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GISELLA GRUBER: Recording has started. Good morning, good afternoon, and good evening to all. Welcome to the At-Large Briefing on the ALAC Response to the CCWG Accountability 3rd Draft Proposal on Thursday, the 17th of December, 2015, at 11:00 UTC. This is the second session At-Large Briefing Session on this topic.

We will not be doing a roll call as it is a briefing session. However, we do have French and Spanish interpretation on this call, so if I could please ask you not only to state your name but also to speak at a reasonable pace to allow for accurate interpretation. Would you please also mute the speaker's microphones during the presentation to avoid any feedback on the line? And if you do happen to be on the phone bridge and on the Adobe Connect, it's important for you to mute your computer speakers.

I will now turn it back to our moderator, Olivier Crepin-LeBlond. Thank you.

OLIVIER CREPIN-LEBLOND: Thank you very much, Gisella. And the first thing I need to check is whether you can hear me clearly today.

ALAN GREENBERG: Olivier, your voice is beautiful today.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

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OLIVIER CREPIN-LEBLOND: Thank you so much, Alan. I feel so much better than yesterday, I guess. Thanks for this. Now today's webinar is not really a webinar, per se. It's going to be obviously a set of slides that Alan Greenberg, the chair of the ALAC, is going to go through and is going to ask questions from the participants on the webinar as to whether we really support what draft there is at the moment on our hands. And I am getting an echo; I don't know why.

Anyway, what's happening with this is that the first draft of the statement is or – in fact, more than the first draft, it's the third draft of the statement now is available on the link that I believe you can find in the agenda page, but Alan Greenberg will go through each one of the points that is in that draft and ask questions on this.

The second part of this session today is going to be having a few polls on the specific issues. If you have specific questions that might be added to those polls, we will add them, and people will be able to decide here whether they support or don't support moving forward with the point that is being made.

Finally, we also have very little time on our hands. The actual work, the document, the statement needs to be ready within a couple of days. It needs to be ratified by the ALAC, as well, and the comment period closes in two days from now. So it's a very tight timeline, which means that today, introducing something that is completely new or completely outside the current statement and individuals coming up and saying, "Well you know what? I don't agree with [inaudible]," is probably a little bit too late.

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What you can do, though, is certainly support or not support what is already on the table, and point out any additional points, which would gather interest or gather support with other colleagues – possibly other colleagues here on the call, but also other colleagues that either a RALO or your [inaudible] parts of the world.

So that's my introduction on this. Of course, the person who's going to be running most of the call today is Alan Greenberg since he is the penholder for the statement and so I guess I can transfer the floor over to him right now. Alan, you have the floor.

ALAN GREENBERG:

Thank you very much, Olivier, and in fact, I will be modifying those rules that you just went through as we go along because of some issues that we'll be talking about. All right. If we can go to slide number one, please – or slide number two, rather. No, we skipped one. Thank you very much.

I am presuming that everyone on this call has participated in a CCWG briefing reviewing the proposal, or perhaps, read the documents. But that being said, we don't expect you to have memorized it and there will be an overall review on a recommendation by recommendation basis of just what the recommendation is, but it will be a very quick summary review. Now we do have an echo again.

We'll be looking at the positions that have evolved over the last few weeks that mainly have come out of the group that we call the IANA Issues Group – the group that has been focusing on the originally the

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IANA Transition CWG and then the Accountability CCWG. So this is the group. It includes a fair number of ALAC members, it includes a good number of other members of the community, the ones who have spent the most time both in meetings and in the CWG/CCWG meetings themselves and in the At-Large meetings that have been reviewing them.

So essentially, that's our advisory body for the Advisory Committee and that's where these ideas have been fleshed out. This proposal has gone through, I think, three iterations with that group, and what you see now, I'll be saying are ALAC positions. That is presuming, of course, the ALAC adopts them.

And that, indeed, is the current plan. As Olivier said, we have a tight schedule. I'll go over it in detail towards the end of the presentation, but we don't have an awful lot of days left. Next slide, please.

Now I will be going through these recommendation by recommendation and in the case of some recommendations issue by issue within the recommendation. I will be taking questions as we go along, so if on a given recommendation you have something, which you think needs to be raised either because you're disagreeing with it or you need clarification, then please raise your hand and I will be taking them as we go on each – essentially, on each slide or group of slides.

I will say that the timing for this presentation is going to be moderately tight, so if you are going to intervene, then please do so as concisely as you can, and we'll try to make sure everything is clear, however,

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because it's really important that we come out of this and everyone understanding what it is we're talking about.

The first recommendation... There are 12 recommendations in total coming out of the CCWG at this point. The first one is that there be a concept of the empowered community. The empowered community at this point is we think – and the document is written such that it will be the GNSO, the ccNSO, the ASO, the GAC, and the ALAC. The SSAC and the RSSAC have both explicitly said that they do not have an interest in participating in the powers we will discuss, but will remain purely advisory committees. So we are looking at five out of the seven groups at this point.

We also used the term sole designator. Sole designator is a term in California law, which allows entities within an organization to appoint or remove directors. Of the five groups listed, all of them except the GAC appoint directors. So that power is exercised by only some of the ACs and SOs listed. The other most of the powers we're talking about will be exercised potentially by all of them.

We have gone through several models within the CCWG, the ALAC had very significant problems with some of them, we were in some cases willing to go along if everyone else demanded them, but they were not our preference. We certainly were looking for a lighter weight and less legally – ones with less legal force but lighter weight and closer to our current model, and this one very much matches the model that we were looking for. So we generally support it.

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We do have two issues. One of them is the ASO has not actually said yet whether they're in or out, and will be meeting this week – I think actually today – to make that decision. If they decide they are not going to play in the game, then we've come down to four out of the seven ACs and SOs and we may well have a significant problem because the model is built around the presumption that they will.

The second one is there is an effort on the parts of some parts of the community to say that the five groups who are participating are not all participating on equal ground, but rather the SOs should have dominance over the ACs. This is not a new idea. It's been mentioned as a minority position before. The ALAC has had a very strong negative appealing to that, and it could well be an issue. If somehow the proposal got changed back to that, then it is an issue, which might well stop the ALAC from approving the final proposal.

Now to look at the color scheme, it may well be obvious, but I'll be clear, if it says green, then the ALAC is essentially willing to accept something. If it is red, these are issues which could, on the final balance, decide that the ALAC does not ratify the proposal. And there's also some yellow ones, which are either questionable or things that are soft that they may not stop us from ratifying, but we believe they need to be said at this point because they're closely linked to other related issues.

That's it for recommendation number one. I don't see any hands. I'll give it a couple of seconds. And we'll go on to the next slide, please.

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Recommendation two goes into a fair amount of detail – and it’s several slides long – of just how the powers will be exercised. The process is a moderately long one, although each interval is small and we’ll talk about that in a moment. The overall process will take a fair number of weeks and it has multiple steps in it.

The process to exercise any community power starts with an action of a single person. That doesn’t have to be even a member of the ICANN community. It can be someone from outside. But someone has to request that an AC or SO, one of the ones that are participating, initiate a petition to exercise a power, and they have to be specific as to exactly which power and for what reasons.

That AC or SO has two weeks – 15 days – in which to decide are they going to issue it? Are they going to issue a petition? Is this a serious enough matter for them to take action? To go any farther, it also has to be supported by at least one other AC and SO. So at the same time as any AC or SO will initiate the petition, it will be talking to the other ones and seeing it as anyone else who agrees.

If there are multiple ones that agree and I should say for some of the powers, the details are a little bit different, and I’ll be talking about those explicitly. But this is the general path.

The next thing one does is have a conference call amongst the ACs and SOs that have an interest at this point. If there is still significant interest, it’s conceivable an AC or SO says yes at the first stage just because they

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want to talk about it, not because they've made any decisions. No decisions have been made yet. A conference call is called.

If there is still significant interest – and what significant is varies in the powers. It may require two ACs or SOs, it might require. Then we can be in a community forum. A community forum is an extended teleconference or a face-to-face meeting. And if the community forum, if the groups coming out of the community forum, they have two weeks to decide, are we exercising the power? And each AC and SO has to say, "Yes, we are for it," or, "We are against it." And if enough of the community, enough of the ACs and SOs say they're for it and not too many say they're against it, a single one at this point cannot veto. Then the power is exercised.

So it's a long multistep process. It's designed to be complex because none of these powers are ones that the community should be exercising frivolously or for meanness on the part of one AC and SO. These are things that the community really has to decide are important.

Now if you recall in a previous model, there was a concept of membership. Members can take legal action in some cases and, of course, will enforce the action of members. That is not the case with our empowered community, but there are other mechanisms that we can use to effectively enforce these.

If the community exercises a power that the Board does not accept, even though they are legally bound to by its bylaws, then we have the possibility of mediation, a review panel – an IRP is one of the

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recommendations we'll be talking about later – or you can go to court. Or, of course, at any of these stages, you can simply recall the Board and say, "Hey, Board. You're not doing what we want. You're history." And in fact, we can skip all of those processes and go directly to the last one immediately, should the group decide. Next slide, please.

Sorry. That's one we just talked about. And one more. No. That's it. All right. That one talks about the individual powers. And we'll review them again in a moment, but might as well do it right now since that slight is pretty clear. The first power is for the community to reject an operating plan, a strategic plan, or a budget. To do that requires four support – and we'll talk about the or three in a moment – and less than two objecting.

So if, for instance, three groups say they want it and two say they don't, it does not get exercised. It will take four of the five ACs or SOs to effect the rejection of a budget. Bylaws have been divided into two groups. Regular bylaws, which all of them are today, and fundamental bylaws. There will be another recommendation explicitly on that. But the functional difference is regular bylaws, just like today, are adopted by the Board, by a 2/3 majority of the sitting Board.

Fundamental bylaws are ones, which are deemed to be more important. Those cannot be done by the Board alone; the community must pass those. There is a risk, however, that if the community doesn't pass them, then they don't happen, and there is some concern that the process may be too long and we'll just never get around to doing those. In fact, the process for adopting fundamental bylaws is a little bit short

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circuited because it's triggered not by a community petition but by the Board proposing changes to the fundamental bylaws. It skips some of the steps and is not quite as onerous as the other ones.

If the Board changes regular bylaws, then the community can say, "No, we reject them." And bylaws will have to have a certain delay built in to allow the community to make that decision.

The community can remove Board directors. They can remove NomCom Board directors by a decision of the overall community. They can remove AC or SO Board directors by a decision of the AC or SO involved, but there must be discussion among the rest of the communities. So it can't be done simply as a unilateral action, even though the final decision is up to the AC or SO.

The entire Board can be removed, the IRP (the Independent Review Process) can be initiated by the community on behalf of the community. So if we see the Board not following its bylaws, we can take action against the Board. And there is also a power that in the decisions related to IANA, that the community also has overriding power to make sure that the community believes that the Board indeed should follow whatever the community understands is the proper process to support IANA. Next slide, please. Thank you.

Overall, the ALAC supports this process. We have been very active in the development of it and we can support it pretty well completely. There are a couple of caveats. There's one that is a significant one from our

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point of view, and the others that are lesser value but nevertheless are of concern.

The first one is there has been a proposal, which was introduced at the very last moment, so did not receive a lot of discussion, that if one AC or SO abstains in a decision, which requires four to support, we have a problem. If we have four and one of the four object, then we only have three left to make the decision, and you need four.

So if one of the groups abstains, then it is not possible to exercise the [fours]. That's particularly problematic in fundamental bylaws because that could make a change that is necessary for ICANN difficult or impossible to achieve. So one group could do that. That is viewed by some to be problematic. And in fact, the ALAC has raised a similar concern that locking in the bylaws may make it too difficult to change.

So in fact, we would support this reduction for the changes to fundamental bylaws. We believe there may be other ways of doing it better, but we would support it. We do not believe that we should be able to recall the entire Board with only three ACs or SOs making that decision. That is just too onerous a thing to do to the organization with too small a percentage of all of the ACs and SOs making that decisions, and the ALAC so far in our discussions, we have said we cannot accept that.

We might be able to accept the change for the reduction for budget plan and IANA, the other four type mechanisms, the ones requiring four. The feeling has not been as hard. There's one other concern that

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we have with the overall process, and that's associated with recalling the entire Board. The process to recall the entire Board says when the decision is made by an AC or SO, if an AC or SO appoints directors, they have to, at the same time as they're saying, "Kill the current Board," provide one or more interim directors. In other words, someone who can sit immediately and take over because ICANN cannot be without a Board.

And if indeed we are in time of crisis, as we may well be if we have a reason for removing the Board, then it's certainly not a time you can be without a Board. But that interim Board must be replaced and there is a requirement that ACs and SOs that appoint Board members and the NomCom put in place rules and processes to guarantee that within four months – 120 days – they have replacement directors.

That's a target, it's shorter than the currently is taken by the ALAC, it is shorter than currently is taken by the NomCom, and it is problematic, we feel, to put in the bylaws that it will happen. We think it should be kept a target. It's not at all clear what the penalty would be if we missed the target, but anytime that we are in violation of the bylaws, we have a significant problem. So we don't believe anything should be put in the bylaws which may be problematic.

And that's all I have for recommendation two, it's a really substantive one, and I see Olivier has his hand up. Go ahead, Olivier.

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OLIVIER CREPIN-LEBLOND: Two questions for the [inaudible]. The first one is with regards to ICANN breaking its bylaws. So if we had here this 120-day requirement and let's say the ALAC was unable to [inaudible] a replacement Board member within those 120 days, as you just said, that ICANN would be breaking its own bylaw, I gather. If that's the case, ICANN can be sued for this?

ALAN GREENBERG: Potentially. The wording this is currently there, and remember, the wording for all of the bylaw changes are not the draft bylaws. They are essentially direction to bylaw drafters, to the lawyers who will have to draft the bylaws, which will then come back for community approval. But the wording in the current directive says the ACs and SOs, and by implication, the NomCom, will enact rules that will ensure that directors will be named within 120 days.

I don't know how the courts or certainly an IRP or the courts would view that deadline being missed. In other words, we put in rules, which in theory will work within 120 days, but as we all know, the world sometimes intervenes, whether it's because of a natural disaster or someone getting sick or a tied vote when we weren't expecting it. Things take time sometimes.

So it is conceivable that we do not make that target. If we are in violation of bylaws, directors, any sitting directors, can sue. They have standing. The Attorney General has standing and could sue, and there may be others in the community that have it.

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Now if someone sues and the problem is remedied while the lawsuit is starting, I don't know what the implications that are. I'm not a lawyer. I just believe that it is very bad practice to put into things into your bylaws absolute rules, which have a high likelihood of not being followed. I just don't believe that we should be doing something like that. So that's my personal position but it's been one that's been accepted as we've been discussing it over the last many months.

And Olivier...

OLIVIER CREPIN-LEBLOND: That was my first question. Yes, thank you, Alan. The second question is with regards to bylaw changes. You mentioned that if the Board wishes to change bylaws, and I gather the Board is the only body that would be changing bylaws, they can be asked to change a bylaw and then they would change it. Does that mean that a bylaw change requested by, let's say, an ALAC review process or the Accountability and Transparency Review or any ICANN review has to be affected by the Board?

Does this mean that the community could [inaudible] that review? The requirement for changing the bylaws caused by review process?

ALAN GREENBERG: Yes, it does, and we'll be talking about that in a little bit more detail when we get to the actual powers. Or actually, in the case of the bylaws, in the very next slide. So if we can defer that for moment.

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OLIVIER CREPIN-LEBLOND: Okay.

ALAN GREENBERG: Anyone else? No hands, no voices. Then we'll move on to slide number eight, please. All right. Let's talk about bylaws a little bit. As I said, the standard bylaws, all of the bylaws today, can be changed by the Board, and it requires, I believe, a 2/3 vote of all sitting members – not necessarily just those who are there at that meeting, but a total count.

And there is a similar rule to change the Articles of Incorporation, which are the basis on which the corporation sits, ICANN Corporation. Now currently, according to the bylaws, the Board can change those. We do have an echo that has appeared. Currently, according to the bylaws, the Board can make changes, period. The process the Board has been following in recent years is potential changes are put out for public comment, the comment is received, it is analyzed.

There has been one case recently where the community basically had a very adverse reaction. This was a bylaw related to the GAC advice. And indeed, the Board did not enact it. But there's no rule that says that. Staff, are we looking at where the echo has come from?

There's no rule on that, so if the Board were to go into meeting tomorrow and decide ACs and SOs and NomCom no longer appoint Board members, they appoint Board members, and they're only

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appointing their children and wives and husbands, that's a bylaw. We don't think they're likely to do that, but they could.

So anything the Board does can, at this point, they can. The current, under the proposed plan, we divide bylaws into two different groups. One of them deemed to be fundamental bylaws. These are the bylaws that actually control how bylaws are changed, they control all of the accountability measures we've been talking about, and a few other things, including the mission and the IANA, the rules associated with the IANA.

These are deemed to be fundamental bylaw. The Board no longer has the ability of changing those on its own. They have to be ratified by the community, according to the power and process we've just discussed. Other bylaws – and that's the majority of them – the Board can still change, in theory, without getting approval of the community, but the community has an ability to override and to reject.

So to answer Olivier's question, if a bylaw comes about at the request of an AC or SO... And for instance, as the ALAC revises its ALS criteria, as we're doing right now, that will require bylaw changes because some of these rules are included in the bylaws, and that will require a bylaw change.

And in theory, the community by vast actions can take that down, essentially, and say, "No, you can't make those changes." We wouldn't expect the community to do that unless there was some really substantive reason why, but that is the case.

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Now that's probably not different from today. If that same negative reaction comes from the wide part of the community, four of the ACs and SOs are adamantly against it, likely we would have similar problems today. So I don't think it really changes the process. It actually makes it harder because the community cannot just write a statement to a public comment period and say we don't like it, which is all it takes today, and they have to go through a much more formal process. So I don't have a great amount of worry about that.

There is one exception built in and it is conceivable, although I don't believe it has ever happened, that a PDP, a policy development process in an SO, can ultimately require to implement a bylaw change. There's a real problem with – and that wouldn't likely be a fundamental bylaw, it would just be a bylaw. There's a problem with the community, excluding that SO, overriding that bylaw because it essentially says we're taking a policy development process and making that policy development process susceptible to override, and that has some significant problems with regard to other bylaws, and therefore, an exception was made to override a bylaw that is there because explicitly of a PDP recommendation, an approved PDP recommendation, then the involved SO must also concur.

That it must decide that even though it recommended it, something has changed, the world is so different or the implementation is so bad that it can't go through. It's not a likely scenario. I'm going to pause to try to clear my throat, and if we can go to the next slide in preparation.

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I am back now. I didn't see any hands on that one. I'm assuming there weren't any questions that was on recommendation three. Recommendation four is the detailing of the seven powers, and we've talked about them a little bit, but I'll go over them again because there's some interesting subtleties on one or two of them.

Rejecting five-year strategies is not particularly onerous, there's plenty of time to fix them. Rejecting this year's, the forthcoming year's budget and operating plan does have some higher repercussions because even though the community may believe that the budget is wrong, the organization has to keep on functioning. And therefore, we have looked at a number of possible ways forward.

The original one that was proposed was we simply used this year's budget, and it goes ahead. That is somewhat problematic if the thing the community was objecting to was that the Board was proposing to spend too much money. In a scenario where our review is down, the expenses would have to be down. If the Board would foolishly ignore that, we can have a problem and continue with last year's budget just replicates the problem.

So we are looking at something called a caretaker budget. It's a budget that will be developed, and the work is ongoing at this point, which essentially says the essential parts of ICANN must continue going, but more discretionary things will be cut out.

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It's a budget which will hurt – cause a fair amount of pain. People will not invoke it frivolously, hopefully, but it is something, which in a dire scenario, could happen.

The removal of individual directors that are appointed by ACs and SOs is an interesting one, and we'll come back to that one as we go forward. The decision is made by the AC or SO that appointed the director, but it must be done with community discussion with the director being involved so that, again, it can't be done by an AC or SO in the middle of the night, in the dark, without any community discussion. You have to be able to explain why you're doing it.

The entire Board, we've already talked about the process. I think that's probably all of the things we need to discuss. Some of the other ones are discussed in more detail as we go ahead. Any questions? Sorry, we have one more slide.

Now the ALAC is in general agreement. We do have one liability, one concern, and that is the potential liability in discussing with the director why we are removing them, and that could apply to a whole Board, it could apply to an individual one. Under California law, directors can be removed with no cause, and there's no evidence that they would have any recourse in the courts.

But we have rules that say for fairness, we must talk to the director, we must announce publicly what the rules are. There is potential for defamation suits – libel or slander, depending on how it's done. And these could be aimed at the organization. They could also be aimed at

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individual volunteers. And the ones who are identified as the spokespeople and that is the somewhat problematic and we believe that must be addressed.

We believe it can be addressed by the director simply signing a pre-service letter saying they waive their rights, but that's going to require a little bit of legal work. I notice in the chat that there was a question that went back a while ago on the 120 days. I asked staff if there's a question in chat that someone is asking, please, when I come to questions, raise the issue. I'm not paying attention to reading the chat as I'm going forward.

Would someone like to do something? Because I believe there was one on the 120 days from several slides back. Ariel, go ahead.

ARIEL LIANG:

Thanks, Alan. That's the question from Siva, recommendation number two, is the 120-day requirement to name a replacement post the process or the [inaudible] process of removing a director.

ALAN GREENBERG:

The 120 days is the time after the interim Board starts serving. In other words, after the old Board is removed, and the interim Board takes over. The 120 days is the time to replace all of those directors with permanent directors. So this process goes on after the removal of a Board to put in place a new permanent Board as opposed to the interim, who take over on the very short term.

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Now that could be the same people. You could name the interim person as the director within certain rules. You could also name back your old director, even though they were removed. But that is the requirement, the time that you are given to name the replacement Board members.

All right. If we can go on to the next slide and recommendation five, please. This is going to be the substantive part of this presentation. We have an echo again. Recommendation five changes the ICANN mission, the commitments, and core values. It is the part of the bylaws that essentially define what ICANN is. And the ALAC in its previous statements has had some significant problems with various aspects of the changes, and some of them have been addressed in this draft, some of them have not been addressed, and in fact, a new issue has come up as we went along. Next slide, please.

Thank you. The overall mission is being redefined and the first three paragraphs of this slide are the new words. It simply says ICANN should work within its mission, it should not impose rules on the content that services carry. Because remember, ICANN is about the identifiers, not about what they're [inaudible] so we don't control spam, we don't control porn. And this simply reiterates it. But we should be able to go into contracts regardless of what those contracts say right now.

And currently, there are aspects of contracts that do regard content. As an example, there are picks that talk about content, voluntarily, but they do talk about it. Our contract, the contracts with registrars require them to ask for WHOIS information, for instance. Now we can debate whether WHOIS is right or wrong, but right now, the contracts require

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them to ask certain questions and get certain answers. That's content. And without carving out a provision that says we can talk about content in certain cases, then we would invalidate whole sections of our current contracts.

Now the instructions to the drafters talk about content. And for instance, the instructions, the first one I have listed there, says domain names are not content. Now the courts have ruled on occasion domain names are content. There are people within ICANN who believe that putting rules on domain names are putting rules on content. But at this point, we make substantive rules on content, we have certain domain names that cannot be registered. We have rules regarding trademark and copyright that define, to some extent, what domain names and what TLDs you can have, and we have to make sure that those are not subject to the courts or to an IRP. That, in fact, came out of an ALAC recommendation, comment in the previous round.

There's also a statement saying that things that are within the picket fence – and I'll define that in a moment – are within scope. It is not clear, if you look at number two, if things that are not within the picket fence are also within scope. Because defines part of what is within ICANN's mission, and therein lies a problem.

Now the picket fence is what we call the area of policy where a PDP can, for a gTLD, can alter the contracts with a registry or registrar on the fly. So if the PDP says we are changing a certain aspect, and it an aspect that is considered in the contract already, we can change it, and it

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changes immediately. The contract does not have to be rewarded, the registry does not have to agree, it's just a done deal.

If we look at the next page, we have an extract of specification one. Thank you, slide 13, for those who are following along. And it lists a long list of things that can be subject to change. One of them, for instance, an interesting one because we've never actually put in place a rule, that talks about warehousing of domain names.

In theory, we could stop people from registering domain names that they are going to just hold on to and hope they have value later on. There's a whole industry around that. But we could put in place rules, and they would take effect immediately.

We have rules associated with intellectual property that you cannot register a domain name, which violates someone's trademark and use it, essentially, to imitate them. And we can make rules for that, but there are many things we can't make rules about, according the specification. The public interest commitments are among them, but there are other things. And we have some significant problems with whether the contracts will be enforceable if we have this kind of general rule in place. And next slide, please.

So essentially, we're saying that many parts of our contracts were not created through a bottom-up process. They include things, which are not addressable through a PDP. The current requirement is that we will grandfather these terms, but they will be grandfathered in current contracts. It is not clear whether a renewal of a contract would be

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grandfathered. On all of our gTLD contracts have to be renewed every ten years.

And it is clear that any new gTLD contracts that are not currently signed, and there are still several hundred of them, could not use terms that they would not be grandfathered. So, many of the terms in their contracts either could not be put in the contracts or they could be removed by an IRP process, and we find that's problematic.

We need the – just because someone doesn't sign by next March but they sign in April, or whatever the deadline is that the bylaws go into place, we can't have a completely different set of rules applying to them. And the redline is, and it's a serious one from our perspective, is that we cannot use the IRP to invalidate current contractual terms. People say ICANN is a regulator. Technically, they are not a regulator, but we do regulation-type things through our contracts and we simply can't have contracts invalidated just because we change some of the ground rules.

And we'll stop now for questions on this one. Olivier. Olivier, we can't hear you.

OLIVIER CREPIN-LEBLOND: [inaudible] not being able to hear me. Can you hear me? Hello.

ALAN GREENBERG: Now we can hear you.

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OLIVIER CREPIN-LEBLOND: Oh, dear. I'm not doing anything, by the way, it just seems to be stopping working. One point, which you haven't made regarding the bylaw changes and the mission, is that there is some text going in there that will make sure that the mission of ICANN and the actual activities of ICANN are enumerated? Which means that anything that would not be specifically mentioned there would be deemed as being outside the scope of ICANN.

And I think we have to be very careful about that because, so far, the mission and the different component work of ICANN is not marked as being enumerated, and that has given some flexibility as to what ICANN can do. So when you mentioned the point that you just mentioned here, we need to be very careful and do we actually support this fact that the mission of ICANN and the different responsibilities are enumerated?

ALAN GREENBERG: Thank you, Olivier. Yes. You mentioned that the first webinar last night, and I didn't take note of it, but it is something we need to look at very quickly, and it is potentially a concern. One of the overall concerns with the changes to the mission are there are a significant number of changes, and it's not clear what the interaction of the [inaudible] will be. And it is quite possible that there may be some unintended or intended, by some people, because we don't know the mission about everyone who has made suggestions.

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And this forms the real crux of what ICANN is. So changes here have to be done with extreme care and my personal point of view is that that level of care and understanding has not been exercised at this point. So we have some real problems associated with this. Next slide, please.

The wording on the left is a current bylaw, where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment. The first phrase, where feasible and appropriate, has been omitted. The ALAC has raised this issue a number of times and we have great concern that purely depending on market mechanisms may not be sufficient. There are maybe times where intervention is required, judgment calls are required.

When we pursue this matter – next slide, please – one of the reasons given was the statement that ICANN does not possess the skill or authority to intervene in the competitive market. And the example given is the Registry Service Evaluation Process, RSEP. The RSEP is used by a registry to request a change in its contract, which might be nominal violation, but they believe there's a good reason for doing it.

These happen with some regulatory, and the first part, one of the parts of that is the registry is asked what are the competition issues? Is this going to put you in a preferential position regarding other registries, for instance? In which case, since we are required by our mission to apply our rules fairly, if we say, "Registry X, you no longer have to follow a particular rule," if this now gives you an advantage over the other registries, then we shouldn't be accepting it because it violates one of our core commitments.

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But to make that decision, we actually have to look at the details and decide is it correct that there doesn't seem to be any? I use the word "seem." Doesn't seem to be any competition issues associated with this change. If we think there might be competition issues, then we refer it to authorities within the legal jurisdiction in the US corporation.

We will invoke external authorities if there's potential of conflict. But first, we make that decision on whether we think there is a competition or not, or do we have to invoke somebody else. That's a discretion that's been talked about in that first phrase that's been taken out. I suspect, but I'm not a lawyer and I can't really pass judgment, but I suspect this whole part of the process of RSEP could be invalidated if we make an absolute statement saying we have no authority whatsoever to make any decisions.

Any questions, comments, on that one? As I said at the beginning, we get into some of the nitty gritty of what we're doing in these changes and they potentially could impact in great ways how we do our business. No questions on that. Next slide, please. We're on 17.

This one is an interesting one. The current bylaw says we preserve and enhance the operational stability, reliability, security, global interoperability of the network of the Internet. If anything describes what ICANN's responsibility for, that's a pretty good one. It's one of our key things. Security and stability is, for instance, the reason that the Board can override a PDP process and simply make a change if it feels stability and security of the DNS is threatened.

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So it's a really core part of what we do. The wording has been changed to say, "Preserve and enhance the neutral and judgment-free operation of the DNS." That trigger rang some bells because if one country, for instance, decides to filter out certain TLDs, as countries do today, that says the DNS, which is a worldwide thing, is no longer being run judgment-free.

This puts the onus and I can't affix that problem. Clearly, that gets us into political waters that we have no ability to fix, we have no authority to fix it, but it puts a requirement on us to fix it. When we pursued the matter, we were told it was an NTIA requirement. So looking into that document, we did find the NTIA has referenced these issues in testimony to Congress and a number of other places.

The wording they used, however, was different. The wording they used is the transition, the IANA transition specifically, would have to ensure the neutral and judgment-free administration of the technical DNS and IANA functions. That makes complete sense. It says the things that ICANN will have authority over, the things that NTIA currently has authority over, will be run in a judgment-free and neutral way, but it doesn't say that the whole worldwide DNS has to be judgment-free.

To increase ICANN's responsibility to the entire world in ways that we actually don't have any tools to handle, we believe, is mission creep and is totally out of line. Questions, comments, on that one? We're having very few questions today. We may finish early. Yes, Ariel, go ahead.

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ARIEL LIANG: Thank you, Alan. There's a question from Siva. Why not aspire to preserve and enhance?

ALAN GREENBERG: Again, these are bylaws. I'm not sure aspire to is something that has any meaning in law, so I would, first of all, ask that question. And we're not necessarily saying how to fix the problem; we're simply saying that the wording today that is being proposed is not acceptable. And I'm not sure aspiring to telling 250 countries around the world what to do is something I really want in ICANN's aspirations, but that's a personal position.

All right. Seeing no more comments, then we'll go on to the next slide, slide 18. This is an interesting one. We'll get to the Affirmation of Commitments in a moment, but essentially, the details that are in the AOC are being transferred into the bylaws. It was noticed that one little tiny part of it that is a statement saying that consumer trust is something that ICANN must worry about, was not transferred into the bylaws.

There have been statements made saying that section of the bylaws was not really – rather of the Affirmation – was not really a commitment, it was just pointing to other commitments, but it's also the place that the global public interest is mentioned. And the ALAC believes that in light of the fact that the consumer trust issue and consumer use of the DNS have not always been focused on by ICANN, that it's critical that we actually mention that. It's too easy to ignore, and we'll be asking the

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question later on saying, “Indeed, is this one of the things that we need to look at as we go forward?”

I’m just saying. Ariel, is that actually one of the questions that we ask later on, explicitly on the consumer trust? Or did we do a poll with ticks yesterday?

ARIEL LIANG: It’s actually a clarification notes from Siva regarding the previous question he asked you, but if we don’t have time.

ALAN GREENBERG: No. I’m asking you about do we ask the question on consumer trust? Is that one of the five questions we’re asking at the end?

ARIEL LIANG: Yes. That’s one of the five questions.

ALAN GREENBERG: Okay. Thank you. I can’t read my own handwriting. I wasn’t sure. All right. You said there was a question from Siva that we’ll follow up.

ARIEL LIANG: Yes. It’s a comment from Siva for follow-up, that I will read out loud. Regarding the preserve and enhance, I’m not suggesting the word aspire to be included in the bylaws, but what is already stated should be

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[inaudible] without being constrained by what is possible for ICANN at present.

ALAN GREENBERG:

Okay. That's certainly one of the ways of getting around it. Our concern was not it not say something we simply can't do, but thank you, Siva. Next slide, please. All right. Human rights has always been an interesting issue in ICANN. The current bylaws say we will adhere to international laws and such.

Now there are, in fact, no international laws that directly apply to companies, to corporations. International laws apply to countries who then must enact legislation controlling the entities within their countries. There are those who feel strongly that with the NTIA overseeing ICANN, that implicitly the human rights agreements of the US has signed on to were, by implication, the onus was upon us to follow them.

Without the NTIA in those links in those positions controlling contracts, it was more important to specify in our bylaws clearly that we will adhere to human rights. Nobody really objects to the overall concept, but there are worries that until and unless we understand exactly what that means in the context of our limited scope, that putting words and bylaws is something we don't want to do because there may be implications of what action could be taken if we are not following our own bylaws.

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And indeed, there has been much discussion we have proposed. There have been a number of different words, sets of wording proposed. And the one you see on the screen is the current proposal. It hedges things to a great extent and says we care about human rights, but we're going to look in Work Stream 2, the part of this process comes after the IANA transition to look at the exact words, to figure out exactly what we want to say that protects ICANN at the same time, says we respect human rights.

The problem that we've identified is that the wording currently says that this replacement text will be available in no event later than one year. Now one year is not a long time from an ICANN perspective. Other things sometimes get in the way and it's like the 120-day one. Do we want to be in a position where for whatever reason, we are in violation of our own bylaws because we haven't made that deadline? It's going to be a difficult question to resolve, there's going to be lots of controversy, and we may or may not make it.

And without understanding what the implications are potentially for someone to file an IRP that we're in violation of our bylaws over a human rights issue is really problematic. And we feel that we should not be putting commitments in the bylaws, which we cannot absolutely guarantee that we are going to fulfilling.

But you'll notice the red question mark. There are some people who believe it is premature to put anything in the bylaws until we have an understanding of what the meanings are. And so the question at this point is, do we say we support it? Do we say something more cautious?

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Or do we only worry about the one-year part of it? And I see Tijani has his hand up. Go ahead, Tijani.

TIJANI BEN JEMAA:

Thank you very much, Alan, and I'm sorry to come late. I was [inaudible]. Regarding this issue of the human rights, [inaudible] low and [inaudible] don't apply to companies, they apply only to governments. So you said that the mention of those laws, those discussion of laws and conventions is useless for ICANN since [inaudible] not a government.

So why we are arguing now the same thing but specifying that it is [inaudible]? Because we said in this language that we want to commit ICANN to the internationally recognized human rights rules. So since they are not applicable to companies, if the mention in the bylaw are useless about the international law and conventions, it will be useless also for this [inaudible].

Moreover, I remark that there is an insistence, a bigger insistence, because the legal counsel for that that [inaudible] foundation that will not be any risk for the commitment of ICANN regarding human rights, no change, and yet we try this wording and also we proposed to have an interim bylaw. This will be done in Work Stream 2. Normally, okay, we speak about, we discuss it and we say we will deal with it in Work Stream 2. If we want to make an interim bylaw now, that means that we have a real interest in having something now.

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And my fear, my big fear is that this will be a way to regulate the delegation of domain names because this applicant is not respecting human rights from my point of view because respecting human rights, it's a judgment, it's an assessment, and if I say it is not respecting human rights, I can prevent him from having the domain name, and this is a big, big, big problem for me. Thank you.

ALAN GREENBERG:

Okay. Thank you, Tijani. I say we have a queue of people and I will go over to them. Something you've heard me say, many people have heard me say many times is one of the reasons we ask for diversity and we want a multi-stakeholder model as opposed to a single stakeholder is people have very different views on things, and the whole concept of multi-stakeholder process is one where we come to compromise.

So the position you have said here is one that you feel very strongly about and you have strong worries, as do many of us, on what the implications might be, what might someone use this affirmation in the bylaws to do, which might violate how we might do things. In other words, if someone in the simple case is putting porn on the Internet and some people claim that violates human rights, some classes of porn, then we're in violation because we've allowed that TLD to exist.

On the other hand, there are other people who feel exceedingly strongly that we must make a statement that is saying we support human rights, and the current draft is the compromise that was accepted. So it very much is a compromise and I think from my

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perspective, it was not the outcome that I was looking for when we started discussing this, but it is the compromise that is currently on the table.

It has been objected to also by the Board, who have some concerns very similar to yours, but we'll go on to the queue now. Harold. Harold, I presume you're speaking in Spanish.

HAROLD ARCOS: Can you hear me?

ALAN GREENBERG: Yes, we can.

HAROLD ARCOS: I want to say with respect this point when we deny human rights based on international recognition of human rights and international conventions. I think it's important because, otherwise, ICANN would still be an organization that is out of phase when we can see the other modern organizations. So we should recognize human rights because, otherwise, it would be a mistake.

But [inaudible] wording, I think, they're not [inaudible] that we are showing some interest, we are showing global concern regarding human rights and the respect for human rights. Additionally, ICANN as a multi-stakeholder organization, should not look aside with respect to some

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key facts [inaudible] like [inaudible] but we should be part of the responsibility and it should be included within our technical remit.

So a world resource, the Internet, the human resources should be included there because every person using a certain the Internet is including his or her benefits. So we should recognize human rights within the bylaws. Otherwise, we'll be looking aside, we will paying attention in a world that today we are putting human rights on the table.

ALAN GREENBERG: Thank you very much.

HAROLD ARCOS: I would agree with the current wording for us to recognize human rights in recommendation number six.

ALAN GREENBERG: Okay. Thank you. We will have a poll at the end to look at in depth at this question. I ask people to keep their interventions concise and short. Otherwise, we are going to run out of time. We're down to 40 minutes and we're only at recommendation number six at this point. So I'll go through the queue but please keep things short. Olivier, then Ariel, then Tijani back for any rebuttal.

OLIVIER CREPIN-LEBLOND: Thank you very much, Alan. Can you hear me?

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ALAN GREENBERG: Yes.

OLIVIER CREPIN-LEBLOND: I keep on asking, that's because [inaudible] you're not able to hear me.

ALAN GREENBERG: We can.

OLIVIER CREPIN-LEBLOND: Okay. Quickly, then. Two things, first, I hear the concerns that Tijani has mentioned. And I think one of the specific points in whatever will be drafted in the bylaws is that it would not give any additional rights to anyone over what they currently have. So we're not creating new rights.

The idea is for human rights to be recognized as part of ICANN's corporate accountability. It used to be called corporate social responsibility a few years ago but this really is all about corporate accountability. The Human Rights Council of the United Nations is promoting this, and these days, multinationals, some corporations, and ICANN included, have a lot more power than some states out there.

Furthermore, there are some who say that ICANN responsibilities would be better run by an intergovernmental organization and one of the arguments is that an intergovernmental organization would be subjected to the human rights directives, etc. So I would say having human rights included in the ICANN bylaws in very careful language

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would be a very good thing, indeed, because I would stop those detractors saying that ICANN is a corporate and private sector organization that does things that should be done by governments, and at the same time, it's something that a lot of other multinational corporations have been doing very recently. Thank you.

ALAN GREENBERG: Thank you very much. Ariel.

ARIEL LIANG: Thank you, Alan. I will read out two comments from the AC chats. One is from Siva. We'll respect human rights could be also a statement of good practices rather than enforceable terms of contract. This one [inaudible] stated in the bylaws. For example, the idea of ICANN's commitment to respect human rights could be stated in bylaws in such a manner that it is articulated as a commitment to endeavor to follow good practices related to human rights while making it clear in legal terms that this would be an endeavor, not a legally bonding contractual obligation.

And then there's another comment from Avri Doria. It is necessary in order to make the corporation committed to human rights without a corporate self of affirmation, there's no obligation. Why are people so afraid of human rights? And there's more chat in the AC about the human rights.

ALAN GREENBERG: Thank you very much. Tijani.

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TIJANI BEN JEMAA:

Thank you very much. I am not afraid of human rights. On the contrary, I want it to be in the bylaw. And as I said, I see that with the international law and convention, we can add including human rights, and that's all.

What triggered my fear is that [inaudible] of having an interim bylaw, why we will have the final wording in Work Stream 2, and this makes me a little bit, how to say, not very confident of the intention of this insistence, but I want the human rights to be included in the bylaw but not in this way. Thank you.

ALAN GREENBERG:

Thank you very much, and as I said, we will have a poll at the end looking at the options of adding our warning, but leading the bylaw or recommending that there be nothing at this point. Next slide, please.

Ariel, is that a new hand? Tijani [inaudible] is gone. All right. Recommendation number seven. This is strengthening ICANN's independent review process. We currently have an independent review process by which essentially organizations can take ICANN not to court, but to a review, with the claim that ICANN has violated its bylaws.

The process works, it was recently used by dot-Africa and one of the few that successfully used it. It is an expensive process. It has a lot of particular rules in it that some people have felt are not appropriate, and that the process had to be enhanced. That has generally been agreed on by everyone, including the Board, and this is a revision of the IRP, which

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a test to put in place rules that are more in line with what the community and the organization needs.

There is relatively little dispute over it. I think all parties largely agree and the ALAC does also. We do have one little concern and it's more of a drafting one than a functional concern. In one of the revisions, it was suggested that the IRP can be used for panel decisions where panels have conflicting decisions.

So for instance, in the new gTLD process, one panel made the judgment that dot-cam and dot-com are confusingly similar with each other. A different panelist made the decision that dot-com and cam are not confusingly similar. So they have looked at the same question, come up with different answers, and the question is how do you resolve those kind of problems?

It was suggested the IRP could be used. There are other methods, which could be used, but it was suggested the IRP could be used and it is in the current proposal, but the IRP does not allow an outcome other than to say ICANN is in violation of its bylaws. Panelists having competing answers to the same question is not in violation of the bylaws, so the wording simply has to be adjusted to make sure that if the IRP hears such a case, that they have a possible outcome that they are allowed to rule on. So that was omitted and needs to be explicit.

Questions? Yes, Tijani. Go ahead.

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TIJANI BEN JEMAA: Thank you, Alan. I am [inaudible] moment. I am afraid there is a confusion, Alan, because the IRP will be treated only if there is – if ICANN took the decision to follow the advice of the panel regarding the [inaudible] community to follow one of the advises that they are not accepted by the community.

In this case, the community will go to the IRP because the only thing the IRP will address, if ICANN acted or decided according to the bylaw and that [inaudible] so if there is another panel regarding the similarity, the panel will not decide. They will give their position to the Board and the Board will decide. And in this case, the party that are harmed by decision can go to the IRP. Thank you.

ALAN GREENBERG: Yeah. The problem, Tijani, is if some third party, and it would not likely be the community, although it could be bringing it, that the wording that we have in the proposal now says we could go to the IRP to settle a problem of conflicting decisions. The IRP is only allowed, at this point, to come up with one of two answers. The bylaws were followed, the bylaws were not followed.

So it has no mechanism by which it can address the conflicting decisions, and if conflicting decisions are one of the things that it may be called upon to hear, then there needs to be an outcome, which makes sense.

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TIJANI BEN JEMAA:

But Alan, excuse me, if I can follow up on this. I am afraid this is not good for the community because if the IRP would decide, would give decision, it will be a problem about issues of the TLDs [inaudible] and names. It will be a problem for me because they don't have the activity to do so. Only, they are legal, most legal, so they have only the ability to know if it is done according to the law, according to the bylaw, according to the article.

ALAN GREENBERG:

And to fix the problem, there are a number of fixes. One of the fixes, and it's suggested by the Board, is there shouldn't be an IRP responsibility at all; it should be a new panelist or something. The CCWG has said but didn't put in the proposal that the IRP could only hear a question of conflicting panels if the policy explicitly says that, some new policy, and it tells the IRP panel how it can make a decision.

Either of those are viable ways of addressing the problem. It is make it disappear completely, as you and the Board are suggesting, and put it somewhere else, or give the IRP the tools. All we're saying right now is as the document is written, there is a conflict. That is, we are giving the IRP a task without giving it the rules to handle it. So we're not suggesting what the right way of fixing the problem is, it's just that there is a conflict right now, and that's what we're identifying.

So I think everyone is in violent agreement that the current words are not right, we're just pointing out that before this becomes final, we have to make them right, and the likely way of doing that is to take the

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responsibility away from the IRP, as you're suggesting. But regardless, it has to be fixed one way or another. Any further comments? Seeing none, we'll go on to slide number 21. We are getting to the half hour point. We have five more recommendations, but these go very quickly, so we should be okay on time.

The next one is improving the reconsideration process. This is another process that ICANN has in its bylaws, and to a large extent, it doesn't work. Everyone agrees that the current forward reconsideration process, which has some very strong restrictions on it, is not effective, does not do what people want it to do, and these are changes that are widely supported as hopefully we'll do something better. And the ALAC is supported completely.

Next slide. The affirmation of commitments, when the last, I think it was a memorandum of understanding between the US government and ICANN ended in 2009, it was replaced by an affirmation of commitments. This is a document signed jointly by the US government and ICANN saying what ICANN is promising to do in a number of different areas.

The current contract, the current affirmation is cancelable by either party on short notice. Since we were moving the US government out of certain aspects of ICANN's operation with the current transition, it was felt that it was appropriate to remove this connection, also. And we're essentially taking almost everything that is in the affirmation of commitments and incorporate it into the bylaws.

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The ALAC did have one concern regarding the WHOIS review, the wording has been changed, and we are satisfied with it at this point. Any questions or comments?

Next slide, number ten. This one is an interesting one. The CCWG has spent the vast bulk of its time looking at ways that we could effectively control the Board. And with the belief that the community itself has the wisdom – we have an echo again, by the way – that the community has the ability to oversee the Board.

The question that was raised, and it's been raised numerous times, and including by the ALAC was, how do we know that the community is really accountable? How do we stop parts of the ICANN community from being captured by certain voices and not representing fairly the wide diversity that their communities actual embody?

And that is a real serious problem. If we're giving power to the community, the community itself has to be accountable. Right now, the Board has the power and therefore we are trying to make sure the Board exercises its power properly. How do we make sure the community exercises its power properly?

Not an easy question to answer and there are examples one can give, including At-Large, that people claim we are not representing our communities effectively, and therefore, it's a really important question. The question has largely been sidestepped in the first part of this process in WS1, Work Stream 1, that is the current recommendations, and in this recommendation, we're not doing a lot more than saying the

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regular reviews that parts of the community are subject to should include accountability as one of the things they're looking at.

Work Stream 2 will look at more detailed ways of making sure that ACs and SOs are accountable to their community and, in fact, to the global Internet community. So this is not a complete answer but it's the first step and it felt quite important, and certainly, I support it, and we have not had any objection to it. Tijani, go ahead.

TIJANI BEN JEMAA:

Thank you very much. I support that but I have a question. I think that the accountability of the community is more important than the human rights because ICANN is not dealing with content, so human rights aspects will be really not very important, but we will not have a lot of cases of human [inaudible] inside the ICANN mission exercise.

But the accountability of the community, since the community now is a becoming to be controlling something inside the governance of ICANN, I think that this accountability is very important. And yes, we didn't propose to make an interim bylaw for it why [inaudible] an interim bylaw for the human rights. Thank you.

ALAN GREENBERG:

I'm not actually sure there isn't an interim bylaw, I don't really know.

TIJANI BEN JEMAA:

There isn't. It is not mentioned.

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ALAN GREENBERG: Well the bylaws themselves have not been drafted at this point. There is a section on periodic reviews, and I suspect that the reference to accountability will be inserted in that bylaw.

TIJANI BEN JEMAA: I hope so.

ALAN GREENBERG: That was my presumption because that's where it logically fits in the section on bylaws on reviews.

TIJANI BEN JEMAA: I have a clear wording for the human rights. I don't have anything for this issue. So that's why [inaudible].

ALAN GREENBERG: That's a really good point, actually, and I have no problem putting into our response we presume it will be reflected in the appropriate bylaw. It's a good point.

TIJANI BEN JEMAA: Okay.

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ALAN GREENBERG:

Next slide, please. 11. And we're starting to get very short of time. This one is a complex one, which I will not try to go into great detail on. Currently, the GAC, the Governmental Advisory Committee, can give advice to the Board and the Board can refuse to accept that advice, but it must go through a specific procedure of negotiation and discussion if that happens.

There apparently has been a requirement, an implied requirement from the US government that if the Board is to go through that process, it must be device that is developed by the GAC under the current rules of consensus, which are the UN rules saying the position is taken by some governments and not objected to by any governments.

If that methodology changes, we have a situation where some governments in the GAC can say we want X, other ones can say a minority, can say, "No, we don't want X," and the Board is now put in a position to essentially negotiate and evaluate which governments are more important and which ones it should listen to. That's not an enviable position for our Board to be in, and therefore, the statement has been made that the current rule for a consensus must be maintained.

It's been very controversial. Many in the GAC have objected to it. There have been some false starts along the way where wording was used, which some GAC members felt was very offensive. They've since been withdrawn, but nevertheless, the wording had been published. The ALAC has, I think, wisely taken the position that we're not going to get into that, but we do have a concern that ultimately the bylaws be

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written in such a way that the NTIA will accept the transition on this particular account. So we're not going to try to wordsmith it but it is important that it be addressed. Tijani, go ahead.

TIJANI BEN JEMAA:

Thank you very much. I agree 100% that we don't have to take a position on that. But I am sure that the rationale given is not accepted, is not, is anyone. I don't think it is logic because I think in any case, we will have, we will receive, the Board will receive a consensus position from the GAC. So if the consensus is the full consensus or I have to say a majority consensus, it is not an issue, and it is mentioned in the wording.

So there is need to say that we will have the, we will be obliged to have to say to judge which government we have to take into account [inaudible] it's absolutely not convincing. What is clear is that what is written now, it is good. Or they said if we have to have the affirmation that there is no objection, and this is very good, and the NTIA will accept it because it is clear that in any case, the US government will say no and it will not pass if they don't want it, and that's all. Thank you.

ALAN GREENBERG:

And I don't think you're disagreeing with what I've said here.

TIJANI BEN JEMAA:

No, I'm not disagreeing.

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ALAN GREENBERG: Yeah. The US government on many things has said, when asked questions, has given cryptic answers that can be interpreted ways, and people have interpreted it multiple ways. A couple of weeks ago, they actually did make a statement on this. It was not interpretable multiple ways, it was the clearest government I've ever seen out of the NTIA – the clearest statement I've ever seen out of the NTIA, making it exceedingly clear what their target is. So I don't think there's any misunderstanding at this point.

TIJANI BEN JEMAA: No, there's no misunderstanding but I am speaking about the consensus inside the GAC. So where the US government don't the GAC to go, they say, "No." And that's all. This is very clear. And it is written in a very good way so that we will not have any problem with NTIA. Thank you.

ALAN GREENBERG: I'm not predicting. All we're saying is we want to make sure there is no problem. And I think you're agreeing with us 100%.

TIJANI BEN JEMAA: 100%.

ALAN GREENBERG: Okay. Recommendation number 12. Next slide, please. Recommendation 12 is Work Stream 2. That is, the parts of

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accountability that we believe are necessary but not necessary to affect the transition. And they go into a number of areas, they include further work on accountability of the ACs and SOs, they look at transparency, access to documents, they look at enhancing the rule of the ombudsman, so there are a number of areas that are delineated as Work Stream 2.

The ALAC in the discussions have pretty well always agreed that this was a reasonable set. It's clear not everything we're going to do, there's always going to be room for improvement, but these were issues that did need to be looked at, diversity is another one of those that there's no easy answers, but it's a target that we have to work on, and the ALAC is supporting that 100%. Questions on that.

Nothing. Next step. Next slide, please. The next step is we have already – the slide is slightly out of date – we have already sent the substance of this information to the CCWG, identifying what we believe are at least some of the crucial issues. Our final comment to the CCWG must be submitted next Monday, that's four days from now. So if there are any further inputs that have to come out of this, they really need to be come out very quickly.

As Olivier said, it's really a bit late to start saying new things, but this is the timeline we're on. The intent at this point is to have this drafted by the weekend and to have the ALAC have a very short formal vote that will probably be completed on Monday. We may try to get it out for Sunday, but it's going to be a very short period of time.

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Next slide. The overall timeline we're on is almost impossibly short, and there's been significant wording of people who are saying it is too short. There was an announcement or some action yesterday from the US government, which some people think extends the timeline, other people say it doesn't change anything at all. I haven't looked at this morning's e-mail, so I'm not sure what the opinion is today.

At this point, the comments, particularly from the chartering organizations, are due in by next month. We are giving staff all of three days to summarize them. The working group will then have one week between Christmas and New Year's to analyze them. There will be a one-week period where changes will be made in the report, a final report will be issued, and then we go to a two-week period to the chartering organizations to ratify the report and the proposal and send it on to the NTIA or not.

So our aim at this point is to fix as the problems as we see so we can ratify. Exactly what action we will take if some of these problems are not addressed, the ALAC will have to decide, but we're not going to presume at this point what our decision is. It's conceivable that if some of these major issues are not resolved, there will not be ratification at that point.

Let's go on to slide 29 for a moment. The Board has recently submitted a very large document, 27 pages, I believe, of comments. Many of them are in line with what we're seeing. There may well be a few that are not in line, and my plan is I will try to write a statement, a personal statement. The ALAC may well choose to support it or not, but there's

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no time for the ALAC to develop a formal statement on this. So I'm going to simply try to put in some writing and I'll be passing it by the IANA Issues Group. I'm going to be try doing that by the end of tomorrow.

Because they have raised some interesting issues, some of them we had not caught ourselves, and they may be things that we want to reiterate and support. There may be things we want to object to, and there are one or two things that I believe they got wrong and we need to identify, but there's no time to formally do it as an ALAC endeavor, so I will do something personally. I encourage anyone else to work with me if they have an interest on it and we'll try to get something out.

Previously slide, though. The issues that were identified in red were what we at this point considered redline issues. These are things, which there's a high probability that if not fixed, the ALAC would refuse to ratify the report or a section of the report on. There are also a number of things that we've identified in yellow. Some of them were soft issues and some of them were questions to the community.

We have a total of six questions to the community that we'd like to take a poll on right now. The first one is do we have the wording? Should the questions for the poll be – that's not worded properly. Okay. I'll try to reword it on the fly. The question is there has been a suggestion among some people that we use the ALAC statement not only to identify the really critical issues, but identify other issues that a subset of the community believe are important.

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Examples are changing the requirement to recall the whole Board to a unanimous decision, removing altogether the ability to recall the Board, because we believe it is a dangerous position. So the IANA Issues Group made a recommendation several weeks ago that at this stage, we are past the point of negotiating, we are past the point of trying to change the CCWG on things that we think they have gotten wrong, unless they are so crucial that we will refuse to ratify because of them, so that we should only identify in this public comment the things that are really critical that could cause us to not ratify.

So the question is do you believe we should restrict this report to the highly critical issues and not include dissenting opinions? So answer yes if you believe we should restrict it, answer no if you believe dissenting opinions should be included.

And if I can be promoted to a host so I can see the results as they're coming in. Do we have a count of how many non-staff, non-interpreter people we have on this call?

ARIEL LIANG:

We have about non-staff, non-interpreter in the call.

ALAN GREENBERG:

Okay. So we'll keep the poll open for a little bit of time, trying to get more input. We only have seven right now. So to reiterate, should the poll be – not questions for the poll. Should the report, the comment we're submitting to the public comment, be restricted to critical issues?

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This is not a question on the poll, it's a question of what should the proposal, what goes into ICANN say. So the current wording that where it says Q1 is wrong right now.

ARIEL LIANG: I just have heard a collective wording on the discussion notes to the last of the chat.

ALAN GREENBERG: I understand, but people are looking at the pod with the answer, and where it says Q1, it is wrong there, so I'm telling people. The poll we're asking is, should the public comment be restricted to the critical redline issues that may stop the ALAC from ratifying? That is the question. We have only eight people answering out of 13.

GISELLA GRUBER: Alan.

ALAN GREENBERG: Yes, go ahead.

GISELLA GRUBER: Just an update that the last count, there's 11 non-staffers on the call and Cheryl also mentioned that if anyone voted in the previous poll, please not to vote again.

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ALAN GREENBERG:

Okay. We do have some repeat people, so if you voted last night, or last night my time, about 12 hours ago, don't vote again. All right. And we have the answer of three and three at this point, not particular decisive. Okay. Next question. There has been some concern that registries are yield too much power, and particularly, as noted earlier, there is a push by some parts of the community to lower the weighting of ACs in this proposal. The current proposal says ACs and SOs will have equal weight. There are people who are currently very actively pushing to lower the role of the advisory committees.

The current draft says we are supporting the current proposal, we are not talking about the minority opinion. The question is, should we comment on the minority opinion that has been raised and will likely be published with the proposal that says we should reduce the impact of advisory committees?

So if you vote yes, then we will make a proactive statement saying if the weighting changes, the ALAC will not ratify. If you say no, we will be silent on the issue. Essentially, this is a warning that if the change is made, the ALAC will no longer support it. Three people have answered so far.

So a yes answer says we make a statement saying the current balance must be maintained. No says we are silent on it altogether. Avri says question two seems to be different. I don't know what happened in the order of the questions.

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Okay. Let's restart this since we have a discontinuity between question two than I'm seeing and question two that has been raised. I think I must have [inaudible] the one that got it wrong. Okay. Staff, can we erase all the numbers? We're starting this poll over again. The last minute and a half has not happened.

All right. Question number two, thank you for the people who have pointed it out. Question number two is an issue of consumer trust. You will recall that currently the reference to consumer trust in the AOC is not included in the bylaws. The question is do we identify this issue as something critical to the ALAC? Yes, we identify it as critical. No, we're willing to accept it.

My apologies for the misunderstanding. Currently, we have five people [inaudible].

ARIEL LIANG: This is Ariel Liang.

ALAN GREENBERG: Yes, Ariel.

ARIEL LIANG: Since the poll, we can't add a question, but I have captured the correct wording in the note chat.

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ALAN GREENBERG: Yeah. The wording in the poll part is fine. Do we push consumer trust issues as an absolute requirement?

OLIVIER CREPIN-LEBLOND: Hello?

ALAN GREENBERG: Yes.

OLIVIER CREPIN-LEBLOND: You can hear me. Alan, by critical, a critical requirement or something critical to the ALAC, you mean is it a redline issue? I think we need [inaudible].

ALAN GREENBERG: That's right. The question is, are we making a redline issue?

OLIVIER CREPIN-LEBLOND: [inaudible] a redline issue.

ALAN GREENBERG: Yeah.

OLIVIER CREPIN-LEBLOND: As in if we don't get that, do we not ratify?

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ALAN GREENBERG:

That's correct. Or potentially not ratify. We have a small vote of, at this point, four to two saying it is a critical issue. I will review what the outcomes were at the end of this from last night. All right. Let us close this poll. Poll number three is the one that I thought was number two. So my apologies.

There is a concern that registries are at too much of a sway and if the dissenting view is honored and the ACs have a lower weighting than the SOs, then that would continue and that would be a real problem for ICANN. So essentially, this question says, do we make a statement that we believe it is mandatory? I'm not trying to word it, I'm giving you the idea. If you answer yes, we will make a statement in our comment that the current weighting must be maintained. If you answer no, then you're recommending that we simply be silent.

The current proposal does not say make a change, but there is a dissenting view that will say that. So yes we should proactively make a comment. No says we are silent. And we have the same number of people answering as before, so the answer here is seven to zero that we should make a statement.

Next poll. Sorry, I'm trying to understand what I have here. The next poll is do we believe that this proposal overall meets the requirements for transition? That is saying there's nothing important that we should really have to be put into Work Stream 2, we've already identified the human rights as a question, so let's ignore that one. And basically, do

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we believe that we're going forward properly? This is a harder question to answer for people who have not followed the process and what requirements of transition are.

All right, and we have an answer of six and zero that we are on the right track. Next question. Should we make a statement under recommendation 12 emphasizing the importance of AC/SO accountability?

So a yes answer says we should make a statement reemphasizing AC/SO accountability. It's already there, but saying we think it's really important. And we have six votes, which is about as many as we're getting, and we have four saying we should make a statement, one saying no, and one abstain. All right. And now we have a sixth poll we did not hold last night, and this is on human rights. There are two options.

Option one is we essentially take the wording that is in the slide, that we accept that there is a statement, preliminary statement on human rights in the bylaws, but we have the concern about the one-year time limit. That's a yes. No is there should be no statement in the current bylaws regarding human rights, and it should all be deferred to Work Stream 2.

So yes, again, I'll repeat, says what is in the human rights in the proposal should stay there. One moment, Tijani. Can we go back to the appropriate slide on human rights? Go forward. That's the one. So what you see there is the current bylaw, and our concern is with the one-year

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timeline that is unrealistic. If you agree that that's what we should put in our proposal, and answer yes. If you are answering no and you are saying there should be no human rights at all in the bylaws, then it should be all be deferred to Work Stream 2.

Tijani, you had something to say?

TIJANI BEN JEMAA: No. It's okay now. It's okay.

ALAN GREENBERG: Okay. And we have the highest vote we've had for anything here. Good. Another moment. This is one we did not ask last night, so everybody can participate. And I'll call it closed. We have eight to preserve what we have today, and two saying there should be nothing at this point.

All right. In most cases, the responses today are in line with what came out last night. The only exception is we have a reversal from last night on the issue of consumer trust. And I realize that that may well be because last night, there was a discussion that we excluded, not deliberately, we just forgot, at least I forgot it, and it was pointed out that on the issue of consumer trust, there is an AOC review on consumer trust that is starting imminently.

And that AOC review will have the ability, should it decide, that it can make a recommendation that the bylaws be changed to emphasize consumer trust, and therefore, this is not the only kick at the can, so to speak, this is not the only opportunity we will have to insert those

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words, but it could well be done as a result of the AOC review. And I suspect that argument swayed the vote somewhat because last night, there was a much stronger vote to say, “Yes, we should mention it, but it’s not a redline issue, it’s not a die in the ditch issue.”

Everything else, the votes today were pretty much in line with what we saw yesterday, and we’ve gotten some very direct, some clear direction from this group as we did from yesterday as how to proceed.

All right. We are a little bit over the time right now, but I will quickly and some of us have another meeting, which we’re now late for. So we can’t continue very long. Is there anyone who wants to make any final statements? And if you do, please make them very brief. Tijani has his hand up. I don’t know if it’s an old hand or not.

In that case, with the artistic ending slide, we’ll end this meeting. Thank you all very much. I hope it’s been informative. If there are any questions that people have, please address them at me directly, or if other people who have been active in this call. If you send an e-mail to me that you want to answer to. Make it really clear in the subject that that’s the case.

My e-mail box has been receiving several hundred messages a day, and I don’t have the ability to read them all right now in real time. So if you’re asking me a question that you want an answer to, make it really clear. Thank you.

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I thank you all for your attendance, I thank the interpreters for bearing with us for the two hours and a few extra minutes, and I hope the rest of you all have a good day, if your day hasn't ended already. Bye-bye.

GISELLA GRUBER:

Thank you, everyone. The meeting has been adjourned and the audio will now be disconnected. Thank you for joining today's call and have a good morning, good afternoon, and good evening to you all.

[END OF TRANSCRIPTION]