward. And there was no plan whatsoever -- and I think it would be very difficult to do of our group to reopen the discussions about the substance of the recommendations.

And this is why we have asked staff, in particular Bernie who I think we all owe a great deal of gratitude for taking care of that

process primarily, to discuss with ICANN what the root cause of their concerns was and how we can tackle those concerns without having to reopen the discussion on the substance of the recommendations.

And these discussions were ongoing so there wasn't really anything substantive that we had to report, and we didn't want to waste everyone's time to make you dial in through each and every day and nighttime to jump on a call in the plenary with us only to find out that we didn't have a final answer for you. And this is why we're going to have this discussion today.

This is why we are not going to have the chartering organizations approved today because the discussion has not really been finalized. So that will take place after Panama.

Unfortunately, that means that we will not be able to stick to our original time line, do a little roadshow to the chartering organizations and ask them for their support. But this will actually have to take place after this group has officially disbanded and after this group has had its budget.

That doesn't mean, of course, that we are just fading away and that nothing else is going to happen. So I have been reassured by Bernie that Bernie -- although he will take on other commitments, Bernie will still be there to assist with this, right? So our budget ends at the end of this month, but we will still

have some support to get the remaining parts of our work completed, i.e., navigate the process of approval with the chartering organizations, with the Board, and then subsequently -- and this is something that you have already been informed about, when we have to do our implementation guidance.

And so to speak, what we are seeing today with the discussion around implementation is sort of a first glance -- a first taste of what the implementation support that we're going to give will look like in the next couple of years. There will be questions by the Board. There will certainly be questions by staff on how to implement the almost 100 recommendations that our group came up with. And what we're doing now is just put that in front of the bracket and issue implementation guidelines on four of the recommendations that we came up with.

So I hope that helps you to put things into perspective a little bit. I should also say that we wanted to have a party in Panama. Coming from Germany, I had my little party yesterday when we won the game already.

[ Laughter ]

But I think this group really deserves some official ending of this exercise. This sort of brought the community together, but it even brought the participants of this group together over the

last 2 1/2 or 3 years or so.  And we should ask ICANN for some budget to appropriately celebrate that.

We didn't ask for that today because we didn't want to count the chickens before they hatched, I guess, is the sense that native speakers are using for that.  So we will defer that until a later point in time.

So I hope that this, you know, helps put some concerns at rest. It's not like we're going to disappear and that we're leaving this process uncontrolled.  We will have some staff resources.  We will have the co-chairs still available to help with this.  And I hope that we can also tap on your expertise.

Let's move to the next slide, please.

So I've said a few things that I wanted to say to this slide already.  But we need to make sure that the approval process runs smoothly, right, that when we hand over our package to the chartering organizations and subsequently to the Board that we reduce the risk of any pushback or hiccups or other back and forth.

You will remember that in the bylaws, we put in a clause whereby Work Stream 2 recommendations can only be rejected with a 2/3 majority inside the Board.  And this is quite some leverage that we have.   And if the Board rejects our

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recommendations -- and they can only reject recommendations based on global public interest considerations, then a process of deliberation between our group and the ICANN Board starts.

And we have been signaled by the board that on the limited catalog of four items that we're going to extensively discuss today, that the Board has global public interest concerns.  So if we wanted to follow process strictly, we could say, "We don't care.  We're going to do our bit.  We have pushed everything in front of the community through public comment periods a couple of times so now we're going to wrap this up, send it to the chartering organizations."  The chartering organizations will hopefully say yes and then what happens with the Board.

It may well be the Board then says, "We told you early in the process that we do have some concerns" and, therefore, we're going to wave the global public interest flag, and then we have to deal with it at that point in time.

Therefore, we thought it would be wise for this group, for the community's resources, for resources that every one of you thankfully dedicate to this process, to try to understand what the global public interest concerns are that the Board has and to try to see whether we can find language that explains what our recommendations mean in order to put the global public interest concerns at rest.

And this is -- this is a dialogue that we kicked off at the last ICANN meeting. So as you know, we had a meeting with a few board members and with a few staff members. And we said, Okay. Out of this huge number of recommendations, we only have four where there are issues. That's great news. Then we said, okay, let's try to understand between the last meeting and Panama what we can do in order to find appropriate language by means of an implementation guideline versus reopening the discussion about the substance of the recommendation and whether we can find implementation guidelines that would help remove the concerns there are. Yet, ensuring that we would preserve the recommendations that have been so thoroughly vetted by this group and the wider community, preserve those in order to make sure that nothing is really diluted.

So that's where we are. This is why we need to discuss the implementation guidelines.

I want to make sure to convey the -- the position from the co-chairs as transparently as possible. What you will hear from us in our reporting with Bernie is a position that the co-chairs would like to support in terms of these implementation guidelines, but we want to make sure that everyone is heard with their concerns and that the group is united, more or less, as much as we can in adopting these implementation guidelines.

We hope that we will have, at least, one board member for part of this discussion available to share ideas about what the concerns are, but we think it would be good to end this discussion with these implementation guidelines and then be able to submit the report with the implementation guidelines to the chartering organizations for their approval.

And again, I think this is something where we need to apply the usual die-in-the-ditch test again. So I know particularly those that have been working hard on the recommendations don't want them to be commented by third party that haven't been at the table all the time. So let's try to focus on what we actually wanted to achieve with the recommendations and not that much the words that have -- that we have used in our report to get that message across because that message seems to have been misunderstood, to a certain extent, by those who should read it. You know, we want to improve ICANN's accountability. I think we've gotten very far with that, and I hope that we can resolve the last remaining issues.

Okay. So that's the first half of the slide already. And the second part, and this is going to be very brief -- Yeah, I will move to the hands in a moment, but just very brief. And I think all of you know this by now, but the work that the IRP, Implementation Oversight Team is doing with the great help from David McAuley, who is sitting over there, that has been put

into the Work Stream 2 package, but technically it still is a remaining piece of work out of Work Stream 1. So the budget limitations, the timeline does not apply to that particular part of the work. So that's going to be work in progress. Everything is going to be unchanged for that part of our work package.

So there are two hands. Unfortunately, I haven't been able to update my Adobe Connect in time so maybe you can help me.

Kavouss is first.

Kavouss, the floor is yours. Welcome.

KAVOUSS ARASTEH:     Thank you, Thomas; thank you, co-chairs; and thank you, distinguished colleagues and friends. Happy to see you again here.

Thomas, thing perhaps it may be necessary that what you said, plus some other additional information, be included in some sort of either attached to your statement; for many people, they're raising the same questions. What happened that the activities of the plenary of the CCWG decayed and slowed down in a way that were they tired of the work? Were they not necessary? We have announcement of plenary, we have cancellation after cancellations.

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So some of the reasons you have given is useful to provide information to the people who are not closely following the CCWG, because this Work Stream 2 was very important.

What I get from your information and statement, maybe today CCWG physical meeting will be disband but CCWG will not completely finish its activities because there are many other things that may come up, any request or comment from chartering organizations, anything about the implementation of recommendations, not those you have raised today by the Board. So it means that we do not totally close the activities, but we would not have, presumably, any more face-to-face meeting. This is one point that I wanted to raise. It is better explained.

And, secondly, with respect to this implementation principle, also we would like to know the origin of that. I understood that it's coming from some of the comments made by the Board, but perhaps they would like to know how you come up that. You just took the initiative that without discussing with the community you start to write something, and for which we thank you very much and thank the ICANN staff to provide this draft, but perhaps it is better also to explain that because we would like that CCWG, as continued -- as started with dynamism and continued with dynamism also not be fade out totally

without necessary explanation to the public that what has happened and what is going to beyond.

Third point is IOT. IOT has continued its work. I raised some point today with that. I look into the bylaws, and there are some activities that we have to undertake. And even after the implementation team work finish during the IRP there is a need to have some connections or activities with the IOT team.

So this is the things. But I would like that, if possible, and the co-chair tries to make some sort of explanation to the public that we know what we are today and what position that we are, but not those that some people they know, some other people they don't know. Some of the questions that are raised in fact, I was asked some of my colleagues, and I did not have any clear answer until I heard from you today and I thank you very much for that.

Thanks.


THOMAS RICKERT: Thank you very much, Kavouss, for your questions.

Now, with respect to the first point, you will note in agenda item number 9 we have a discussion about the co-chair statement, and this will be an opportunity for us to inform the community about the process, about how the work of this group ends, how

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we're still going to help with the implementation. So I hope that on the procedural aspects we will be able to shed some light on the overall process and let the community know that this group hasn't gone dormant or out of existence but that we're actually doing our job.

With respect to the idea of the implementation guidelines, you will remember that when we last convened at ICANN61 we informed the plenary about our meeting with the Board and that we tried to -- that we will try to find a way to address the concerns without re-opening the recommendations, and that this would be done with the tool of implementation guidelines, because that's something that would formally be attached to the report so the Board has something to lean on when it actually comes to the implementation. At the same time, you know, we would have a low barrier, easy-to-implement way to address the concerns.

And on the disbanding of the group, maybe one last sentence. I think we will not, per se, invite to more plenary meetings. So we have discussed the composition of the Implementation Oversight Team during ICANN61. We've also said that the co-chairs would still be available to help with the approval process. So I think we have good enough instructions from the plenary on how to navigate this process. Everything has been agreed with the plenary in terms of next steps. So we will try to take care of

this whole process as good as we can, and only should there be major hiccups, that we don't foresee to happen at the moment, we will potentially reconvene this work, as has happened in other instances in the ICANN world. But unless you get an explicit invitation to join a meeting of a reconvened Cross-Community Working Group, this is actually going to be the last plenary that we hold.

So, Steve's hand was raised as well. Steve, please.

STEVE DELBIANCO:        Thank you, Steve DelBianco with Commercial Stakeholders Group.

I think it was a point of good fortune that we learned that of a hundred recommendations, the Board was raising a concern of only four. And that was an opportunity for us. As one of the rapporteurs of the nine streams, I participated in Puerto Rico in the meeting with Board and legal as we tried to work through the implementation questions. And I have to say, Kavouss, you would be very pleased that it was completely focused on understanding if the Board had concerns early as opposed to waiting until chartering organizations had approved it only to then learn that the details weren't clear from the recommendations themselves.

So I think we've done and the co-chairs have done this process exactly right by trying to surface concerns now rather than later.

So having said that, I think the co-chairs are being premature in concluding at the beginning of this meeting that we can't get it done this week. Let's be aspirational and understand that we have only four elements of implementation guidelines that we need to resolve as a plenary before we would recommend our recommendations and the implementation guidance as a package to the chartering organizations.

So let's keep hope alive that we could come to that conclusion in the next three, four hours. It can be done, and I realize that the outcome of that could go multiple ways. It might be that we, in this plenary, would decide that we differ with the Board on implementation guidelines. That doesn't mean you've died in a ditch. It just means that you're at the edge of the ditch. It may well not descend into the ditch many months from now after the chartering organizations have approved and the Board takes a formal position.

Another outcome is that we decide that the implementation technicalities, the guidelines that the Board is willing to agree and embrace, are acceptable for us. There's significant enough improvement on the status quo that we choose to move forward

knowing that there will be zero controversy once the chartering organizations hopefully approve it.

And the third alternative is that we would work something out in amending these implementation guidelines today. However, that step would require the presence of a Board representative with the authority to say, yes, that would be fine, because it would be frustrating for us to modify a few words in the implementation guidelines only to learn that Board and Legal haven't had an opportunity to look at it. So it could be that that would be the delay in our ability to move forward. But, Thomas, I would ask you to keep hope alive. Let's charge this group to see if we can get it done this morning.

Thank you.


THOMAS RICKERT: I'll do it, Steve!

Some of you may know Bob the Builder, and when we did -- when we started Work Stream 1, I was asked to speak at the European community's congregation at an ICANN meeting. And then I said, well, people might think we can't get this done but all of you who know Bob the Builder, you know he has this energizing pep talk whenever they have a project in front of them. Can we do it? And then the whole team says yes, we can!

So in that spirit, I suggest we move to the substantive suggestion and I'd like to hand over to Jordan to take us through the first of the four points.

JORDAN CARTER:     Thanks, Thomas.

Good morning, afternoon, evening, everyone here and online. My name is Jordan Carter, one of the three co-chair amigos at the front.

If we can move the slide on to the next slide, please. Who am I looking at for slides? We're doing ombuds first, are we?

THOMAS RICKERT:     Is Chris here?

JORDAN CARTER:     Okay. So the way that this is going to work is for each of these four topics, one of us will facilitate the discussion and introduction, but Bernie is going to do the substantive talking.

That may be a bit trickier on this one, but he'll have a go.

So ombuds panel. Is there a slide for this?

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BERNARD TURCOTTE:    Next slide, please.

JORDAN CARTER:    There we go.  Bernie, I'll hand it over to you, and give us an intro.

BERNARD TURCOTTE:    Thank you, Jordan.  Hi, everyone.  This is Bernie Turcotte, for those that don't know me.

You will remember that the ombuds subgroup was being led by our rapporteur, Sebastien Bachollet, and that we worked our way through that using the external evaluation report.

If you will remember, we started the work, and then as part of ATRT2, there was a recommendation to have an external evaluation of the ombuds function.  A few months after we started our work, there was an agreement that our group, led by Sebastien, would take over that external evaluation, which they did.  And the group decided to wait for the results of the external evaluation before proceeding with a lot of its work.

The external evaluation was completed.  It seemed very good to the group.  And basically the group accepted all 11 recommendations from the external evaluation.  In accepting those 11 recommendations, there was concern raised by the Board on the issue of recommendation 8, I believe, of instituting

a panel to assist the ombudsman, not with practical cases but just as independent support.

As part of that back and forth while we were preparing the report, the subgroup moved to changing the external evaluator's recommendation to making it that this panel would still be constituted but would be advice to the Board only, it would not be decision-making, in hopes it would address the concerns the Board had.

Am I essentially correct with that, Sebastien?


SEBASTIEN BACHOLLET:    Thank you.  Sebastien Bachollet speaking.

Yes, I just want to add one point, is that we try, as it was the recommendation from the co-chair, not to make any change into the bylaws.  Therefore, it was also one of the reason why the recommendation from the reviewer were taken and rewrite not in the substance but in a way to allow no changing the bylaws. And it's where we have some difficulty to be understood by the Board because they say you must change the bylaw, and we say we don't want.  Then it's part of the -- where we are today.

But yes, you're right.

BERNARD TURCOTTE:     Thank you, Sebastien.

So basically we completed the -- our recommendations in all areas in Puerto Rico, and on 14 May the Board delivered a letter to Work Stream 2 stating they had four areas of concerns which, if we could not find some way to deal with, they would probably have to invoke global public interest to reject these four recommendations.  One of these four recommendations was, of course, recommendation 8 from the ombuds about creating a panel for the ombuds.

As part of the general strategy of this, many of you will remember that, as Thomas has mentioned, there was a meeting with representatives of the Board in Puerto Rico to talk about these issues.  And there was an initial discussion, and it was agreed that the Board would confirm those issues.

Once those issues were confirmed in that May 14 letter, the co-chairs requested staff look at defining implementation guidance; i.e., how to interpret the recommendations for implementation, which might address the Board concerns and would allow us to not change the recommendations.  Because let's be very clear.  If there are substantial changes to the recommendations, we probably would have to reconstitute the subgroup, we probably would have to go to another public

consultation, and then we would again have to redo this. So we're trying to be realistic and try to wrap this up on the timing.

So staff went off trying to find an expression of implementation guidance which would respect the original requirements of the recommendation and might address the concerns of the Board in how to implement this and therefore avoid a rejection by the Board if it gets past the chartering organizations and is submitted to the Board as is.

Just to be clear, for those that don't remember, if the Board does invoke global public interest to reject any recommendations, all of those details about what actually happens are clearly spelled out in the bylaws. You will remember as part of Work Stream 1, for those that were there, that we insisted that there be a very specific protocol as to -- can you lower your sound? -- as to what happens if the Board does invoke global public interest.

And as our friend Steve DelBianco noted, we also have a much higher threshold than anywhere else in the ICANN approval process. It does require two-thirds of the Board to agree to reject the recommendation on global public interest for our things, but if they do reach that, okay, we start a whole other process where there is feedback loops, where there is Work

Stream 2, and we might have several months, and many, many months, of work to wrap that up.

But the reality is at the end of the day if we do not come to some sort of acceptable solution, if the Board goes to another 2/3 vote, they could reject it, that recommendation finally. So that's just reality of where we are.

So staff went on to see -- next slide, please -- what they could do. I won't bother you with reading the full recommendation. It basically says install a panel and what it can do. And we worked on various elements of refining what items of the recommendation meant what to who. And we thought that we would come to some sort of an agreement. And we did for most of the parts.

Next slide, please.

This implementation guidance was not published because basically we were working on it with the co-chairs until about 10:00 last night. So you're seeing it here for the first time, not because we didn't want to show it to you but it's a rather fluid situation.

Next slide, please.

So I'll go through this since this hasn't been published. The ombuds panel is not meant to be a decision-making body. We

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agreed on that. We're just making that clear. It's only there to assist the Board or relevant Board committee with the specific tasks enumerated in the recommendation. The panel is specifically prohibited from getting involved in any matter before the ombuds. The ombuds shall not seek, even on anonymized terms, guidance from the panel on any matter before the ombuds. The panel will only have the following specifically enumerated powers. This was agreed -- this was stated in the original recommendation. We're just clarifying it.

Next slide, please.

These are the enumerated terms: Contribute to the selection process for new ombuds which would meet the various requirements of the Board and community including diversity. Recommending candidates for the position of ombuds to the Board. Recommending terms of probation to the Board for the new ombuds. Only at the request of the Board recommend to the Board firing an ombuds for cause. You'll note this is in brackets and we'll go through the explanation of that in a minute.

Contribute to the external evaluation of the ombuds every five years. Only at the request of the Board, make recommendations regarding any potential involvement -- next slide, please. Oh, that got caught off -- but in any nonclassical ombuds questions.

And that was in the original recommendation that was made very clear.

There was a lot of concern from the ICANN side on the independence issue of this panel, and we tried to address this in the following because in Puerto Rico we had agreed to make this as -- the notion was really to assist the Board, make it as independent as possible. So the following text was added in the potential implementation guidance: Additionally, a formal process to select the panel members should be created to first ensure that candidates must have significant experience and complete independence from the SOs and ACs. The requirement for ICANN experience is secondary. The selection process may be designed in any appropriate means to achieve independence, such as by selection by the Board, an independent recruitment firm, or other appropriate process. Regardless of the process which is selected, the ICANN Board should post details regarding the process that will be utilized.

So really the notion is there is great concern by the Board. Because you will remember that the ombuds reports to the board. This is not a staff position. The ombuds reports directly to the Board. And for the ombuds to be able to do his job, it must be independent. It must be seen as independent. So, thereby, if we are having a panel, there is, if you will, serious

concern that there not be any questions that would bring that independence into question.

That's the core of the implementation advice. If we could go back one slide, please.

We have in square brackets, "Only at the request of the Board, recommend to the Board the firing of an ombuds for cause." And so basically you will note that there are two bold statements there. The other one has similarly noted "only at the request of the Board, make recommendations to the Board regarding potential involvement in things that are not classically ombuds things."

And we received word as we were working on this that the Board was so concerned about the firing clause that they were asking us to completely remove it.

So the co-chairs discussed this last night and basically could not agree that this was providing implementation guidance. It was actually changing a recommendation if you are actually removing a section.

Now, there may be actually reasons that support removing this. And, you know, regarding the true independent nature, if you've got this panel, there are many issues surrounding this. But I

think the co-chairs felt that we needed to bring this to you and see what the plenary felt about it.

Did I summarize that properly, Jordan?

JORDAN CARTER:          Yes, Bernie.  Thanks.

The only other thing I would add just on that, the firing ombuds for cause, is that we're operating on a few assumptions about what the Board's concern is here.  And what it seems to me to tie down to is that the ombuds independence is important and the Board has some responsibilities as directors and an organization in dealing with any decision-making around that in a clean way that doesn't get compromised or broken by parallel processes. So it seems like that's the motivating concern.

It would have been strongly and deeply preferable if there was someone from the Board in the room to actually talk us through directly what their concerns were.  But I kind of -- or you have kind of summarized the advice well.  I think we need to get that advice on the list as soon as we can so people can have a read of it as well.

There are some hands up in the room, so we'll start with those. Steve DelBianco, you're first.

STEVE DelBIANCO:     Thank you.  Steve DelBianco with the commercial stakeholders group.  The description that you have given reminds us that the purpose of this panel isn't to be substantive.  It won't look at actual rulings of the ombudsman, that its sole purpose is to signal the community is displeased with the performance of the current ombudsman.

Now, I know it may contribute to the idea of hiring a new one.  I get that.  But its sole purpose is for the community to signal that we are really not happy with the way the ombudsman is performing.

And on that signal, the Board may consider a recommendation for probation, may consider a recommendation for other forms of discipline, readjustment, or even dismissal and replacement of the ombudsman.

So with that in mind, I don't understand the Board's objecting to the composition of the panel as representing the ACs and SOs.  Here's what I'm suggesting:  You don't need to be an expert in the ombudsman functions to be able to simply relay the fact that the community really thinks the ombudsman is doing a terrible job.   It's not reviewing the substance of the ombudsman's decisions, so they need not be experts in what ombudsmen do.  They simply need to be able to relay that the

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community is extremely displeased with the performance and is recommending some path of action.

And it's the CSG where we're full of business people that really are sort of strapped to the reality that boards and corporations do the employee and contract relationships, not outside panels. So I'm confident the CSG would support the notion that the Board can't be told to fire the ombudsman, or any employee, receive a recommendation. And if the recommendation is from the ACs and SOs, it has been duly approved, the Board would be wise to consider that. There would be no legal obligation for the Board to follow through. Nor do I think this recommendation imply any legal obligation.

So to summarize, I think the Board is right that they shouldn't be told to fire an individual that is employed by the Board. But, number two, the Board is wrong to insist on the composition of a panel that really only represents the view of the community and doesn't need to substantively review decisions. Therefore, they do not need to be independent of the community. They want to be representative of the community. Thank you.

JORDAN CARTER:       Thanks, Steve.

I think I disagree with you on both counts on that one actually in the sense, taking liberties with my chairing role here, that in terms of the overall independence of the ombuds function, the Board's feedback has been very clear about the independence of that panel, whatever its role is.

So if people want to raise concerns about the ombudsman, at the moment there is already a way for them to do that, right? People can -- people -- well, I'm assuming there's a way for them to do that. I don't know what it is. But whatever -- the Board committee has oversight over the ombuds function for the organization, I'm assuming that if there was community concern raised by an SO or an AC or a stakeholder group and there was, like, an allegation of bad behavior or something like this, because this is always about there being a cause, that the Board would investigate that. And my impression, from what I've heard feedback-wise through Bernie and so on, is that the concern is that that not be -- there not be a group with a special standing to raise those concerns in a parallel process with the Board in case it interferes with their duty to look at any allegations independently. Because as you said, one of the realizations from business is that the Board needs to take responsibility for managing those contracting relationships. So I think we might end up getting to the same place. I wanted to just sort of nudge that nuance that way.

The next on the list is Alan and then David and then Sebastien according to the order in my Adobe room. So we'll go through that order.

Alan, please go ahead.

ALAN GREENBERG:     Thank you. Alan Greenberg.

First, a verification. I haven't been very active in the ombudsman section. So I want to make sure my interpretation is correct. The fourth bullet that is in bold and bracketed, that is a recommendation that was in our report and the Board is asking us to remove it, is that correct?

BERNARD TURCOTTE:     In the recommendation is the part that does not only have request of the board. It is recommend to the Board firing an ombuds for cause, okay? The implementation advice, guidance, we were providing was -- or proposing was only at the request of the Board. Okay. When we proposed that, the answer came back, no, we can't do that for this one, okay? But we can do that for the second one. Does that -- you seem puzzled.

ALAN GREENBERG:     Okay. So what we had originally was recommend to the Board.

BERNARD TURCOTTE:     That is correct.


ALAN GREENBERG:       The Board is asking us to add the phrase at the beginning --


BERNARD TURCOTTE:     No.  No, we were trying -- the Board had a concern with this specific element.  We tried to deal with it by adding "only at the request of the Board."  That did not work, okay?  What came back was "simply remove this, please."


ALAN GREENBERG:       If we had succeeded and convinced them to allow us to add "only at the request of the Board" --


BERNARD TURCOTTE:     Right.


ALAN GREENBERG:       -- should the Board never choose to exercise that request, that has the net same result as removing it altogether?


BERNARD TURCOTTE:     We tried --

ALAN GREENBERG:     Is that not correct?

BERNARD TURCOTTE:     We tried to make that case, and there was a feeling that having that there as a tool, the Board would be obliged in certain circumstances to use it.

ALAN GREENBERG:     Okay.  I would suggest that even though some future board might feel obliged to use it, it gives the Board full discretion to never use it.  And, therefore, that is functionally equivalent to removing that clause altogether.  And I would claim that, therefore, we are fighting over something that is not very important because it's out of our control.  Once we put that first clause in, it is out of our control.  It is up to the Board, and it may never be -- Board may choose to never use it.  And, therefore, it is functionally equivalent to removing it.  And I would claim that would be acceptable.  Thank you.

JORDAN CARTER:     Thanks, Alan.

The next on the list is David.

DAVID McAULEY: Thanks, Jordan. David McAuley speaking for the record. And I had a number of concerns with this, and I was somewhat sympathetic to the Board's concerns. But, Bernie, my hat's off to you and the staff and the co-chairs for what you did last night and what came out because I think it goes a long way to resolving at least the concerns I have.

So I really had a question, and that is: In discussing all of this, has there been -- has there been attention paid or clarification around the cost of All this? And I'll mention bylaw Section 5.1 says that ICANN will maintain the office of the ombudsman. And that will be managed by the ombudsman including -- including, I would take it, all of the costs of this advisory panel. Has this been discussed? Have you gotten to that level of detail? Once a panel like this is created, we all know it tends to, I would think, expand and want this, that, and the other.

BERNARD TURCOTTE: The recommendation, if you read it, is very limited as to the constitution. And so I don't think there is any thought to expansion.

DAVID McAULEY: Thank you, Bernie.

JORDAN CARTER:           Thank you.

The next on the list is Sebastien.  Sebastien, please go ahead.

SEBASTIEN BACHOLLET:     Thank you very much.  Sebastien Bachollet.

When I put my name to be the rapporteur of this subgroup, I was thinking that it was not a contentious issue.  It's why I didn't put my name on the diversity panel or SO/AC accountability or others like that.  It was supposed to be easy work to be done and not to take too much of my time and of my energy.

But it happened that it's -- it changed with the fact that we add -- and it was a good addition -- the ATRT2 recommendation to have a review of the ombuds.  Therefore, we take that on board.

And I want to stress again and I want to stress that to the Board that those recommendations are not from the community.  They are coming from the external reviewer.

And I know that we could have different view on the work done by some external reviewer compared to others.  But I can ensure you that this one done their work, I would say, perfectly.  They've done their work.

Now to the substance, I would like very much to have the last-to-second page of this recommendation into brackets because I

disagree.  I am not taking my hat as a rapporteur as I am -- this group is disband.  If we have to recommend it, we will see.  But for the moment, I speak just on that behalf.

I want to remind you that the objective of this panel was to have an accountability advisement mechanism that would be more capable of guiding the ombuds.

It was also to be sure that it was more and more independent from the Board.  Also, Board is considering independence to the community, and we are considering the independence -- the current dependence from the ombuds to the board.

The second, and in that direction, was to relieve the governance committee of the job of oversight.  It's maybe -- and it was, I guess, something very specific to the ICANN Organization in the way we are working.

Therefore, I think if we take the proposal of the people I discover like you just now, then my comments are just (indiscernible).

I don't see why this panel can't suggest to the Board to fire an ombuds.  It will not be the job they will have -- the main job they will have to do.  The main job will have to advise the ombuds office to do their work and not to have this ombuds fired.

But if there are people from the community who have a concern, if there are people from the Board who have concern about work done by the current office of the ombuds -- sorry, not the current one, but the one at the moment, they will have trouble, it's good to have one place to give that feedback and that they can act on that.

For the second, "only at the request of the Board," I am not sure that if we -- this recommendation was recommendation 11, and it was because we tried to work with other subgroup like the document -- DRDP things and other to see how the ombuds can be involved.  And the question was to how the ombuds could be involved need to be seen for each of the topics.  And I don't see why it could be only the Board who decides that this topic must be by the ombuds or not.  It must be also from the community.

And if we want to be sure to have -- not to talk about the community as something.  Another thing we can say is the enhanced community.  It could be one way, the chair of the SO and AC, whatever, but I don't see why only the Board.

And if we can go to the next slide, please.  I'm sorry to be a little bit long, but I think...

Here, the idea was to have a panel composed of people with good knowledge of the ombuds function.  It's why the suggestion to have ex-ombuds or current ombuds from outside

of ICANN. And to have in the panel some people who are not representing SO and AC but who have a good knowledge of the ICANN as a whole and who understand what is the job of the -- of the ombuds to allow this group to function with enough knowledge both from ICANN way of doing and the ombuds function.

It's why, if I have to -- a suggestion to change the composition of this panel and to help the Board to decrease their question about the independence to SO and AC, I would suggest that we may have -- I don't know. It's out of my mind here. But, for example, three from ombuds function and one from ICANN -- from us, from the ICANN community, and one from the Board. And it could be the share of the Board Governance Committee. And if the Board is very, very concerned, we can still say that the Board could be the chair of this panel if they wish by the representative of the chair of the advisory -- of the Board Governance Committee.

Okay. I will stop here, but I am a little bit concerned that we were not able to participate to this exchange, and especially as a rapporteur, I would have been very happy to help with finding a solution. But we are where we are, and I hope that we can find a way to go outside of this situation.

Thank you very much.

JORDAN CARTER:          Thanks, Sebastien.  Bernie wants to make a comment on one part of what you said.

BERNARD TURCOTTE:       Regarding recommendation 11, I understood your comment to say it's only the Board.  You know that last part there where there is a -- If we can go back one slide, please.  "Only at the request of the Board" is only about the panel being involved in this.  It doesn't change recommendation 11 which says the community has to be involved in it.

So this is only about the panel being involved in that decision, and the Board would agree that if they asked the panel, that's fine; but if not, then that's nothing thing.  It does not in any way change recommendation 11 which was accepted as is and requires the community to be involved in any such decision.

Thank you.

JORDAN CARTER:          Thanks, Bernie.

I'm going to move on with the speaking list on which I have Thomas and Cheryl.

Thomas.

THOMAS RICKERT:    Thanks very much, Jordan.

Now, let's step back for a moment and see how we got to this discussion and what the origin of the concern potentially was.

The way I see it -- and this is not -- not a co-chair position. First of all, Sebastien, I think you mentioned that the possibility to request the firing of the ombudsman was in the independent evaluator's report. I think it wasn't. I think it came from the subgroup. But then what we want to achieve with this recommendation is that this independent board can express its dismay with how the ombudsman works. And we've used language that suggests that the independent panel can recommend to the Board that the ombudsman should be fired.

What does that mean? Even if it is purely advisory, it puts pressure on the Board, it puts an expectation on the Board that the Board will honor that recommendation. And I do understand that the Board has some concerns with respect to the independence, that's one thing, but also with regard to its fiduciary duties, because if they are supposed to terminate a contract for allegedly good cause where, at the end of the day, there is no such good cause, that could even put the Board and ICANN in trouble.

So how can we preserve the essence of what we're trying to say; i.e., the Board can say this guy or this person doesn't do its job correctly without using the exact language of "firing" which causes the Board's concern. And I think Alan was spot on. If we say the Board can reach out to the independent evaluators and ask for their view, nothing prevents them from doing so.

At the same time, we -- So and this one direction it works. If the Board chooses toe ask the panel, the panel can respond.

Then we also have something in there that the panel helps with the review of the ombuds function. So they can put their dismay on how things work into their report according to that clause. So it works in that direction as well.

And that begs the question whether we shouldn't just explain that the firing language was our vehicle to convey that the panel can talk to the quality of the ombudsperson's work, but that firing sort of puts the Board into a difficult situation and that, therefore, we chose to clarify that this can be conveyed through other channels. And then we explain that it can be done, as I said, either via the Board reaching out to the panel and asking for their advice on this particular point or the panel informing the Board in the course of their evaluation.

So we would maintain the spirit, we could -- we could remove the "firing" language, and the problem could potentially be resolved. That's my take on it.


JORDAN CARTER: Thanks, Thomas.

I'll move to Cheryl and then Kavouss and then Alan.


CHERYL LANGDON ORR: Thank you very much, Jordan. Cheryl Langdon-Orr for the record.

I'm in total agreement with you, Thomas, and I think that's also supportive of what Alan was suggesting. I see no down side to us removing the square-bracketed language and I think, if we move in that direction, there is enough safety nets in the other language for us to get to the intentions of what I think the spirit of what our work was going to do. So I'd be happy to actually agree to remove the square-bracketed text in this situation. Obviously we all need to decide what we're going to do with that as yet.

If you can just move to the next slide, please in terms of the independent ombuds panel.

This is a really important piece that needs to perhaps be worked out in the minutiae more in the implementation.  I would -- I can live with this language, don't get me wrong, but I also feel that having the ICANN experience is actually important.  I am uncomfortable with it being, in inverted commas, "secondary."  However, if it stays there, there's many ways to skin that cat.  I did want it on the record that I personally think the design of the panel should have a quotient of ICANN experience. That's certainly, from my memory, and I believe this agrees with what Sebastien was saying, what we were thinking in the ruminations of our work track.  And I don't think there's a down side to that with the limited nature and typed description of purpose.

I don't think this is a panel that will extend.  I know, you know, there was a suggestion earlier that this may, like many panels, expand.  I don't think that this is one that is going to be able to do that.  I think this is a tight and controlled panel, but from my perspective, I would like to see a clear quotient of specific ICANN AC/SO empowered community input.

 Thank you.


JORDAN CARTER:          Thanks, Cheryl.  Sorry.  Just flipping back to check my speaking list.

Kavouss is next on the list.

KAVOUSS ARASTEH:    Thank you, Jordan.  I think we should not start a new round of discussion about the whole issue from the very beginning, fresh, on the 24th of June here.

The only thing that we need to maintain certain balance between the alternative of the Board and the scope of the panel, and so on.  We should not start to have a new arrangement and so on.

I don't agree with those suggesting that the Board chair this panel.  I don't agree with those saying that -- somebody said that community has lost confidence because there is no mechanism to seek that confidence not being given by the community.  How we reach that?  So perhaps you need a little bit more to simplify the matter and to wrap up the discussions and continue with the next topic; otherwise, it will have the discussions of the subgroup being restarted here at the plenary.

Thank you.

JORDAN CARTER:    Thank you, Kavouss.

And the next two speakers are Alan and Malcolm.  And, Alan.

ALAN GREENBERG:     Thank you very much.  Alan Greenberg.  Two points.  Number one, I agree with Cheryl that the panel should have ICANN experience.  That doesn't mean every member has to have ICANN experience, but there must be significant ICANN experience on that panel, because, otherwise, I think we'll go off in a random direction.

If we can go back to the previous slide.  If I understood Thomas correctly, he was saying that removing the fourth bullet, the bracketed bold text, could be acceptable because of the fifth bullet -- that is, the panel already has the ability to input into the evaluation of the ombudsman -- the fault of that logic is on timing.  It could well be that the position that they are in is after the first year of a new ombudsman, ombudsperson and they realize that this person is really going off the track and they don't have any recourse to do anything until five years is up.  And I would suggest that we could replace the fourth bullet with the Board has -- the panel has the ability to request that the Board initiative a review out of -- out of the five-year sequence.  And that gives the panel the ability to bring to the attention of the Board the fact that they have a problem, and perhaps that could be addressed through such a review.  So -- or such an evaluation, rather.

So that may well be a way of getting -- of addressing the timing problem and making it more acceptable.  Thank you.


JORDAN CARTER:          Thanks, Alan.

And now my Adobe room has crashed so I don't know who is next on the list.  Lori is on the list.  Lori.


LORI SCHULMAN:          Yes, Lori Schulman for the record.  I just wanted to make a comment about community experience versus noncommunity experience.  I would definitely advocate for balance here.  I think one of the biggest criticisms that ICANN has from an external point of view is that we're insular.  And while this is about self-governance, I think it's very, very important that we have outside points of view, particularly when it comes to an ombuds function.  I think it's important in terms of the independence itself and the appearance of independence.  If you weigh too heavily in terms of community experience, I feel just the opposite could happen; that there's a built-in bias.  You can talk to members of the community to learn about process.  There is a lot an informed participant can do to get themselves up to what would be a good knowledge of ICANN ethos, but that's very

different from being able to evaluate what is working properly in terms of a functional ombudsman role.

And I -- I also want to ask a question -- a comment I have to something Steve had said. Again, I'm a rapporteur for a different group, but I have read all the reports and I have been involved in comments on all the reports, and I didn't take it that this was solely about the community being able to weigh in on the performance of an individual ombudsman. I was under the impression it's about as much function as it would be any sort of individual's role. I mean, we're looking at two issues here: how the office functions and perhaps how an individual functions within that office. And I'm not sure I'm hearing that layered approach now, or perhaps I'm adding too many layers in my own interpretation.

Thank you.

JORDAN CARTER: The problem with all of these topics is that there are many layers which one can add or subtract.

Look, I've got two more speakers. And just to let you know, we're probably going to head for a slightly earlier start to the coffee break after this discussion so we can work on trying to get some language together that reflects the really helpful

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contributions that we have been having here. But in the meantime, Malcolm, please go ahead.

MALCOLM HUTTY: No; sorry. My apologies. I thought I had taken myself out of the queue. I have been persuaded by Kavouss criticism and my suggestion. So no. I yield the floor.

JORDAN CARTER: Removing is possible. Tijani, you're in the list.

TIJANI BEN JEMAA: Thank you. I saw your hand, Sebastien. Do you want to speak before me?

No. Thank you.

I would like to thank you for all these comments. They are all very valuable comments. I would like to remind you the problem.

The problem is that we have recommendations that are final, that have been approved and that have passed the public comment. And we have, on the other hand, some issues, some concern from the Board about two points. Only two points. The first one is the independence of the panel through its

composition, and the second point is about the ability of the panel to recommend firing the ombuds.

So I would like to ask you please to concentrate your comments on these two issues and try to find -- because we are trying to find a way to address the concern of the Board's through the implementation guidance.  So try to find a way, try to help us find this mechanism to address those two concerns through -- through the implementation guidance.

Thank you.

JORDAN CARTER:          Great.  And thanks, Tijani.

I just want to make a political point and then a process point. When I was looking at all of this ombuds stuff, as someone who paid very little attention to this topic as we were going, my underlying assumption was that what we were trying to help do was insulate the ombuds from any day-to-day pressures from within the ICANN system.  So the point of this panel was to insulate the ICANN ombudsman from the Board.

I think at the core of some of the concerns the Board is raising is a worry that actually the way that the recommendations come together might end up giving the ombuds less independence and creating more pressures from the community on the

ombuds. So I would never have even conceived of that as being a problem because, for me, you're trying to protect them from group with power in the organization. The group with power in the organization for the ombudsman is the Board. So, you know, my naivete in the ICANN way of doing things, I guess. So that's why this is difficult stuff to juggle and get right. So there is a reason for the trickiness here and we need to get the language right.

On the process point, I am personally very loathe for us to do anything that involves changing the recommendations because I don't want us to go to another public comment. And what is on the screen in front of you in that square bracket, the thing after the equal sign, "recommend to the Board firing an ombuds for cause," is a recommendation. That is in the recommendations. That is text that is in the recommendations. So what we now need to do up is try and find some language that looks at all of the language in these recommendations and sees if we can do something. And I think we can because recommendation 5.8 says that ICANN should establish an ombuds advisory panel, and then 5.8.2 of which that bullet point is on says, "The panel should be responsible for."

So in a world of "shoulds," I think we can probably find some language to -- to nuance this that reflects down into the next recommendation, 5.9, which says that the ombuds should only

be able to be terminated with cause, as the second bullet point. So the cause thing is there and well established, and I think we can probably find something in the "should."  And I guess I just want to put on record my view.  And if anyone disagrees with this, they have to say so because I might want to point to this as validating, like, something that the CCWG is comfortable with, that we all want to respect and uphold the independence of the ombuds; that that is essential to the successful functioning of that role and that office.  And that nothing that is in any of the recommendations or guidance is about compromising or reducing that independence or the independence of the Board in exercising it fiduciary responsibilities in managing the engagement of the ombuds.

So those are important pieces of context that we might even be able to work into the implementation guidance, to just restate at every point on the record as clearly as we can that the aim here is enhancing the independence and functionality of this role, which is an important one for the whole ICANN community.

If anyone has any violent disagreements to that, please let us know.  And I've got two final speakers on my ombuds -- on my Adobe room, Kavouss and Alan, and then we will go to an early coffee break.

Sebastien as well. Where in that queue are you? We'll give you the closing, Sebastien, as the rapporteur for the group.

So Kavouss?

KAVOUSS ARASTEH: Yes. I suggest for your consideration that the language should be. The panel recommends the Board to consider firing an ombuds for cause and take necessary action as appropriate. Should be a balanced things. To consider them, to consider the situation, but take actions, necessary actions, as appropriate. That means putting some responsibility to the Board not rejecting without any arguing, without any rationale. That is some soft language that has been worked elsewhere, as sort of the balance I mentioned before.

Thank you.

JORDAN CARTER: Thanks, Kavouss. I think that's helpful.

Alan and then Sebastien.

ALAN GREENBERG: Thank you. I just wanted to go on record that you said if we make changes we have to go out for public comment. I do not believe that's the case. We have to go for ratification by the

ACs/SOs.  If they feel their communities cannot live with that they can make a statement to that effect at that point.  So I do not believe a public comment would be required if we have to -- if we make changes.  That's a personal opinion, of course.

JORDAN CARTER:    Bernie is the guardian of our process.

BERNARD TURCOTTE:    I'm the one who stated that, and I stated it as "could."  You know, this is -- this is a sub-bullet to a recommendation, and so I believe it's this group's decision.

JORDAN CARTER:    Sebastien.

SEBASTIEN BACHOLLET:    Thank you very much.  Sebastien Bachollet.

We are here struggling with what is independence of the ombuds office.  Who is more capable to ensure this independence?  And we think a good balance between the community and the Board, which is not the case today, is better than the current situation.  Therefore, I really think that what is a more important piece in that discussion is what will be the composition of the panel.  And I don't know if it's something we

can find a consensus now -- when I say "now," here in this group -- and with the Board later today. But if we can, it would be a good step.

And after, what it's important, it's the panel start to function. I don't think the question of firing the ombuds will be the question -- the first question that this panel will have to face. Therefore, I hope that the Board will accept this, what it's under, into the brackets even if I don't think it's the way to do it, but nevertheless, let's go. And that the Board accept that the composition of the panel will allow both knowledge of ICANN from some of the member and knowledge of the ombuds office from some of the member. And if it happens that one or two have both, that's great but it's not the goal of the composition of this panel. Now, how many member on each part of this panel need to be finalized, and I hope that we can do that in a short order. Thank you.

JORDAN CARTER: Thanks, Sebastien. And thanks. We'll need to work on some text, but this has been a really illuminating discussion here.

Thomas, I think you had something else.

THOMAS RICKERT:    Yeah.   Sebastien, just to confirm, you mentioned that you wanted to discuss additional comments.  Is there anything that you -- that we could probably do before we break for lunch -- before we break for coffee?

SEBASTIEN BACHOLLET:    I would prefer not to mix the two topic and, therefore, I would like to have a stop now because I will -- I need to reset my mind to change the topic.  Sorry.

THOMAS RICKERT:    Okay.  But then just as we're discussing ombuds now, I think it would make sense for us to get the ombuds topic to resolve so we will call on you the first thing after the coffee break.  Is that okay?

JORDAN CARTER:    And with that, we will adjourn a few minutes early, 18 minutes early, for our coffee break.  And I think we'll aim to reconvene at 11 as previously scheduled.  So it's a slightly longer break but we need to do a little bit of work up here.

Thanks, everyone.

[ Coffee break ]

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|---|---|
| JORDAN CARTER: | Okay, ladies and gentlemen, we can kick off. On the screen in front of you is the implementation guidance. Am I right in thinking that will also appear in the Adobe room? I am, yep. So thumb is up for that. And Bernie has just sent this paper around on the list as well.

So I'm going to walk you through the document as a way of introducing the content. There's not a lot new here.

The first part of this document just restates Recommendation 5.8 which is about the ombuds advisory panel, 5.8, 5.8.1, 2, 3, 4. That's what's in the recommendation as well. It's just recapitulated, restated here as well.

So if we could scroll down, please, to the implementation guidance section. So the first paragraph just says that we prepared it following the Board raising concerns about independence at San Juan and Panama. It explains how we expect the recommendations to be implemented.

The next paragraph which says "unchanged" at the front is the same language that was presented to you on the slide earlier today: The panel is not meant to be a decision-making body. It's there to assist the Board or relevant committee with specific tasks enumerated. And then we say that the panel will only have the specifically enumerated powers set out in the recommendation. So it's just -- it's just restating what's already |

there. And rather than that listing them all again, we're just saying that.

So if you scroll over to the top of the next page, this is the new language, this first paragraph: In implementing Recommendation 5.8.2.4, which is to recommend to the Board firing an ombuds for cause, the CCWG advises that the Board should prepare and publish information about the process any ICANN community participants can use to provide feedback about, or raise concerns regarding, the performance of the ombuds. So we want them to be clear about what the process is that anyone can use to raise concerns.

The panel is welcome to offer feedback on the performance of the ombuds but can only provide any feedback through this process, other than through the regular external evaluation.

So what that's trying to do is to say there will be a process by which concerns about performance can be raised, and this panel can raise concerns through that process the same way as any other ICANN community participant. And then the reason: The CCWG suggests this clarification to preserve the right of the panel to raise any concerns with the performance of the ombuds function while not interfering with the Board's responsibilities in managing the engagement of the ombuds and considering concerns raised in an appropriate way.

So what this avoids is that the Board's concern about there being two parallel processes about the ombuds going, oh, which of these do I have to pay more attention to, about the possible chilling effect of another body with a formal recommendatory role. So that is what it's designed to tackle.

And what we haven't proposed here is actually changing the recommendation. And I'll note that the recommendation says that there should be a panel established and the panel should have these responsibilities. If there's going to be a panel, it's going to have the terms of reference drawn up as part of the implementation process. If the board is really stuck on the language in the recommendation about the firing, they simply won't include it in the terms of reference to the panel. They'll include a reference to this process. So hopefully this provides a way through for the implementation.

So if I carry on, the next paragraph that starts with "changed format," that was the request of the board being how the panel would make advice about noncompliant work. That was shown to you earlier on, so it's just a different format.

And in the composition of the panel, now that we've clarified that decision-making process, we had advice that said: A formal process to select the panel members should be created to first ensure that candidates must have significant experience and

independence from the SO/ACs. The composition of the panel as worded in the recommendation says there will be some completely independent and some with familiarity with ICANN. We think the appointment process should be able to square familiarity with ICANN and independence. So restating that second point, the requirement for ICANN experience is secondary, we're proposing not to make that advice because actually it is important that there be some understanding of how ICANN works for this panel to be able to do its job.

And then it carries on as presented earlier today: The selection process may be designed in an appropriate means to achieve independence, such as Board selection, independent recruitment, or other appropriate process. They will post details regarding the process.

So this is based on an exchange with board members at the break. It's designed to get us over the line here. We think it's a workable solution. And I'd welcome any comments or thoughts back in response. And I think it's been on the email list as well if you want to read it separately.

I've got two hands up so far, Sebastien and Steve. Kavouss just joined them. So Sebastien first.

SEBASTIEN BACHOLLET:     Thank you very much.  I need to read it again for me to take that into account like that.  But one point, it strikes me in the addition, if the Board prepare and published information about the process and define the process any ICANN community participant can use and then you say the panel can be -- but the panel is not an ICANN community participant.  It must be specified that any ICANN community participant and the panel in one way or another must -- could be or must be included, because if the Board set up a process where the panel is not asked to be -- to give its advice, we will have an endpoint here.  Thank you.

And I would like very much that we -- I guess you say we will receive it by mail.  I hope that it's done.  And if you give us some time to read it again and maybe not make a decision just now but at the end of this morning session will be better for at least my point of view.  Thank you.


JORDAN CARTER:     Thanks.  That's clarified that it went to the wrong email address, so hopefully it will be coming on the list very shortly.

And I think it's implicit if we're saying that the panel can use this process, it has to be clear that the panel can use this process.  So I think that's a point well made.  Thanks.

It is now sent again to the list, so hopefully it is on the list shortly.

Next is Steve DelBianco.

STEVE DelBIANCO:    Thank you, Jordan.

Kudos for working this out over the extended coffee break. And I think it is clever and appropriate to change the channel via which the panel can make recommendations for firing. They have to channel it through the open process of soliciting feedback, if I see that correctly. That's why you don't have to remove the recommendation that we allow the panel to recommend firing. They can do so at any time through the ordinary -- through the new channel of community-wide feedback. Do I have that right? Okay, great. Thank you.

And the second question is on the screen in front of you, the last unchanged item suggests that appropriate means to achieve independence -- and I'm seeking clarification if we mean independence from us in the community, ACs and SOs. Do we mean independence from the Board itself or independence from the ombudsman's office. And if we mean all of the above, then leave it alone. And, yet, if we are reiterating independence from the ACs and SOs, then we are continuing to perhaps clash with

the unchanged recommendation that five of the seven have extensive ICANN experience.

That recommendation coupled with the recommendation of having absolute independence from the ACs and SOs would be irreconcilable. Thank you.

JORDAN CARTER: So, Steve, on your second point, I'm reading it as being consistent with the first part of the recommendation, which is that the panel we made up as five members to act as advisors, support as wise council, made up of a minimum of at least two members of ombuds experience and the remainder with extensive ICANN experience.

And as I said in my introductory comments, the difficult thing that the Board is going to -- the process to appoint this panel is going to need to juggle is ICANN experience and independence. So I expect that they be made complementary, not contradictory.

STEVE DelBIANCO: So in the unchanged part in the bottom on the screen in front of us, that word of "independence" is referring to independence from whom?

JORDAN CARTER: The sense of it isn't changed from the previous thing. So I think it's -- I think my interpretation of it is it's meant to be independent from the work of the SOs, ACs, and the ICANN corporation. So that's why I'm saying it's a difficult juggling act, because being familiar with but independent from.

STEVE DelBIANCO: So I could be experienced in GNSO for a decade. But if I'm not a voting officer or a member of a GNSO constituency, will I have achieved independence coupled with experience?

JORDAN CARTER: That sounds like a reasonable example to me. But I think this is the challenge that the fleshed-out process will need to answer. Yeah.

So nonindependence would be the GNSO Council Chair or the ccNSO Council Chair. I think that's -- at some point, there will be a change that happens.

The next speaker on the speaking list is Kavouss.

KAVOUSS ARASTEH: Yes. Thank you very much for this text. I have two comments, one comment relating to changed format. In the second line,

the term "work" is mentioned.  "Work" is too broad, too general.  Perhaps one suggestion would be to replace that by "function" or "action" but not "work" because "work" would involve anything.  Even coming to the office at 8:00 and leaving the office at 5:00, this is work.  And so too broad and so on.  We are talking about functions or we are talking of actions taken by most men.

The second one with respect to the unchanged, the second line, it is a term "significant experience."  I think also is too strong.  Suggestion would be either "necessary" or "adequate" instead of "significant."  Thank you.

JORDAN CARTER:          Thanks, Kavouss.  I have no view on the second point that you raise.

On the use of the word "work," the reason the word "work" is used is because that in Recommendation 5.11, which that points to, the recommendation text says, and I quote, "The following point should be considered and clarified publicly when looking at ombuds' involvement in any noncomplaints work" and then it lists five or six bullet points about what that work might be.

So the reason for the use of the word is that it is exactly the same language that is in the other recommendation.  So it keeps a

tight link between them.  So "work" might not be the best word but if we change it in this advice, we should also try and change it in the recommendation, and we're trying not to change the recommendations.

So I agree with you in substance.  But in process it would be easier just to keep the word "work."

KAVOUSS ARASTEH:    Is it possibly to put the term "works" in two inverted commas that would refer to something else which is already explained at least?  Thank you.

JORDAN CARTER:    Yeah, I think we can manage that.  Thank you.

My next speaker is Alan Greenberg.

ALAN GREENBERG:    Thank you.  Just a very minor problem -- minor point.  Sebastien said the panel is not part of the ICANN community, and he's probably right.  We may want to use words like "already ICANN entity," because clearly it's an ICANN entity even though it's not a community entity.  So words like that may suffice to cover both parts of it.

JORDAN CARTER: Thanks for that. Yeah, I think as long as we're clear on the substance that this panel can make recommendations through that process, that will be the key thing to get right in the implementation. That's a good point.

I see a mercifully clear speaking list. So there's a couple of suggestions of tweaks of this language and so on. But at this point, I'd ask if anyone has any fundamental objections with us proceeding with the implementation advice on this topic in the way it's set out. The aim as ever is to get it over the line and get us out of here.

[ Laughter ]

Not just get us out of here but get us completing this work.

On that -- okay. I'm not seeing any hands raised on that point. Steve's got a point apparently.


STEVE DelBIANCO: It was just placed into the chat. I would ask you to reiterate whether the coffee-break conversations give you a high confidence that legal and Board will support these implementation guidelines. Thank you.

JORDAN CARTER:     I've got -- you know, subject to them having seen the text which they didn't because we wrote it after the discussion, I'm reasonably confident this will be right.  And if not, at least everyone's intent will be clear and any responses will be in that context.  So that's my view.  Hopefully the co-chairs and staff share that view.

THOMAS RICKERT:     I guess what we're going to do, if everyone so far is comfortable with it and understanding that Sebastien and potentially others want to have another read, we will send this over to the Board.  And then when we -- before we close the meeting, we can hopefully confirm that everyone's happy with it.

JORDAN CARTER:     All right.  Thank you very much, everyone.  Now I'm going to chuck it to someone else to do the next area -- some more ombuds topics.  Thomas, I will leave that one to you to chair.

THOMAS RICKERT:     Thanks very much, Jordan.  This will be the opportunity for Sebastien to introduce his point about other ombudsperson-related questions there might be so that we can hopefully conclude with the ombuds part before we break for lunch.

Sebastien, do you want to speak to that?

SEBASTIEN BACHOLLET: No. I wanted to -- it's a more general question. Sebastien Bachollet speaking.

It was how we use the comments we received. And I understand that for the moment, we just take into account the one we're pointing about any discrepancy and, therefore, there were none of them, I guess, if I understood well.

But I think that another point was to be taken if there is something who could be dealing with two subgroup work. And one of them is the question linked between the diversity and ombuds.

I want to just explain why I didn't raise this issue before. As such, I made it in the comments, and I think others have made some similar comments. It's that as I was rapporteur of the ombuds -- ICANN ombuds office subgroup, I didn't want to interfere with this work, this collective work, with my suggestion about doing something between diversity and ombuds. Maybe you will think it's crazy, but it was my way of thinking.

Therefore, I put the suggestions -- the idea of diversity still need to be handled in a way more independent and as the decision

was taken not to create an office of diversity or whatever new mechanism.

In that comment, I suggest that we reinforce the role of the ICANN ombuds office in that direction. It's already something that the ombuds have a role in the diversity, but I think that we need to reinforce it.

Maybe it could be done through the implementation phase, if you think that it's more appropriate. But I wanted to raise that issue. And I -- it's not linked with the discussion we had about the ombuds up to now in this morning discussion. Thank you.

THOMAS RICKERT:       Thanks, Sebastien.

With respect to that work, Bernie, is that something you want to comment on?

BERNARD TURCOTTE:     No, not really at this point. Thank you.

THOMAS RICKERT:       Okay. So with respect to your question, I think that we will have to deal with this if and when the time comes. You know, I don't think there's a structured mechanism for dealing with this now because the report is done. And whatever questions there might

be I think need to be addressed when we see the implementation plan, which will likely be proposed by ICANN Org on behalf of the Board and then there will be opportunities to chime in and make yourself heard.

I hope that sufficiently answers the question, Sebastien.

SEBASTIEN BACHOLLET:     No but yes.

THOMAS RICKERT:     I don't really see another avenue for us to take at this stage given that the work of this group is about to end. So I think we all need to keep an eye open when the matter is being brought up to see whether there is anything that we need to chime in on. And that will be both for the community as well as for those who are taking a closer look at the implementation oversight.

Great. So with that, let's just briefly confirm. To avoid any misunderstandings, we took your silence, except for Sebastien's silence, on reading the proposed language again as no objections being on the record for the time being, right? So we will get back to the clarification on the ombuds panel towards the end of this session, not before lunch but towards the end of this whole meeting, and try to get some feedback from the Board as well.

I would suggest that we use the remaining half-hour to discuss the second point that was still open on the implementation. So maybe we can bring that back up on the screen. I think that the overview is in the slide deck that Bernie thankfully provided.

And, Bernie --

BERNARD TURCOTTE: 5.2.

THOMAS RICKERT: -- I would like to hand over to you for giving us a quick overview on where we are with the second point.

BERNARD TURCOTTE: All right. Thank you, Thomas.

You will remember that the transparency group issued a vast number of DIDP recommendations, 40-odd recommendations, if I remember correctly.

The Board did have issue with several of the -- well, with three of the transparency recommendations. One of them being the DIDP exception for deliberative process. It should not apply to any factual information, technical reports or reports on the performance or effectiveness of a particular body or strategy as well as any guideline or reasons for a decision, et cetera.

**EN**

We posted implementation guidance on Wednesday, 20 June, which was edited versus what we had posted on 12 June. This 20 June version was the result of discussions between myself, Michael Karanicolas, and Steve DelBianco looking at how to address concerns that both these gentlemen had with the original 12 June version.

After looking at what we had come up with, the co-chairs thought it was fair to recommend it. Steve and Michael thought it was good implementation advice also. So overall, we seem to have support on this.

Next slide, please.

So rather straightforwardly, the first part of the advice is for the sake of greater clarity, current publications of Board briefing materials appear to fulfill this requirement. And just to give you a bit of background on this, the original recommendation was really based on copy/paste from some government requirements and maybe made it a little difficult to understand it in our ICANN context. And after going through it and going through all the materials that are currently published by ICANN and what is disclosed, it seemed to meet the requirement.

In its comment, ICANN had pointed out that documents information already provided to a third party, without obligation to keep as confidential, should not be withheld simply because

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of a deliberative process exception.  So that was confirmed by ICANN that this is already in place.

So overall, I believe we've got implementation advice that works for this.  And back over to my co-chair.


THOMAS RICKERT:    Thanks very much, Bernie.

Any comments on this from the floor?

And Kavouss, I think that your hand was raised with respect to the last point.  And just to respond to that, we are providing a Google doc with the amended language, so your suggestion will be reflected and that's going to be shared.  So it's on its way. Just wait for a few moments.


KAVOUSS ARASTEH:    There were two suggestion.  One is significant, and the other was when we say "experience."  Experience on what?  At least "on the matter" or something, because experience may be on anything.  So we should refer to experience on something. Maybe the subject matter.  That means ombudsmanship and so on. But not experience.  Experience on what?

Thank you.

**EN**

THOMAS RICKERT: So let's try to come up with a proposed language for everyone, everyone to read. Thank you for that clarification, Kavouss.

And so I don't see any comments in the group on this point on transparency. Cheryl is confirming in the chat that this is okay with her.

Great! So three, two, one. One down.

Let's move to the next one. Thanks, everyone.

BERNARD TURCOTTE: 5.3, please, on the slides.

Open contracting. All right. This is going to be another popular one, I'm certain.

This was another DIDP recommendation from the transparency group, recommendation 16. And I'm going to walk you through the whole thing and then we will see where we go with this.

So the recommendation was: Wherever possible, ICANN's contract should either be proactively disclosed or available for request under DIDP. The DIDP should allow ICANN to withhold information subject to a nondisclosure agreement; however, such agreements should only be entered into where the contracting party satisfies ICANN that it has legitimate commercial reason for requesting the NDA or where information

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contained therein would be subject to other exceptions within the DIDP, such as, for example, where the contract contains information whose disclosure would be harmful to the security and stability of the Internet.

So that's our starting point. That was the recommendation. That's what was approved in the May 14th letter from the Board to the Accountability. There were serious concerns by the Board regarding this.

Next slide, please.

So this was one point that Michael Karanicolas and Steve DelBianco and I discussed following the 12 June posting. We could not come to an agreement with Michael on this one, and so we brought the situation to the co-chairs, and the co-chairs thought that the proposed implementation guidance made sense in our context and ask that it be posted for consideration by the plenary.

So I will repeat, and Michael will -- has since posted to the list, you will have seen, his very serious concerns regarding the implementation advice that is being proposed, and that will be part of our discussion in a few minutes.

Next slide, please.

So the implementation guidance is as follows. As the recommendation starts with the language "wherever possible," we would recommend that ICANN publish a document clearly stating its position on the limited use of NDAs and documenting the information that it will make available on its contracted relationships as discussed below.

Okay. So basically there was a little bit of grayness there, and what we're saying is ICANN needs to really clarify that as to what they will publish and what they will not publish, and that we have a really clear document on that.

The second part is. ICANN should annually publish a register of all suppliers, that includes the name of the supplier, the country of origin, and actual annual amount, it pays $500,000 U.S. or more per fiscal year broken down by categories, category of supplier: computer equipment, software, telecommunication services, contracting, et cetera. The Board should review this threshold amount on a regular basis to effectively ensure transparency.

So just to be clear, there is no such register right now. There is a requirement for ICANN to disclose any contracts that are approved by the Board over $500,000. What we're saying here is not a contract. It's the sum total for a year for a supplier. So

even if you have five $100,000 contracts, it reaches the limit and will get disclosed.

So -- And not only will it be disclosed, there will be a report, a single report annually where all this information is brought together so that you don't have to go hunting everywhere.

Part of the discussions we were having with Michael in writing this is -- and I'm sure he'll make the point -- was he felt that we should include in the second part that this was only a starting point and that the Board should commit to doing better over time. It was felt on the Board side that it's unwise for the Board to accept open-ended commitments like that, the issue being that the Board has to manage the expectations and requirements for all the activities of ICANN and not just Work Stream 2, and it's uncertain how -- they just don't take open-ended commitments like that.

They were comfortable with the language the Board should review this threshold amount on a regular basis to effectively ensure transparency.

So that's my background, and I'll hand it back to the co-chair at this point.

Thank you.

THOMAS RICKERT: Thanks very much, Bernie. I see that Michael is not in the Adobe room. Do we know -- ah, he is. I must have overlooked him.

So before we move to the queue, I'd really like to give the opportunity to Michael to speak to his position more so that everything is on the record. Michael, is this something you want to do now? Please give us a...

"Briefly, though. Bad Internet," he says. Well, the Internet is not that bad.

So I think we should have Michael participation possibility in the Adobe room. It's not listen only; right?

BERNARD TURCOTTE: No, no. It's participation.

THOMAS RICKERT: So --

BERNARD TURCOTTE: Michael is calling in. His Internet is bad, if we look in the Adobe chat.

THOMAS RICKERT: Okay. Then while we're waiting for Michael, let's go to the floor first, but please understand I will give Michael the opportunity as

soon as we have him online, and I'd like the tech staff to let us know once Michael is there.

Kavouss, you're first in line. Please.

KAVOUSS ARASTEH: Yes, this comment is not an opposition but just clarification. What was the basis and rationale to set the $500,000 as a limit? Where it come from? It come from the past experience? Come from something? Come from any particular suggestion? Just a clarification.

Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. I'll let Bernie answer that.

BERNARD TURCOTTE: I think as part of the discussions, the original version of this recommendation had $100,000. There was concern on ICANN on the amount of work to actually collate this information, because remember, we're not talking on a contract basis, we're talking on an annual basis. And so if you start getting to too-small amounts, the work to actually get all that information to meet that requirement was a large concern.

So there was a back and forth, if you will, and we settled on 500,000 as a starting point with no commitment that they're going to change it but look at it.

THOMAS RICKERT:    Thanks very much, Bernie.

Michael, we should be able to hear you now. Please go ahead.

MICHAEL KARANICOLAS:    Hi. Can you hear me?

THOMAS RICKERT:    Yes, we can. Welcome, Michael.

MICHAEL KARANICOLAS:    Just heard my echo. All right. Hi. Thanks very much for that.

So you saw -- Thanks very much for the introduction, Bernie, I wrote to the list previously to express the substance of my opposition to both this recommendation, the implementation guidance for this recommendation and the one on interaction with governments.

I'll note that the fact that I -- I didn't raise objections on the list to the implementation guidance around Board transparency doesn't mean I don't think there's any issue with these

additions. for the second recommendation in particular, I think allowing the Board to stray from the codified exemptions builds in a loophole which is contrary to the point of the recommendation. But that said, I didn't raise an objection to that on the list because I still think that that recommendation even with the implementation guidance provides important progress as it's phrased. So even though it has now had a loophole built into it, I would view that as an acceptable price for getting it through. The difference here, and the reason why I objected to this recommendation and to the one on the interactions with governments, is that in these two cases I view the implementation guidance as totally undercutting the substance of the recommendations. And while I understand the importance of addressing concerns that the Board has raised, to do so in a way which is going to substantially have a negative impact on any effect that these recommendations are going to have defeats the purpose of what we're doing here, and it turns the victory of getting these through into a paper victory.

So as I mentioned on the list regarding this specific exception, the $500,000 threshold is enormously high. I don't see that as being consistent with the language in the recommendation that says contracts should be disclosed wherever possible. It doesn't say wherever easy or wherever convenient. It says they should be disclosed wherever possible.

Now, that said, $500,000 is the highest threshold I've ever seen in any system. It's a moderate improvement, a minor improvement over the current practice. And so in going back and forth, I had suggested that the 500,000 be changed to 100,000, which is still an order of magnitude above what we find in most transparency systems around contracting but is consistent with what we see at the World Bank, for example, so I view that as a decent midpoint. And then barring that, my hope was to get some sort of a broad commitment to progressive implementation, to this idea that this is a starting point or that the organization should aim to improve contracting transparency over time.

Bernie says that the Board views this as being -- as tying their hands and forcing them down a path that they don't want to go down. I don't -- I disagree with that interpretation. I think it's a broad statement of values that gives the community something to hang its hat on if, in future, they feel that more should be done. So I would encourage either that the initial amount be lowered or that the -- there be something inserted into it to indicate that the community would want to see a progressive implementation.

I am going to mention one other thing because I actually have to go, probably after this. I'm not going to be around for the discussion or the interactions with governments. But just to

build briefly on what I mentioned in my email, again there I think it's very important to remove the reference to the DIDP because that's actually -- putting that into a document like this threatens to significantly expand the scope of the DIDP exception as it's understood and interpreted by ICANN. So it would actually be regressive to the transparency system and counter to what we're doing here. And beyond that, I think the reason why I raised specific objection to including meetings within that is meetings can refer to virtually anything. So if you build in an exception to this transparency guidance which says you only have -- you only have to disclose -- you don't have to disclose it if it involves a meeting and it involves discussing ICANN's public policies, that's a loophole big enough to drive a truck through. That completely undercuts the efficacy of this recommendation such that I think it will lose all of its practical effect.

So in both cases, I think that the implementation guidance as currently written is definitely not in the spirit of the recommendations, and I think that they're both enormously problematic.

Thanks very much.

THOMAS RICKERT:     Thanks very much, Michael. I hope that you will still be around for the remainder of this discussion. And thanks for speaking all

your concerns to the record so that we have this on file and even for those that haven't read your email so they all can understand your concerns.

Let's now go through the queue. We heard Kavouss already on the first point so I think we can now move to Steve, please.

STEVE DELBIANCO: Steve DelBianco. Michael, I hope you can hear this because the first part is to acknowledge and compliment you on the role that you played. You first came to this group and came to ICANN at the plenary meeting we held in Helsinki, I believe, and it was your sort of introduction to the world of ICANN. It was our introduction to what I've come to view as a fearless crusader for transparency on the part of governments. And I've learned a lot from listening to the way you explain and map to your experiences that you have. Having said that, I am still conscious of the fact that ICANN is not a government and is not even an intergovernmental organization such as the World Bank, as cited in one of your comments. The World Bank is a treaty organization of governments.

ICANN is a little bit of a different animal: a private-sector-led organization that answers to the constituents but not necessarily governments and taxpayer funding. So having said that, I'd like to address the concerns that you've raised because I

feel it's important as -- since you're the rapporteur, that we give adequate recognition to your concerns and explain why, at least speaking for myself, why I believe that our proposed implementation guidance is appropriate.

The dollar amount with respect to open contracting is clearly one that has to be thought of relative to the period of time covered by the dollars. When we looked at a $10,000 per contract, that threshold felt extremely low, but when one maps it to an annual expenditure with a vendor, not a per-contract expenditure, it's clear the number needs to be higher. And I appreciate your flexibility in suggesting that 500,000 could be appropriate on an annual expenditure but, in your words, only if it's seen as a starting point.

So all of us in this room who have worked with ICANN would be quick to say to you that "as a starting point" is a meaningless improvement to the community's powers over the ICANN Organization, because "as a starting point" without explaining what the next step is -- who, how, and when could anything be obligated upon the organization -- gives us nothing. And that's why on the call I held with you just last week I hit upon a way in which we can operationalize your notion of progressive improvement, and that is in the implementation guidance where I said that in scoping future ATRTs, that's Accountability and Transparency Review Teams, in scoping future ATRTs, SO/AC

should consider if the information provided in the above register meets their requirements. Should they feel the need to improvements, they should request that the review consider this.

So let me explain. We are currently in ATRT3, and no less frequently than every five years we'll have more ATRTs. In the ICANN bylaws, the Accountability and Transparency Review Team is selected by the AC and SO chairs. It is not selected by ICANN or the GAC. That means that we, the community, control the composition of the review team, and what is it that the review team does on the first day it comes together? It defines a scope for what will be looked at in the ATRT. So the community controls the ability to scope their review to include is the $500,000 threshold really appropriate? Are we seeing too little information here? And if so, they can make recommendations, and those recommendations have to be considered by the Board per the bylaws.

So I do think that we have covered off the -- the thought you had in mind with "as a starting point," but given it an operational mechanism as opposed to a -- sort of a meaningless statement that we will not be able to move ahead on.

Regarding your interaction with governments, I think that we'll move to that next, but we'll -- I'd like to put a bookmark there

because I really believe that we have an appropriate response to this notion of the DIDP reference on meetings. Michael, I hope were you there to hear this.

Thank you.

THOMAS RICKERT: Thanks very much, Steve.

Let's go through the queue first, and then I think we have to break for lunch because that's been booked for 12 -- 1200, as you know, and then we continue with our conversation after the -- after we reconvene.

David, please.

DAVID McAULEY: Thank you, Thomas. David McAuley speaking for the record, and I just want to say two things here. One is a statement of understanding and that is I want to state my understanding that with respect to the nondisclosure agreement portion of all this, and I think this is important to say because that's been discussed in this implementation guidance, the compromise reached in the transparency subgroup was that for -- if a party that's entering into a contract with ICANN convinces ICANN of the legitimacy of the need for a nondisclosure agreement, then

that nondisclosure agreement will be treated like a contractual nondisclosure agreement in the typical course. That's my understanding; that this is still protected here, and I think that's important to state on the record.

Secondly, with respect to the staff -- with respect to the implementation guidance, I would like to note my personal support for it. And I do -- I do -- I was part of the transparency subgroup. I recognize the hard work that was done by the leaders of the group, and there were times when we didn't always agree but it was a good discussion.

With respect to the staff guidance or the implementation guidance that we have on the screen, in my view it does -- it strikes the correct tenor. Many of the -- some of the impetus for the original recommendations came from the idea that ICANN should be treated like a government. And as ICANN stated in its remarks it has neither the privileges nor the immunities that governments have. That's an important thing to keep in mind and to bear in mind.

I think Steve's idea of the ATRT review is a good one. I also think we need to keep in mind that ICANN is subject to annual audits by an independent third party that would probably surface issues that might arise in this respect. And so for -- for where we

are now, I think that this strikes the right -- the right note, and I -- so I rise in support of it.

Thank you.

THOMAS RICKERT: Thanks very much, David.

Greg.

GREG SHATAN: Thank you. Greg Shatan for the record. Just briefly since both Steve and David said a lot of what I would have said, I support the recommendation. I also believe it strikes the right balance and strikes the right tone for an organization of ICANN's type, whatever that type is, but it's certainly not a governmental type, as such, not a multilateral organization. And I think further, having been involved in many hundreds of contracts in my private career, it also strikes the right balance in terms of practicality going forward.

Thank you.

THOMAS RICKERT: Thanks, Greg.

Alan.

ALAN GREENBERG:    Thank you.  Uncharacteristically, I am speaking now on behalf of the ALAC.

THOMAS RICKERT:    What?

[ Laughter ]

ALAN GREENBERG:    And I'm going to quote -- I'm going to quote a short part of the comment we made.

The recommendations for -- formulated in the very sections of this report all have merit in advancing ICANN's transparency and accountability; however, taken together, they may amount to a daunting burden on the ICANN Organization and its volunteer community.   For this reason, the ALAC recommends that recommendation -- as recommendations are implemented, ICANN take an approach to minimize the impact and work associated with following these recommendations.

During the discussions of this group, it was quite obvious to me, and I'm now speaking on my own personal behalf, that we were imposing potentially very large burdens on ICANN.   Not necessarily the ones that are listed on this screen right now.  And

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when the issue was raised, I was told, well, governments can do it, and we should do it, too. We don't print money, and we have certain other constraints that governments or international organizations don't have. And I think we have to be very vigilant as we go forward that all of this may advance ICANN's transparency but a transparent organization that can't actually do the work it's here for, because we're spending our time being transparent, is of no value whatsoever.

Thank you.

THOMAS RICKERT:         Thanks very much, Steve -- Steve. Alan. I apologize. It's jet lag. I mean, you both look so great that it's easy to, you know, to confuse the two of you.

So we have Robin, Kavouss, Jay, Christopher.

ROBIN GROSS:            Hi, this is Robin Gross for the record.

Yes, I wanted to backup what Michael has stated about these objections or about his objections on these proposals. ICANN does engage in governance, global governance in fact. So I -- while I understand it's not a government, per se, what we're doing here is governance. And so that means we have to be a

little bit more responsible than if we were just a private company and we only have to answer to our shareholders.

I think the 500,000 number is enormously large. I understand the need to have a number that is both practicable and works to build transparency, but I'm afraid that the $500,000 number is just way too high. It completely eviscerates the recommendations, the transparency recommendations that we did. So I'm extremely disappointed to see the gutting of the transparency recommendations in this way through the implementation process.

Thank you.

THOMAS RICKERT: Thanks, Robin. Let's get back to that in a moment, but it's great to hear your view on this.

Kavouss.

KAVOUSS ARASTEH: Yes, I have two suggestion. The first one, if, and only if, we maintain 500,000, when we talk about the review on the regular basis by the Board, we should inject the idea of taking into account the recommendation of ATRT. That means we add another element on that but not only Board review that.

Second, perhaps because I have heard pros and cons if it's 500,000 and various -- not various one, idea of 100,000 and some others saying it's too large, perhaps we should opt for something between the 100,000 and the 500,000. So there are two suggestions, and I submit that for your consideration, one by one.

Thank you.


THOMAS RICKERT: Thanks very much, Kavouss.

Jay.


JAY DALEY: Thank you. Jay Daley. And before I speak, I need to just give a declaration here. One of my clients is ICANN, and if the limit were 500,000, I would not be included in a disclosure. If limit were 100,000, I would be included in a disclosure.

Further, the reason I'm contracted to ICANN is to work on the Open Data Initiative, so anything that comes out of this would come out of the project I'm working on.

So having made that disclosure, the -- I am not comfortable that the limit is set within this narrow framework of a negotiation with ICANN. There are plenty of external standards in use for

contract disclosure, particularly through the U.S. government. Open Contracting and Sunlight Foundation and various others. And I would much prefer that we took an external standard and we work to that external standard.

My own view is that 500,000 is also far too high and 100,000 for an annual contribution is much more in line with the external standards you'll see out there.

Thank you.

THOMAS RICKERT:       Thanks very much, Jay.

Christopher, where are you?  Oh, over there.

CHRISTOPHER WILKINSON:  Thank you, Chair.  Christopher Wilkinson for the record.  I shall be very brief because I have not participated directly very much in recent months on this topic.

Naturally I support the ALAC position, although I did not participate in its preparation.  My view of this is that there are significant external and internal sources of discipline and efficiency which do not depend on ex-post transparency.  And I think as an organization, ICANN should, in the first instance, rely on the results of efficient international competitive bidding for

such contracts; that it should have, and I'm sure it does, a management structure which is fair and uncorruptible in the allocation of contracts, and that there is an audit procedure of which would have to address these issues long before the community could get hold of the problems that might arise through this form of transparency.

And, finally, I think it's extremely important in terms of enlarging the scope of tendering for ICANN contracts, that disclosure and transparency should not discourage new contractors from bidding for new -- new contracts.

Where this leads us in terms of this or that threshold, I'm not quite sure. But I did want to make the point that we are not relying and ICANN should not rely entirely or even essentially on this form of transparency to achieve the efficiency and reliability and uncorruptability of their contractual procedures. Thank you.

THOMAS RICKERT:    Thanks very much, Christopher.

Robin, you put yourself back in the queue. Briefly, because we have one minute past the hour.

ROBIN GROSS:    Thanks.  This is Robin Gross for the record.  I will be brief.  I just wanted to ask a question because I think it might help us analyze this particular issue a little bit better.

If we could maybe get some information back from staff as to what's the range number that we're talking about.  How many contracts are we really talking about that reach this $500,000 threshold as opposed to the $100,000 threshold?  What's that range as well?  Because if we could see, oh, this is only five contracts or, oh, this is 500 contracts, I think that would really help us to try to understand how workable is this, how practical is this, and what the right number should be.  Thanks.

THOMAS RICKERT:    Thanks, Robin.

So let's do the following.  We will try to wordsmith a little bit over the lunch break.  And following your suggestion, we will also try to get somebody here who can maybe inform our discussion a little bit more.

On the previous point, there is updated language taking into account the various comments that have been made.  So that either has been sent to the list or it will shortly be sent to the list, so please watch out for that.

I think we have one hour four lunch break now.  Is that correct, Bernie?  So we will reconvene at the top of the hour.  Thanks so much for a good discussion this morning.  And talk soon.

Thanks to the remote participants.  We will have the recording stopped north and reconvene in an hour.  Thank you.

[ Lunch break ]

BERNARD TURCOTTE: Ladies and gentlemen, if you will take your seats, we'll be starting now.  Thank you.

THOMAS RICKERT: Can we get the recording started again, please. Awesome. Thank you so much. The tech folks just indicated to me that the recording has been restarted.

This is Thomas Rickert speaking. And welcome, again, to our plenary session on occasion of the ICANN62 meeting in Panama.

We had a couple of items that we wanted to close on. Jordan has kindly sent the revised language for the ombuds panel to the list. So let me check whether there are any further interventions that you want to make or any further comments.

Just checking. Bernie, did we receive any response on the list to Jordan's email?

BERNARD TURCOTTE: No.

THOMAS RICKERT: Okay. Then I think we can tick that off the list. So thanks, everyone, for the great discussion on that. And it looks like we found a solution that is workable for everyone.

The other point that we need to discuss is the open contracting part again. And at least from here, it was our understanding that there is a general understanding by the plenary that an implementation guideline is required in order to lower the

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administrative burden for the ICANN Organization in determining thresholds and applicable contractual relationships where disclosure needs to be made.

But we also understand that there are issues that are seen by the group.

Jay made a comment that resonated well with many in the group. Robin has made an intervention as well as many others.

So what has happened in the meantime is I've asked -- or we have asked Bernie to include two parameters in the revised language for the open contracting recommendation.

The first aspect would be to lower the threshold from 500 to 250K. And the second point would be to make adjustments to the threshold subject to ATRT revisions so that it's not a carved-in-stone threshold but we need to look at the practicalities.

So if ICANN's annual budget shrinks, then there might be an adjustment to the one side. If it increases, it might change to the other side because I think we are in align -- we are in agreement that we do not want ICANN to spend too many of its resources on managing the open contracting part.

So we haven't heard back from ICANN. I have reached out to Chris Disspain who has been in discussion with us on this, and I've asked him for an indication of how many contractual

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relationships we're talking about, i.e., what the administrative burden for fulfilling this requirement would be.  And I hope to be able to get back to you with a response within the next hour or so.

But for the time being, unless we hear that it's hundreds of contractual relationships, I think this is a compromise that we should probably go for.  At least I would personally recommend that we do that.  It seems to be good middle ground, preserving the spirit of the recommendation, yet making the operationalization of it easier for the ICANN Organization.

And I will also say this, it will make it more difficult for ICANN to say that there are global public interest considerations to refuse or reject the recommendation.

Is there any opposition to this suggestion?  I see Steve's hand is up.

Steve, please go ahead.

STEVE DelBIANCO:      Thank you.  Steve DelBianco.

I agree with the language and, yet, wonder if we can add a signal to the Board that we fully understand where the burden lies in the register -- the annual publication of the register.  And given

that, if the Board were to respond opposing $250,000 threshold, we would expect their opposition to include data sufficient for us to appreciate why that number -- that threshold is too low. Written accounting systems -- I am an accountant and I realize the accounts payable system that ICANN uses has a simple reporting query. It says that over the last 12 months, give me a list of vendors who have received more than $250,000. I don't need the names, by the way, I just need the quantity, how many are in it. And if ICANN comes back and says the 250K threshold, we have over a thousand records or several hundred records, then I gather that that is extremely difficult for an ICANN auditor to go through each and every one of those to determine whether there are confidentiality provisions in that vendor relationship that prevent the disclosure in the register. That is the burden. There is no burden to running the report. The burden is to screen the report and to publish it.

So we are sensitive to the burdens. I want the record to reflect we understand it. This isn't some fight of what the numbers should be at the World Bank and what other people at this table say. We are appreciative of the burdens, but we can only be responsive to the Board if it shares with us their knowledge of what the burden is. It is insufficient to simply claim we can't do it at 100K. We can do it at 500 because we're coming back at 250

and the answer we need back has to be a substantive answer. Not just a yes or a no.

THOMAS RICKERT:        Thanks, Steve.  That makes an awful lot of sense.  I see Bernie nodding.  So I understand that Bernie is keeping track of what you were saying.

Let me suggest this, if we get green light from Chris that the 250K is accepted, we don't need to make that addition.  Should we get any or a different response, we should put this into the rationale for the recommendation.

I see Robin nodding as well.  I want to put that on the record.

[ Laughter ]

No, to be quite honest, I think -- and this is the part where I feel slightly uncomfortable with the way that we're dealing with this, is what we are adding into the language of our report needs to come from this group wholeheartedly, right?  So we were -- and I hope that we've framed this in a way that everyone agrees with, that we hear that we haven't framed -- we haven't used language sufficiently clear to convey the spirit of what we're trying to say.  And we want to preserve that spirit, yet remove the ambiguity or the issues that third parties might have reading it.

Therefore, this is our amendment. It's not something that's dumped on us, and this is why we should feel comfortable with whatever additional language we put in here.

I see Kavouss' hand and then we go to Jay.

KAVOUSS ARASTEH: Yes. Thank you very much. I fully and wholeheartedly support what Steve mentioned. However, I also agree with what you said. Nevertheless, we should add something in the record or somewhere that this reduction from 500,000 to 250,000 is a result of considerable discussions and proposals and this represents a consensus. So we should not leave that Board is at freedom to make any changes.

I understood that you said that Chris has given, whether he discussed with the Board or whether as the vice chair of the Board said that. But we would like to maintain this 250. If there is anything, we don't mention that. This should be arguing for the time being. We should just mention that this is a consensus built and we need to maintain that. Thank you.

THOMAS RICKERT: So if I understand you correctly, we should confirm that the implementation guidelines have consensus within this group, right? So that's easily done. Thank you for that.

Jay.

JAY DALEY:              Thank you.  This is Jay Daley again speaking again in a personal capacity with the same declaration as before.

I'm not a member of the working group, so I don't expect to have any standing in this.  But I do not agree with Steve.  I do not understand why we need to deviate from commonly accepted standards about open contracting that exist in other organizations.  I do not understand what is special about ICANN that it cannot simply fit to a particular model.

The number of people affected or the number of contractors to be disclosed in my mind is irrelevant.  You know, the number comes from the limit you set.  You don't set the limit because of the number.  That's nonsense.

So I would much prefer that we asked ICANN a specific reason why they cannot set a standard using an external standard. What is so different about them?  And then assess that answer because I don't think there would necessarily be any really good reason for that.  Thank you.

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THOMAS RICKERT: Thanks, Jay. Your point is well heard. I think we are trying to understand exactly that with the question that I put to Chris and say, okay, should there be any issues, you need to feed us with numbers.

So at the moment, we don't have any understanding of what the overall volume for individual contractors are and the individual contract is. So we are pretty much digging in the dark.

Therefore, if this group feels comfortable with the 250K threshold, I think that's also due to the fact that unlike governments or unlike intergovernmental organizations, there are different budget constraints that we have to work under. And I think our iterative process of improving ICANN's accountability, we can use that as a number to start with and then adjust as we move on, right? And that's the idea. But everyone in the room heard your intervention. So should there be a requirement to adjust the figure any further, please do make yourself heard.

I see Greg's hand is up. Greg, where are you? Over there.

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

I support the language that has been proposed here. And with regard to external standards, I note that the external standards

that have been cited so far are those for governmental and multilateral organizations. And ICANN specifically noted in their intervention that they asked for relevant external standards that may apply to private sector organizations and they were given responses like things that were intended to deal with pervasive corruption in the Ukrainian government or Ukrainian economy and other kind of edge cases.

And in my few minutes attempting to do research on the Internet, I didn't find any good discussion of external standards for private sector organizations. So at some point in time, maybe we can, you know, look at that issue appropriately. But that is a -- at this point, it's more of a rabbit hole than a concern, I think.

And if somebody wants to make the case that for an organization like ICANN, whatever that may mean, that there is a private sector standard, I think the idea that we're following the same standards as governments and for the same reasons as governments do not stand. So we should move on from that.

So the question is -- and until there are external standards that we can actually look at, a pragmatic standard makes the most sense. And it's pragmatic not to overly burden ICANN and to do something that is worthwhile and that will be reviewed from time to time. Thank you.

THOMAS RICKERT:     Thanks very much, Greg.

I see Kavouss' hand is up again.

KAVOUSS ARASTEH:     Sorry.  The reduction from 500,000 to 250,000 does not mean the argument against or in favor of 100 or 500 is growing.  The issue is that we need to have a middle ground that everybody could live with it, and that is 250,000.  But individual views could be recorded in the outcome of this meeting.  There is no problem about that.  Doesn't mean they are right or they are wrong.

The problem is that we have to have this agreement, and we think that this consensus is emerged.  And then this 250 will need to be considered for the time being, subject to the review by the Board taking into account the ATRT.  Thank you.

THOMAS RICKERT:     Thanks very much, Kavouss.  That's a good point.

Let me go back to Jay for a moment.  Jay, talking about external standards, are you aware of any such standards outside the intergovernmental organizations or the government realm?

JAY DALEY:                  Right.  No.  But I think asking that is deliberately muddying the waters here.  I don't think it's appropriate that we look for a standard that is specifically to the type of organization that ICANN is.  I think government standards apply very well to us in this regard.

However, I am comfortable with 250,000.  It is much closer to a reasonable target.

THOMAS RICKERT:          So thanks for all your comments.  I just got feedback that there's no way for us to get information on the different tiers of contracts today.  So Chris' suggestion is to leave it at 500 and then work lower through ATRT.

From what I hear from this group is that the 500 doesn't fly within this community, right?  So my suggestion would be to leave it at the 250, to add a rationale to our report as indicated by Steve.

We should -- just summarizing things quickly, we should say that we understand the Board's concern based on the global public interest in a way that not too many resources should be bound by analyzing contractual relationships; that the CCWG acknowledges this; that, therefore, we made revisions by way of implementation guidelines as we discussed, reducing the

threshold to 250 total volume in an individual contractual relationship, vendor-ICANN, not individual order or contract but contractual relationship; and having that adjusted by ATRT as needed.

And that we think by lowering the threshold that way the global public interest concerns are sufficiently reduced because we think that, you know -- not knowing the numbers, that there will not be too many contractual relationships that need to be disclosed and that the burden of analyzing the contract is not too high. So let's put that in writing.

Let's also inform the Board as soon as we can about this. And should they be able to substantiate their concerns with more data, we can talk, right? But for the time being, let's -- let's seal it.

Any objections to proceeding as I outlined? I don't see any. There are no hands raised in the chat. So three, two, one. Sold! Awesome. Two down. Two more to go.

One to go! Great. Shall I continue to go through that?

So the next point would be 5.4, that's government engagement. And as usual, I would like Bernie to give us a quick overview.

BERNARD TURCOTTE: Thank you. All right. We'll walk our way through this one similarly to the open contracting one. In the interest of providing community greater clarity with regard to how ICANN engages government stakeholders -- the numbers you see spread out there refer to footnotes which you can see in the original document -- and to ensure that the ICANN community and, if necessary, the empowered community is fully aware of ICANN's interactions with governments, the CCWG-Accountability recommends ICANN begin disclosing publicly the following, not withstanding any contractual confidentiality provisions on at least a yearly but no more than quarterly basis with regard to expenditures over $20,000 per year devoted to political activities, both in the U.S. and abroad.

Excuse me.

Next slide, please.

So the detail -- that recommendation carried on to include all expenditures on an itemized basis by ICANN both for outside contractors and inside personnel; all identities of those engaging in such activities, both internal and external on behalf of ICANN; the types of engagement used for such activities, meaning types of contracts; to whom the engagement and supporting materials are targeted; and the topics discussed with relative specificity.

Next slide, please.

This implementation advice posted Wednesday 20 June was edited versus what was posted Tuesday 12 June. This version has been agreed to by the co-chairs and would be acceptable to ICANN. This version is not supported by the rapporteur, which is Michael, as he mentioned in his previous statement.

In considering all aspects of this issue, the co-chairs recommend this implementation guidance to the plenary.

Next slide, please.

Now, this one is a little long so please bear with me.

There were a number of concerns from the ICANN side for a variety of different reasons. Note: This recommendation needs to be consistent with DIDP exceptions, specifically the exception which states: Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party. Note: The Work Stream 2 transparency recommendations for DIDP did not mention or modify this exception which is currently included in the DIDP and as such, it would be expected to stand.

So this is currently in the DIDP, and the transparency group did not suggest any modifications to this. So it stands.

Next slide, please.

Thank you. Overall, one must recognize that ICANN is a critical actor in the DNS and has significant expertise in the area. ICANN's corporate objectives include a number of activities and programs to share this expertise with all interested parties including governments.

As such, any activities where ICANN is presenting information which is publicly available or which is part of a formally published ICANN position on a subject through training programs, conferences, or individual meetings should not be required to be disclosed beyond the reports which are currently published by ICANN and reports regarding bilateral conversations with governments.

ICANN currently publishes a lot of information relative to that.

Next slide, please.

And the note points one of these sources out. Reporting on bilateral conversations can be found in the ICANN quarterly reports. Additional information on specifics of these reports can be requested via the DIDP subject to the stated exceptions. An example of such a report can be found at...

So please have a look, page 29. You will see the amount of detail that is provided.

To further facilitate the community's understanding of ICANN's objectives in discussions with governments, it should publish an annual government engagement strategy which should describe the focus of its interactions with governments for the coming year. The document should be derived from existing documentation including but not limited to annual planning, CEO reports to the Board, and correspondence with the GAC.

So basically there is a lot of information that is published. We're suggesting some new information be published as to strategy so it can go further.

When considering the discussions with ICANN on this, we've just finished having a debate about 500,000 versus 250,000, and we understand the pushback from ICANN. You can imagine the pushback on 20,000. If it has to include staff, I mean basically trying to calculate this would imply creating a parallel accounting system, if you will, to a certain extent.

So there was a great deal of concern that in this case, it was -- unquestionably a significant burden would be placed on ICANN to limited value, additional information. In discussion with various people, you know, people want to know who ICANN is talking to, generally what they're talking about, but, you know, if

it was a contractor or if it was a staffer that spent an hour or two or 20 hours in a year talking to someone, does it really make sense?

Now, Michael really did not agree with this, and I don't think he's online so to do justice to him, he felt that the $20,000 threshold was high enough so that most of the things would not matter.

When Steve and I met with him to discuss this, we explained the incredible burden that the $20,000 level would involve, especially if you're including staff. But for him, there was just no going around that.

So basically we went ahead with this implementation guidance and suggesting it to you even without Michael's support for it.

Did I get that right, Steve?

STEVE DELBIANCO:     If I may call -- be called upon, I'd like to address as both of them. As an advocate for Michael's position, having listened to it and read his email no fewer than ten times, and I think Michael would be quite pleased where we ended up on the open contracting number. Significantly better than the 500. And I don't know for sure, I can't speak for Michael except to suggest this. If you read Michael's email where he expressed his personal, the rapporteur's disagreement with respect to the first

thing you brought up, it had to do with the DIDP today allows ICANN to exclude the publication of the content of its conversations with governments. Read Michael's email. He took no issue with that. In fact, he's not asking now at some late date to change that. He thinks it's completely appropriate. He clarified to say that the recommendations of the transparency team never even called for that. They only called for the theme of the conversation, which could be things like we talked about Internet governance, we talked about censorship or some sort of general theme.

So Michael's main concern, read his email carefully, is that by us citing existing and unchallenged DIDP policy in implementation guidance, his belief is that we give it greater weight than it has today.

I have a hard time understanding how that would be the case if implementation guidance results in no change to policy, no change to bylaws. But if -- speaking for what I think Michael would say, let's find some way to put belts and suspenders on that paragraph to indicate that as already provided under ICANN policies and procedures or clarify that this implementation guidance does not suggest any change in policy. And again, I'm speaking to the paragraph that he had concern about. He had asked to delete the paragraph, which is the paragraph that starts with "Information provided by or to a government." His

suggestion was to delete the paragraph. If that paragraph is deemed essential by ICANN, then we split the difference by adding a qualifier to that paragraph indicating that citation of that policy gives it no greater applicability to the activities in the recommendation. So that would be my suggestion as to Michael's first.

The second one gets to this notion of the dollar disclosure. We did some work on this call with Michael by diving into these quarterly disclosures that the CEO publishes. Each quarter, they put out a PowerPoint deck, and in there -- you might find it on slide twine, for instance, if you look at the March quarter ended -- is a list of governments with whom ICANN had bilateral conversations, bilateral interaction. Not necessarily a meeting. So it's a general thing. And it's not even conversations that were over $20,000 in cost. It's all conversations.

Now, what is revealed is the fact that ICANN met with the governments of, and if you look on page 29, there's several governments listed. That is sufficient for any of us in the community who are curious to immediately file a DIDP request to learn more about the nature of that interaction, such as who, how, and what was said. When that happens, ICANN would use their own DIDP policy to exclude the revelation, the disclosure of things they felt violated the existing policy. And Michael understands that. I understand that as well. But we as a

community can't even ask ICANN, "What did you say in your conversations with X government in March?" We can't even ask if we don't know that they had a conversation.

We are getting better information in these quarterly lists of government interaction than we would with a policy based on dollars of expenditure. Let me suggest that we don't want to use dollars as a threshold when we can learn even more by the continued practice of quarterly disclosure of ICANN Org conversations with governments, conversations that are bilateral as opposed to sort of in an open meeting in front of multiple governments.

So I do think that the recitation of the note there, the reporting on bilateral conversations can be found in the ICANN quarterly reports, and then additional information on specifics in the report can be requested at any time via the DIDP subject to the stated exemptions. And we put a paragraph in there.

So I believe we have done better than a $20,000 threshold with the revelation that they will stick to -- that ICANN Org will stick to quarterly disclosure of bilateral conversations, with whom they are having, as opposed to the content and detail.

Bernie, that was a long answer, but you asked, and I'm trying to do my best to summarize where we are and where we are now.

Thank you.

THOMAS RICKERT:        Thanks, Steve.

Any further comments on that?

So, Steve, I think it paid off that you read his email ten times. I mean, that was a great explanation on how we can proceed with this.

So are we clear on the -- David's hand is raised. David, please.

DAVID McAULEY:        Thanks, Thomas. David McAuley for the record.

I think have a question about where you were just going, and that is for much of this, I take it that you all are in contact with members of the Board about is this acceptable. And I'm not sure I followed all of what Steve just said, but if we're making a change here to go with the Michael version and not what the Board's implementation was, the question would be is that okay with the Board? I don't know that -- I mean, think we're still in the place where we came to this, if I'm not mistaken.

Thank you.

THOMAS RICKERT:          Steve?

STEVE DELBIANCO:        To clarify -- thank you, David.  Steve DelBianco.  I'm not suggesting we make any change to the text that was circulated by Bernie because I believe that Michael's objections -- in the second case, I believe he misunderstands that we have more information than the 20K threshold.  With respect to his first one, I personally don't see how the inclusion of the DIDP language gives it greater weight in the world, but out of an abundance of deference to Michael, I was suggesting a single sentence be added where we indicated that this implementation guidance cites existing DIDP policy, and as such does nothing to extend its applicability.

That sentence added under the paragraph I believe is a better answer than deleting a paragraph that the Board seems insistent that we put in there for purposes of transparency.

THOMAS RICKERT:          Okay.  So we -- you're suggesting we add that one sentence to the existing language.

So just to be clear, the Board was fully supportive of the implementation guideline that we provided.  That remains unaltered.  We will add the sentence as suggested by Steve, and

we will let Michael know. And if staff could take note of that, we will let Michael know that his concerns were discussed, point him to the transcript to see Steve's response, and then I think we're done, aren't we?

Any further comments on that point?

David.


DAVID McAULEY:     Thank you, Thomas. David McAuley again for the record.

I just want to say what Steve just said made it clearer for me, and I can support that.

Thank you.


THOMAS RICKERT:    That's great.

So the sentence is in the chat. Let me read it out for those that are not in front of their computers. The above discussion of the DIDP policies is by way of explanation and does not expand the application of this policy to other ICANN activities.

So let's see whether there are further interventions.

Malcolm, I see your hand is raised. Please.

MALCOLM HUTTY:      Yes.  I'm not sure about the -- what's meant by "to other ICANN activities" there.  Would it not be simpler and clearer just to say, "The above discussion of DIDP policies is by way of explanation and does not expand the application of this policy"?

THOMAS RICKERT:     That's fine.

BERNARD TURCOTTE:   Can you post it, Malcolm, so we can be sure to get it properly posted?

THOMAS RICKERT:     So the last four words of Steve's suggested sentence will be deleted.  Malcolm is going to type that into the chat.

The above discussion of DIDP policies is by way of explanation and does not expand the application of this policy.

Any further comments on that?  Steve, your hand is raised again.

STEVE DELBIANCO:    Thank you.  It's only to make sure -- this has been confusing for people.  This is why I believe this is responsive to Michael, the rapporteur.   In Michael's email to all of you, this particular

language with which he has no problem at all, his objection was the inclusion of the language in our implementation guidance. And what he said was, quote, "The language is not only inappropriate to have in this context but it could open the door to a significant regression in ICANN's DIDP system."

This notion that simply disclosing this policy might be an invitation for ICANN to expand it. So rather than delete the entire paragraph, which has been, in my mind, an exercise in transparency, we should qualify that we disclosed it only for purposes of understanding it and not to allow its expansion. That is why I believe we are being in a good faith responsive to Michael's concerns.

Thank you.


THOMAS RICKERT: Thank you very much, Steve.

So the queue is clear. Any objections to this implementation guideline?

Three, two, one.

We're good. Thanks.

[ Applause ]

So...

That allows us to move to the remaining agenda items, but those should be less contentious than what we've discussed already. So over to you, Jordan.

JORDAN CARTER: Thanks, Thomas. We'll come back at the end of the meeting to outline what the next steps are with all the stuff we've just worked through in terms of implementation guidance.

And the next agenda item is item 7, I think, and that's called -- Can you show me the slide?

THOMAS RICKERT: AOB.

JORDAN CARTER: Yeah, there are a couple of items under AOB. One that you want to think about, if you have any AOB, let me know, but the first is the IRP IOT public consultation. A call for comments went out on the 22nd of June. And so, David, are you going to be briefing us on that?

DAVID McAULEY: I can certainly mention it, if you'd like.

And Bernie's -- and Malcolm and others are well aware of those, too. But the IRP Implementation Oversight Team has been working on taking into account public comments that were rendered to the first set of draft supplementary procedures that we had issued for the new IRP. When I say "new IRP," I mean the IRP as established or as constituted under the IANA transition bylaws, the new bylaws that we operate under now.

Anybody that wants to know about IRP, go to bylaw section 4.3. Top to bottom, read it and you'll get it.

But in any event, we're working on rules. And amongst the public comments were a number of criticisms of our first rule that said a claim had to be filed within a certain period of time, 45 days from someone becoming aware of the harm, but in no event more than one year from the date of ICANN's action. And there was public comment about it.

We've struggled to come to some sort of an accommodation, and we've just released a new draft for public comment. It's a radical change from what we did initially. In other words, right now the new rule says a claim has to be filed within 120 days of someone becoming aware of the harm that they suffered, and there's no overall cap. And so that's the rule.

I would suggest that people go and look at it, and also mention to others that this new request for public comment is out there.

It was issued by ICANN Friday evening, June the 22nd. Close date is August the 10th. It's important that people take a look and comment if they feel it's warranted; pro, con, indifferent, whatever, but comments are welcome. And we will continue our work. We're getting close to issuing interim rules for IRP process. And that's -- that would be my rough summary, but I would invite Bernie or anyone from the team to make additional comment if they wish.

JORDAN CARTER:      Bernie, go ahead.

BERNARD TURCOTTE:      Just to add on to that, on the practical guide. This public consultation actually fits on a couple of pages. It's not a challenge to understand. It's not overly legalistic. The concepts are rather clear, so it should be fairly easy for anyone to understand what is being asked and to put in an opinion on it, because the questions are put forward rather clearly.

So don't be put off that this is a huge legal text. It really isn't.

Thank you.

JORDAN CARTER:      Thanks, Bernie.

Are there any other comments on that topic?

Malcolm.

MALCOLM HUTTY: I thought I would briefly summarize what the real -- the substance of the issue is that's being consulted upon here. This is a consultation about the time that you have for filing an IRP case, but the point of contention is not really about the time that should be allowed but when the clock should start running.

Under the previously proposed draft, the clock would start running when ICANN took a decision. Under -- but you should remember that in the IRP, you only have the right to bring an IRP case if you have been materially affected yourself. Under the new proposal, we are suggesting that the clock starts running when you are affected. The difference here makes significant differences for those cases when ICANN takes a decision and then takes a long time before actually it ends up affecting anyone. In many of our most contentious areas, ICANN could take a decision in principle as to a policy or something like that and then it take years before it ever gets implemented. Under that, you couldn't challenge the original decision if the time has run out before you were ever affected in the first place.

So the new proposal is that the clock starts running when you become -- when you are actually affected or when you reasonably ought to have known that you were affected by the decision. That's the nature of the change. Without that, there is a real risk that, particularly for the areas that are most contentious -- for example, whether or not something is within the realms of what ICANN is allowed to engage in -- that nobody would have the opportunity ever to bring an IRP case so as to challenge the appropriateness of that. This rule, as with any normal sort of legal or other administrative claim, says that the person must act promptly as soon as they have the right to bring a claim, but it doesn't cut off the time before they have the right to bring a claim.

Thank you.

JORDAN CARTER:     Great. Thanks, Malcolm, for that sort of teasing out what the issue actually is.

If there aren't any other AOB items at this point, we'll flick on to item 8, which I think is the next slide and is the path forward, which is his suggestion as the path forward. So I'm going to hand that back to Thomas to introduce this item.

THOMAS RICKERT:          Thanks very much, Jordan.

Now we've put three bullet points on this slide.  The first point is within our control.  So our excellent Bernie -- I'm saying "we."  I mean Bernie.   Bernie is going to (laughing) do the last amendments of our final work product, including the changes of the implementation guideline that we've discussed today, and then we will send that to the chartering organizations, and we will also send it to the Board.  And with respect to next steps, I promise to get back on Bob the Builder.  We can do that, and Steve's suggestion not to give up on the idea of getting approval during this meeting.  The question is how can we best facilitate that?  Because when I spoke to the GNSO Council a couple of months back they said they wanted to see the final work product as soon as possible, at least three weeks before we convene in Panama.  And my question to you is can we pull this off?  Do we feel comfortable in potentially putting together a small slide deck with the last revisions and just say everything else remained unchanged and they will say yes, or do the members -- I'm looking particularly at the members who are representing the various chartering organizations -- or would that be a futile exercise and you say, well, my folks are not going to buy that by any stretch; right?

So let's hear some views.

I, to be quite honest, do not know whether the GNSO would approve this week, given they haven't received the report yet.

So Bernie, and then we go to Alan and Kavouss.

BERNARD TURCOTTE: It has been standard process for things to be considered by various SOs and ACs at ICANN for years to give a minimum of three weeks' notice of documents. That's all I have to say. Thank you.

THOMAS RICKERT: Thank you, Bernie.

Alan.

ALAN GREENBERG: Well, to start with, what he said. I would certainly have trouble going to the ALAC and saying with documents I can't even present to you today, I expect to have an answer from the ALAC on whether we support it. You know, our meetings are pretty well fully booked right now. I can't expect someone to do a lot of homework this week. So I think it would be a bit much to ask us.

On top of that, I think it's really important to understand if the Board still has any objections at this point. You know, we make

our own decision, but if we know what we're approving is going to end up with a confrontation, I think we may treat it differently. So I would really like to understand that the Board is giving at least an informal nod to what we're presenting and we need time for our members to consider.

Thank you.

THOMAS RICKERT: Thanks, Alan. I'm not sure we can get -- get that approval or that green light during this meeting, even, but we can ask.

ALAN GREENBERG: That's another reason why getting approval from the -- certainly my committee would be -- I don't think is possible this week.

THOMAS RICKERT: The question is whether you want to wait for the Board's permission to sign off on the report, but that would be a different -- different discussion.

Kavouss, please.

KAVOUSS ARASTEH: Yes, thank you.

In principle, I support Alan's positions.  And the second, why we should have different course of action than we had previously with respect to the views or comments or approval of anything? And perhaps we should not hurry, and it is difficult that you ask the people to reply on something on the spot.  So we need to have more time.  We need to digest some of it.  In particular, some of the ACs need more time because they are more active and they are in sessions and they have to be informed before to take into account the material and be prepared to reply to that.

Thank you.

THOMAS RICKERT:  Thanks very much, Kavouss.

Benedicto.

BENEDICTO FONSECA FILHO:  Thank you, Thomas.  Well, in response to your question, I would agree, it would be not realistic to expect to have a final decision by the end of the week.  We have come to this meeting with a set agenda.  The document is being, with the last adjustments, finalized today.  We will need some time to go through it, to work with colleagues.  So I think it might be worthwhile to think about an early start of this, but certainly it will not be feasible to (indiscernible) by the end of the week.

Thank you.


THOMAS RICKERT: Thank you, Benedicto.

Sebastien.


SEBASTIEN BACHOLLET: Thank you. Sebastien Bachollet speaking.

Yeah, I think it's important to have the feedback of the Board of what to have done. It's not to have the authorization of them that we can sign the document, but as it was a conversation, an exchange you had with them before this meeting, if they say, "No way, we can't agree with one of the recommendation you are putting to us," then we need to make some additional work. Maybe to say no, but we need at least to know.

The second point as Cheryl just write, and I think if we can have a deck it will be useful, but I would like to be sure that we include in this deck what are the next steps and not just the next step here to have the final document and the agreement by the chartering organization and by the Board, by how we, ICANN in general, will deal with the implementation of this and who will be doing what. I think it's important to have that also in this deck, if it's possible.

Thank you very much.


THOMAS RICKERT:       Thanks, Sebastien.

Steve.


STEVE DELBIANCO:      Steve DelBianco.  Alan, hang on one second before you step out of the room because I wanted to pitch this to you as well.

Bob the Builder left the room too soon, because we delivered what we aspired to do this morning, albeit that the Board may or may not decide to challenge 250K.  Everything else should be fine with the Board.  And I'm fine if they're not fine with 250K provided they have to explain why.

So we did what Bob the Builder asked us to do, and now because of the difficulty of scheduling and presenting and getting decisions, we're about to lose that momentum.

So I would ask us to have a PowerPoint ready to go -- for all I know, Bernie has already done it -- a PowerPoint describing the Work Stream 2 recommendations and implementation guidelines, and it can't be too long, and that we offer that along with the report to the AC and SO chairs in an offer to come and present if they wish while we are gathered here.  And the offer to

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present does not imply the obligation to approve. And yet we can't miss the opportunity to use the momentum and the presence of people at this meeting.

So, Bernie, can you get a PowerPoint together to present Work Stream 2 recommendations in time to present this week?

BERNARD TURCOTTE: It's going to be ready about midday tomorrow. So that, sure, I'm trying to make sure that we have a full package. Before the end of business tomorrow, just to make sure I'm not lying to anyone here.

I also want to remind everyone that there's a high-interest topic session on Wednesday where we're scheduled to present all of this to everyone, and that, you know, I think is a great opportunity. We had scheduled it for another reason originally, but now it has become much more of a high-interest topic. So I think we will be ready, one way or another, starting Tuesday morning to give presentations to anyone who wants them.

STEVE DELBIANCO: Thank you. And have we already scheduled time with any SOs and ACs that are chartering?

BERNARD TURCOTTE: The ccNSO has asked for a presentation, and we will be giving that.

STEVE DELBIANCO: So thank you. Let's do our best to offer, either at the general high-interest topic or in specific sessions, let's offer to answer questions and walk through the recommendations in an effort to encourage the chartering orgs to consider approval at the earlier opportunity.

Thank you.

THOMAS RICKERT: Jordan.

JORDAN CARTER: Yeah. Can I just add to that? I don't want to be alarmist but this group's timing, funding, et cetera, runs out at the end of next week. So I would have thought that all of the co-chairs would have organized time at their SOs and ACs to consider these recommendations like I did, because this is the end of the road for us.

So, you know, I don't know about the rest of you, but I'm not coming back to do any work on this in October. And so if SOs and ACs are not going to approve the proposals at this meeting,

they need to use this meeting to get the input, get the discussion going, understand the proposals, tease out any other issues so that that can be worked on I guess intersessionally on the email list without staff support because that is the reality of where we are at in this process.

So I look forward to seeing the slide pack and ask kind of document with the implementation advice be included in the report, but as we all know and as we have managed to stick to today, the recommendations in the proposal have not changed from what they were in March. And so if SOs and ACs and participants there are not yet familiar with them, I doubt they ever will be.

Thanks.


THOMAS RICKERT:    Bernie, and then we'll go back to the queue.


BERNARD TURCOTTE:    Just to note that about a month ago, I did send a note to the SO and AC chairs asking if they wanted a presentation while we were in Panama, to drop us a note. And we got no replies.


THOMAS RICKERT:    Jordan, I guess that's an old hand, right? Cheryl.

CHERYL LANGDON-ORR:   Thank you.  Cheryl Langdon-Orr for the record.  One question that Alan asked me to raise was:  Is there any chance of minor time support post 30 June for this work.  I just gathered from Jordan that's not the case.  Is that correct, or am I wrong?

BERNARD TURCOTTE:   Can I ask you to clarify that?  I was a little bit confused by the question.

CHERYL LANGDON-ORR:   Alan asked me to ask whether or not -- because budget ends June 30.  The SO/ACs coming back with hopefully a supporting point, there's still going to be a minor bit of administration at that time.  Is it possible to get some of your hours to see this or not is his question.  And then I will come back to another point.

BERNARD TURCOTTE:   I have been told there is -- obviously I'm funded, as with the other staff here, funded by the MMSI group and there has been some budget put aside for, quote, implementation.  So there is some money there to keep doing some of the mechanical things that need to be done to really get us across the line I think is the answer you are looking for.

CHERYL LANGDON-ORR:    Thank you.  Cheryl Langdon-Orr for the record again.  And, yes, that I think is going to be heartening when we discuss this.

Regarding the slide deck, I think you're right, the work on Wednesday is now vital.  But I do think, for example, the At-Large Advisory Committee, if I understood what Alan said as he left promptly, post this meeting -- because it simply wasn't put into our agenda, our report wasn't out.  Therefore, it didn't get into our agendas.  Small amount of time.  Lots of things to do in it.

But post this meeting, there would be an opportunity, for example, the At-Large Advisory Committee and I suspect the other ACs and SOs, GNSO included, 21 days' notice to look at that.

Can we also assume that the slide deck and materials we use, is that going to be enough?  Or do we need to perhaps hold a Webinar where people can clarify thoughts in their minds if they're not actually on the ground here?  Not all of our ALAC members, for example, have been able to travel.   Just wondering whether or not there's an opportunity to take up a single-purpose call either by AC and SO or in general across.

| | |
|---|---|
| BERNARD TURCOTTE: | I haven't checked that. But I would imagine that, you know -- it's not a huge preparation given the rest we're preparing. |
| | But what I will say also is we get a fairly good idea after we release a document if it's going to be useful or not because often you just come up and say, "Webinar" and people say, "Oh, yeah, sure" and you get a half dozen people that are watching soccer while listening to your Webinar. And that's not really useful, okay? |
| | But if we do get a huge amount of questions after we publish the document, I think obviously we would look at creating such an opportunity under the regular conditions of probably two so that we hit both major time zones of the earth. |
| CHERYL LANGDON-ORR: | Just in response, if I may -- Cheryl Langdon-Orr for the record again. It seems to me that then, therefore, we also need to note here that there is a vital opportunity for the capital M members in this cross-community working group that the ACs and SOs have appointed that they may have an important faciliatory and educational role. And that may also assist. I just want to make sure that is also noted. Thanks. |
| THOMAS RICKERT: | So with that, let's proceed with the queue. |

Kavouss.

KAVOUSS ARASTEH:     Thank you, Thomas.   I think the way that the AC and SO functions is different from one another to another.  In particular as far as the GAC is concerned, even the Webinar would not help. The best position would be that while they are in session at least some 70 to 80 members that are there, it would be beneficial to present the document either by co-chairs or by somebody and opt for some questions and answers and so on and so forth, get them ready, digest, and then at a later stage a reply.

They are not prepared to put a question and ask them to rush into yes and no which both of them, if it is not properly studied, may be dangerous.  Maybe opposition without any reason or maybe approval also without any reason and not be influenced by each other.

So, therefore, I suggest that we use the opportunity to present the document and to provide clarification to offer the answer but not asking a reply.  Thank you.

JORDAN CARTER:     Can I just respond to that?

**EN**

I have been advised by Tom Dale on behalf of the GAC that there is a session on Work Stream 2 report and recommendations in the GAC schedule on Thursday from 11:45 a.m. to 12:15. And so we'll have the presentation. By then we'll have circulated it in advance. And I at least will be there at the GAC to take any questions and maybe do a run-through. So that's -- that's the approach that's been taken.

The only other thing I will cheekily add is that I think we need to set an expectation that we don't expect SOs and ACs to defer making decisions about the proposal until the Barcelona in October. It needs to happen intersessionally. We don't want to wait another sort of four months.

THOMAS RICKERT:          Thanks very much, Jordan. Julie.

JULIE HAMMER:           I apologize -- Sorry. Julie Hammer. I apologize if I misunderstood something about the process. I did not think that we had already proposed the final report to the SOs and ACs for their concurrence.

I thought what we had done was we were -- had responded where we needed to, to the public comment period that the final report on those public comments or the summary was in

process of being delivered and that once that was finalized, then it would be formally put to the SOs and ACs for their concurrence. And that process in my mind hasn't yet started. So I was somewhat taken aback to hear that there was a thought that we might be getting that formal agreement from the chartering organizations this week. It certainly hadn't been in my mind that we're at that stage.

THOMAS RICKERT: Thanks, Julie. And I agree. You know, before we came here, there was no such expectation because we didn't make our own time lines with the implementation guidelines.

Fiona.

FIONA ASONGA: Fiona Asonga for the record. I think for the purposes of being able to move forward with the different chartering organizations, I would suggest that we still have the presentation to those that we can during this meeting. The others, like the SO who are not going to meet during this meeting because our process happens outside of ICANN, but we have a conference call on the 4th of July and maybe we can see about how we work towards making our presentation then.

However, let's give the chartering organizations a time frame, 21 days, 30 days or whatever it is we agree on, within which to have responded so that then we can be able to close and, yeah, move on to other things. Thank you.

THOMAS RICKERT:      Thanks very much, Fiona.

Kavouss.

KAVOUSS ARASTEH:      Yes, I don't understand any logic behind 21 days. I think it's silly. We're rushing on something. Why 21 days? Where did 21 days come from? We are not public comment. We are not dealing with the vote casting one. We should have sufficient time to react -- to digest and to react. And I don't agree with 20 days' time limit because that would be by correspondence. That would be by Webinar. That would not be effective.

As far as the GAC is concerned, the most effective way would be when the GAC are in session and that will be at the next meeting in 63. Thank you.

THOMAS RICKERT:      Thanks, Kavouss.

Benedicto.

BENEDICTO FONSECA FILHO:   Thank you.  Just to agree with Kavouss, for the GAC I think it would already be a serious challenge to comply with Barcelona deadline which I think is a realistic target but not before that in light of the needs to involve, to educate people, to make things well-known.    I think  for  any  formal  decision  not  before Barcelona.

THOMAS RICKERT:     Thanks very much.

I think  what  we  will  do  is  that  the  chartering  organizations should approve at their earliest convenience.

[ Laughter ]

I guess that's the best we can say.

BERNARD TURCOTTE:     But no later than ICANN63.

THOMAS RICKERT:     But no later than ICANN63.  We can have that qualifier in there.

With respect to the confusion surrounding when the chartering organizations got or didn't get the report, when it will be -- when

it will be sent, let me remind you of what Steve said. And I think it was spot on.

We will have a meeting scheduled with the ccNSO. We will have our town hall meeting. The co-chairs are there for most of the week. So if you talk to your chartering organizations, please do offer to them that we can come visit you. Jordan, Tijani and I will already be gone by then. But Jordan will present to the GAC on Thursday.

So if you have a request for us speaking to your communities, let us know. We will help as good as we can, right? So let's try to use the opportunity while we are here to help inform, remove concerns, as much as possible in order to facilitate and expedite the approval process.

Jorge, your hand is raised. We haven't heard your voice today through microphone. Where are you sitting? Over there. Jorge, please.

JORGE CANCIO:          Good morning. Hello. Jorge Cancio, for the record. This is a question I put on the chat this morning. Probably and hopefully it's only a theoretical question.

But is there any provision being made by this leadership team or by us in case one of the chartering organizations doesn't support

the recommendations or doesn't support all of the recommendations? So do we have a fall-back, a plan B, or something?

THOMAS RICKERT: Well, since I've already quoted from the famous Bob the Builder series, let me now quote from The Blues Brothers, in that case we will bring the band back together.

[ Laughter ]

So I think we just accept for the moment as a fact that we have taken the necessary provisions to oversee the implementation. This group will be formally dissolved by the end of this month or the end of this meeting. We will reconvene as necessary. But we will have as co-chairs as well as with the implementation oversight team as well as with Bernie the resources that we will need in order to respond to questions there might be.

But, you know, to be quite honest, there shouldn't be too much effort involved with that. We send out the reports. Hopefully the chartering organizations will say yes to it. The Board will get it in parallel. The Board will hopefully say yes. And then we're on the other side of the fence, let's say, and await any plans for implementation that we can comment on. Is that understanding correct? Bernie.

BERNARD TURCOTTE:     Maybe not.  I don't think the Board's going to look at it until the SOs and ACs or chartering organizations have looked at it because their plate is quite full and they don't want to waste their time.  Basically there's a process in place.  It says chartering organizations first.

Once the chartering organizations go through it, then the Board will.  Then staff will take it on because if we read the memo that we got 14 May from the Board, it says they will want to see at least an initial version of an implementation plan before they consider it.

So I would think the sequence is chartering organizations, Board, Board to staff for implementation plan, and then staff to Board implementation plan and recommendations.

THOMAS RICKERT:     Okay.  That's fine.  Thank you for that clarification.

Jordan.

JORDAN CARTER:     Can I just add one point?  There is in all of this work been the expectation of some SOs and ACs about cherry picking, about

trying to take the final report say, yes, we like these recommendations, don't like these other recommendations.

I think in those discussions it's important to keep the context of this stuff in mind. This is -- you know, we didn't have cherry picking in the more substantive changes involved with the first work stream of the accountability changes and in the stewardship transition. And this is all leading into a set of ongoing accountability and transparency reviews. So if you're hearing people looking at wishing to cherry pick or wishing to cause the CCWG to be reconvened, to rework through the report based on feedback about a sort of set of recommendations that are important but that are subsidiary to the changes we made in 2016, can I suggest to you that you suggest to them that that probably isn't the best use of anyone's time in the ICANN community.

You know, if there are fundamental problems that we need to fix, the expectations set and the request made of all of us who have participated or paid attention to this was that they would be raised in the public comment periods and the extensive rounds of consultation that have already happened.

So it's not saying there's absolutely no possibility of future changes. It's just saying is it worth it.

THOMAS RICKERT:     Go ahead.

BERNARD TURCOTTE:     Minor correction.  Implementation plan, I was incorrect, it's staff will produce a feasibility assessment which will then accompany our recommendations to the Board for the Board to make a decision.

THOMAS RICKERT:     Okay.

Let me just check -- Kavouss.

KAVOUSS ARASTEH:     Yes, I think the process is more or less similar to the Work Stream 1, but here the situation is much more difficult because the number of the recommendations are extremely more than that one.

In the previous one, for the Work Stream 1, for instance, what GAC did, they did not go all recommendations in detail.  They took two of them which are sensitive for them and they expressed the views with respect to these two, pros and cons with some consent and dissent ideas.  And the remaining, they express no idea or saying that they have no difficulty here.

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I think for the GAC, for instance, it is important to go through the general aspect of the nongroup and saying for which group of these -- of nine are more sensitive for the GAC and then taking the recommendation of that and try to respond to that.

It is very difficult and very sensitive. Once again, please, kindly do not push more than necessary. Otherwise, there will be some negative reactions. Thank you.

THOMAS RICKERT: Thanks, Kavouss. Well noted.

So the queue is clear. Let's then move to the next agenda item which is going to be the co-chair statement, if I'm not mistaken.

So statement is in the making. We will adjust straw dog -- I think is the word you are using today in order to keep it gender neutral.

So we will basically reflect what we did today. We will talk about the process of why we are where we are today with the implementation guidelines in particular that we have resolved for this group the remaining issues, that we will send it formally to the chartering organizations, that this group will disband.

Any points that I forgot? I guess that's the -- those are the most important points that will go into the co-chair statement.

We will then subsequently publicize that probably tomorrow. Today's quite unrealistic. You can use that in order to keep your respective groups informed as well.

So with that, I do hope that I will see some of you at the town hall meeting. It would be -- will be good to have members of this group here, particularly the rapporteurs in case there are questions on implementation guidelines and all the things that we did.

And I guess we're pretty much at the end of the agenda, aren't we?

So, Jordan, do you want to say something?

JORDAN CARTER:        No. I just leaned forward. I just think we should take a moment to turn around and pat each other or ourselves on the back. This is probably the last full plenary meeting of the CCWG, a process that started after the announcement of the stewardship transition change in 2014. It took close to a year to get ICANN's remit that accountability improvements would have to happen in keeping in tandem with the transition, not an afterthought to be had. And the outcome of the two work streams of work is an ICANN that's more accountable to the global Internet

community and one that is more transparent for anyone who's trying to find out about what it is doing.

It is not a trivial achievement.  It has been a ton of work by many hundreds of people.  Those of you in the room here are often the people who have spent the most time and energy on it.  Though, not everyone has hung on since 2014.  So I just want to say thank you and well done to everyone who's taken their role in this process.

[ Applause ]

THOMAS RICKERT:    Well-said, Jordan.

So I would also like to thank the tech team that is supporting us with all this.  So big hand.

[ Applause ]

Our current staff as well as previous staff that has been supporting us, so you will remember Alice's support, Barry's support, Grace's, Alan's, Natalie, Patrick, Brenda, and certainly Bernie.  So let's give them a big round of applause.

[ Applause ]

And those who have been here from the very beginning will remember Mathieu and Leon, who has subsequently moved to the dark side of the empire.

[ Laughter ]

[ Applause ]

And, also, I would like to make a big shout-out to all the rapporteurs who have spent an awful lot of their time in getting the recommendations for the subteams done because the co-chairs had more or less a coordinating role in this phase. So you have done a splendid job in getting us organized and getting substance to the recommendations to improve ICANN's accountability. So big hands for the rapporteurs.

[ Applause ]

Yeah, to all of you, I mean, this group is 230 individuals strong, I guess. I think it has brought the community closer together. It helped break down silos that have historically existed in the ICANN community. And so I think, you know, the existence of this group and the collaborative spirit in which it has worked for such a long time, during very tough times, Christmas, Thanksgiving, you know, we have worked on basically every public holiday that was available around the world. So that was a great testimony of the dedication of this group. So you guys

pulled this off so, therefore, you should give yourselves a round of applause as well.

[ Applause ]

And my fellow co-chairs, Tijani and Jordan, I have learned a lot from you guys. It was great working with you, with everyone. And with that, I guess we can adjourn the meeting. Thanks so much.

[ Applause ]


SEBASTIEN BACHOLLET:   You need to be thanked as well because you are the one that's still here from the beginning. You are still surviving, not going to the dark side of the moon. Thank you.


**[END OF TRANSCRIPTION]**

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