

Way forward considerations on Jurisdiction post 18 October first reading approval

Elements of the document:

- Summary of chat and captioning relative to next steps for jurisdiction draft recommendations
- Relevant Chat Entries
- Relevant Captioning Entries

Summary of chat and captioning relative to next steps for jurisdiction draft recommendations:

- Jorge Cancio, Olga Cavalli and Kavouss Arasteh have asked for more time to arrive at a resolution or compromise wrt the Brazilian proposals.
- Kavouss Arasteh recommending not having second reading on 27 October to allow for more time.
- Benedicto Fonseca Filho - saying a few more weeks will not resolve this very complex issue. Cannot support the jurisdiction report given key areas have not been addressed. Brazil will also amend its minority statement (see captioning below).
- Avri Doria – saying public comments can be an effective tool to bring up issues if the minority position is included.
- Benedicto Fonseca Filho, Greg Shatan, Sebastien Bachollet, Cheryl Langdon-Orr for some sort of acknowledgement that WS2 could not deal with all aspects of jurisdiction and adequate forums should allow the continuation of these discussions (variations on this theme for purposes of the summary).

Relevant Chat Entries:

- Jorge Cancio (GAC Switzerland): (15:31) we should use any possibilities to broaden the consensus, by devoting some extra time to looking specifically to the draft recommendation Brazil would like to see discussed
- Olga Cavalli: (15:32) + 1 to Jorge's comments
- Olga Cavalli: (15:40) If there is a need for more time to review this important issue this should be considered
- Jorge Cancio (GAC Switzerland): (15:41) I urge the co-chairs to introduce flexibility for this key issue as regards the timing - otherwise deadlines may lead us to dead-ends on critical aspects - a defined, clear extra timeline, could help us all to broaden common understanding and consensus
- Cheryl Langdon-Orr: (15:42) or....perhaps the points of concern to some, might be yet taken up in a new (or related) focussed and supported efforts
- Olga Cavalli: (15:42) +1 to Jorge's comments, if there is not a renewal there should be other way to address these concerns

- Cheryl Langdon-Orr: (15:42) which is what Thomas just outlined
- Jorge Cancio (GAC Switzerland): (15:46) I would propose that co-chairs and Greg i consultation with the Subgroup (especially the dissent holders) look into such timing options
- Olga Cavalli: (15:47) +1 to Jorge's proposal
- avri doria: (15:59) perhaps, given the current status of the impasse, sending it out to public comment with the dissenting opinion would be a good way to get community comment that may be helpful.
- Kavouss Arasteh: (16:00) Public comments may help but not completely
- Anne Aikman-Scalese (IPC): (16:00) @AVri - good idea to get community input on both approaches.
- Jorge Cancio (GAC Switzerland): (16:02) for the record, I support the two recs, with the plea that we strive for broader consensus as stated before

Relevant Captioning Entries (raw captioning as published – may not be exact):

- Benedicto Fonseca Filho - We would certainly be happy to get rid of everything related to process, anything that can be found to be [indiscernible] or anything of that sort. We want to focus on the substance, but to make clear that the report as such does not address key concerns we have and that, therefore, we avail ourselves to file this minority [indiscernible].
- Benedicto Fonseca Filho - In that regard, I would like to seek your guidance either from Greg or from you, Thomas, with when would be the right time, the deadline we have to issue this minority view. I took from you that maybe the final, final outline of everything would be wrapped up at the face-to-face meeting. I'm not sure if that would be, let's say, the deadline would have to file the minority views and to have the final outlook or if we should do it before.
- Thomas Rickert - So I think we need to make sure that we complete this part of the work in a timely fashion [indiscernible], but that does not mean that there is not further room for discussion. I mentioned the example of the Human Rights subteam that has made progress and converged more towards consensus between two readings, so that is one possibility. Another opportunity would be the public comments themselves, where those who are not happy with the report, maybe the actual recommendations or the breadth of the recommendations can be raised and those comments can be analyzed and given an opportunity to actually have further work on the substance of the report. And the third opportunity I excluded to earlier is actually to use the opportunities of reviews and continue the discussion and the framework of periodic reviews. So I think that's my immediate response to your question.
- Kavouss Arasteh - So I don't think the 27th or 26 -- you said 26th or 27, but it doesn't matter, day 26th, 27th of October is not definitive to finish this. It could be extended for one week after, two weeks after, allowing to have more discussions, content [indiscernible] a good reading without any emotion, without any tough words and so on and so forth. I think we have come to this point with all the issues with consensus and perhaps we should be closer to the consensus. We should not put a definitive date for the second reading at the face-to-face meeting. You try, but it is not definitive. Two weeks

more, I don't think that makes the issue [indiscernible] so critical. So please kindly, Co-Chairs, consider that. You may not reply right now, but please consider that because I'm sure that Benedicto Fonseca Filho and others, there are several people supporting this. This is not only [indiscernible], there are several people supporting in the e-mail. And we are also considering now [indiscernible] our Government to support that and many others. So perhaps in order not to have this division, I request you kindly to possibly extend the second reading to be not 26th or 27th, but one or two weeks after allowing two or three weeks for further work and the work of Jorge was an example that he finally agreed to get the consensus of the people to get the framework of the Human Rights. Thank you.

- Benedicto Fonseca Filho - Thank you. I'll be very short. Actually just to further clarify what I said before with regard to the official deadline. I think this issue is very complex and you don't solve complex issues in maybe one or two years, it requires a process for this because it needs to mature, there are political realities that sometimes repeat for a number of years. So what I am saying, I don't think to allow one or two or three more weeks or two months would be enough. I think that there's something that we could maybe entertain would be to see some [indiscernible] action and to acknowledge it's a file that needs to be under constant scrutiny, maybe the object of standing effort on the part of ICANN. And I think what should guide that decision that was [indiscernible] but [indiscernible] International organization that is truly International, not interGovernmental, but [indiscernible] stakeholder [indiscernible] new I understand, I fully concur that [indiscernible] it's not believed that once we [indiscernible] as to load that file. As to a third thing to be concerned with something very limited and say this is the end of it. But that's the emotion I would like to convey. Thank you.
- Thomas Rickert - Thanks very much, Benedico. Before we move to Jorge and then to Greg. Let me try to confirm that I understand your message correctly. An idea that you could be would be to include some language in the overall report, not only for the jurisdiction subteam, it can be the jurisdiction subteam's work, but I was thinking something of general nature in the report that constant improvements to ICANN's accountability should be undertaken in order to allow for consideration of topic that is could not be addressed during Work Stream 1 or Work Stream 2 for that matter. We can certainly work on exact language for this, but can you just confirm or clarify what I have outlined is sort of what you were thinking?
- Benedicto Fonseca Filho - Well, thank you. It's rather difficult maybe to react right now because it's just something that occurred to me right now. We have not given enough reflection to that. I think maybe if we could find a formula that continuous work and proceeding in a very strong way, not something that would be left, this could be something that could be entertained. This is certainly we would like to do. But I would like to be very clear for the record that as of now, for this particular meeting, the context we are discussing, we are opposing both the report and the recommendations [indiscernible] because it does not address adequately the issues it should have addressed.
- Thomas Rickert - Thank you very much, Benedicto. My takeaways is you object at the moment and you do not see any chance of improvements in the next weeks or even

months, but that you would be willing to work with us on language for continuous monitoring or continuous efforts in the area for accountability. And I think is that is certainly something that we should keep an eye on and include in our report if we find language that is agreeable.

- Jorge Cancio - >> You don't hear me? [Indiscernible] for the record. I think and I'll be very brief [indiscernible] together with Benedicto Fonseca Filho's comment is we need the room of [indiscernible] we have, perhaps what we need is this extra time to work out a common language that reflects the fact that there are issues of key importance to stakeholders that are part of this community and who have a legitimate interest. And on the other hand, we most possibly cannot be able due to the time to really solve all these issues. We have made some progress on very specific one, the OFAC and the [audio cutting out] applicable law issue, but there are many issues which still give rise to concerns to issues, to interests. I think that we should [audio cutting out] use this extra time [audio cutting out] weeks to work out this common agreed [indiscernible] and hopefully [indiscernible] through this acknowledging that [indiscernible] part of a process that may need to go on. So I'll leave it at that. Thank you very much for [audio cutting out] atmosphere I was seeing [audio cutting out].
- GREG SHATAN: Thanks. I'll try to be as concise as I possibly can be. It strikes me, and I'm listening to what Benedicto said at first that this does require, you know, considerable, further consideration. I think that if we were to try in one or two or a few weeks to go from what is in Thiago's or Brazil's submission, we probably would not have the time for the delicate and nuanced discussion that could lead to consensus on such a complex topic, which would likely lead to a result that many would find unsatisfactory. And, therefore, I think it's best in many ways to view the work of the Subgroup, in part, as groundwork for continuing discussions that are, in essence, bigger than a Subgroup and bigger than enhancing ICANN's accountability working group. I do note that in our final report we contemplate an annex or a supplement where we will preserve and publish all of the non-consensus documents, including the list of proposed issue recommendations that did not turn into actual recommendations. So as much as possible, along with the Wiki and the e-mail list of the group, this hopefully will provide fertile ground for further discussions. And I think finding a way to acknowledge that, that this is an inflection point in consideration of these issues, that work was done that will be valuable in the future, I think is a good way to try to look at this. Thank you.
- Sebastien Bachollet - Thank you very much, Thomas. Sebastien speaking. I think that the last speaker viewed I guess a way to go forward. I would like to suggest that we accept this report, the first reading of this report, in that we, at the same time at the level of the CCWG, not of the Subgroup, we do what Thomas suggested, try to find a [indiscernible] to say that we need to continue the enhancement of ICANN accountability. Work Stream 2 will not be the end. And as you say, there are different review teams and [indiscernible] is not meant to be for that, but maybe if Work Stream 2 says that [indiscernible] can under this topic could be one way to go a little bit further. And, therefore, we don't need extra time because we have extra time for the moment. We are dealing with finishing its Subgroup work and we'll have some time to deal with the

full package. Therefore, I think with this time, we can find a way to write this about continuing announcement of ICANN accountability it would be a great way to go. Thank you.

- Kavouss Arasteh: Yes, I understand Sebastien saying he accepts the first reading with the dissenting opinion to which maybe several others may associate, but I suggest that we postpone the second reading. We should use all possibilities. We should show a degree of flexibility and not [indiscernible] and so on. It is a good idea that we go out of this thing with some consensus. So I suggest the chair and Co-Chairs to continue the matter to see what are the maximum deadlines that they could provide in order to maintain the timeline and also in order to have some degree of consensus. So I want to go between the two areas, not having many [indiscernible], not [indiscernible] to accept that, but accepting maybe the first reading [indiscernible] to this many people or several people may join, but postpone and allow the time, I don't know how many weeks, but still you can [indiscernible] there is a possibility and we should not be so restrictive and so limited for the deadline that you have [indiscernible] already here, dealing with the critical situation. This is different from any other issue so we prefer to have more time. And we have there in many other areas. Additional time would be useful. Please, Co-Chairs, kindly consider that and not close the issue for now. Thank you.