
CLAUDIA RUIZ:

Good morning, good afternoon, and good evening to everyone. Welcome to the ALS Mobilization Working Party on Monday, the 8th of June 2020 at 1800 UTC.

On the call today, we have Alan Greenberg, Cheryl Langdon-Orr, Barrack Otieno, Maureen Hilyard, Remmy Nweke, Pastor Peters, Yrjo Lansipuro, Jaqueline Morris, David Mackey, David Mackey, Amrita Choudhury, Sarah Kiden, Roberto Gaetano, Ali AlMeshal, Bastiaan Gosling, Justine Chew, Judith Hellerstein, and Nadira Al Araj.

We have received apologies from Natalia Filina, Eduardo Diaz, and Alberto Soto.

Herb Waye is also joining us.

From staff, we have Evin Erdogan; and myself, Claudia Ruiz, on call management.

And before we begin, I would like to remind everyone to please state your names before speaking for the transcription purposes and to please keep your microphones muted when not speaking to prevent any background noise. Heidi just joined the call as well. Welcome, Heidi.

Thank you very much, and with this, I turn the call over to you, Alan.

ALAN GREENBERG:

Thank you very much, and welcome all too this call. Looks like we have good participation of this meeting. If we could go to ... I don't think we

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need to accept the agenda since there's only one item for it and it's the only reason we're here.

If we could go to the accreditation process version 2 document at the very beginning of it. Thank you. No, at the very beginning. That's correct.

Please note the message in red. When you're making any comments, make them as comments. Let me show you how to. I'm going to put the phone on speaker phone and demonstrate for those who may not be familiar.

I want to make a comment here. I just highlight something, click on this little box, and say accepted. If changes are made within the text, it becomes exceedingly confusing to know who made them and who is commenting on them. It also becomes difficult to edit it afterwards because sometimes Google Docs does funny things when you delete something that's been added into the text.

All right. We had previously accepted as final a number of these recommendations. However, several of them have now had comments made or text inserted and we'll quickly go over those. The first one is at the beginning of page two, if we could scroll there. Thank you.

It was a comment that was added but added in line text by Peters saying, "I do not remember when this was decided to be added to the ALS application. Reason being there is no one currently involved with ICANN activities that is stateless. The proviso runs contrary to ICANN rules and regulations with regard to RALOs. Until those rules are changed, this proviso is unnecessary."

Number one, no decision has been made to add anything to the ALSes. There's a note to review it later. It says if we will be accepting global ALSes. And that's still something that has not been formally decided. It will be decided by the ALAC. It was unanimously decided by this group for those who are participating and we're currently seeking legal opinion as to exactly how we would modify the bylaws or other things to accommodate that.

Peters, your objection to this is noted, but one person does not break consensus according to our rules.

PASTOR PETERS: Can I [inaudible] one minute?

ALAN GREENBERG: Yes, please.

PASTOR PETERS: I mean, you just mentioned that you're looking at the [inaudible] applications. But as it is, for now, why [inaudible] is? And when that bridge is crossed, they will come back [inaudible] because for us to get to proposed work does not exist, [inaudible] position. Because number one, as it is today, everyone involved with ICANN, they all belong to one constituency or the other. So we work with what is currently applicable, and then if people believe there should be a global whatever—so they can see that [legal opinion], and then later on present it appropriately. So [inaudible] ICANN bylaws are not [inaudible] process.

ALAN GREENBERG: Thank you. Staff, could we please use the timer that I requested? I don't see it on the screen right now. Peters, what we're doing here is revising the rules or making recommendation to the ALAC to revise the rules. Any rules that are revised are going to have to be approved by the ICANN Board as well. So our job here is to write projected rules. The rules don't come into place until all the various groups have approved them. But that is our job here is to look at potentially changing the rules. So, that's why we're here.

The concept of someone being stateless is just not relevant to this discussion. We're talking about an ALS, and currently an ALS must reside in a country that is within one of the regions.

The issue we're looking at here is ALSes which do not simply belong in a single region. So it's not that the people are stateless. It's that the ALS does not necessarily fit the particular rules, and whether we change it or not will depend on a whole bunch of groups approving it. That hasn't been decided yet. But it was the consensus of this group that we pursue it and look at whether it is possible.

PASTOR PETERS: Do we have a definition for this ALS [inaudible]?

ALAN GREENBERG: Yes. It is well described in the first part of the work that this group did on ALS expectations and criteria. There's a link to the document on the Wiki page for the ALS Mobilization Working Party.

PASTOR PETERS: Let's progress [inaudible]. This is not a very big issue, but I can [inaudible] much later.

ALAN GREENBERG: Thank you very much. I made a minor change saying this due diligence may include. "Could" was not a very good language at that point but the intent is the same.

There is a comment again inserted in line by Peters. Please do not do that again. These comments going forward ...

This one is in regard to GSE being consulted. GSE does not have a veto, so whether GSE knows about you or not is not relevant. It is simply an opportunity to gather information about the ALS if GSE staff happen to have some awareness of the ALS or the people involved. It's simply an information source that we have found over the decades is a useful one to use. So, it doesn't give them a veto. It doesn't say what happens if they don't know about you. It just is another information source.

PASTOR PETERS: No problem.

ALAN GREENBERG: Thank you.

CHERYL LANGDON-ORR: You have Sarah's hand up.

ALAN GREENBERG: I'm sorry. Sarah, please go ahead.

SARAH KIDEN: Hi, everyone. I would like to recommend that we delete the comments we've already dealt with, like the ones you have already talked about, so that it is easy for us to follow through the document, if it's possible. Thank you.

ALAN GREENBERG: Yes. I will be deleting them as we go forward. If you'd like to do it in real-time, we can try that. It gets a little bit messy. And see that's the reason I don't want to do it in real-time, because Google Docs does all sorts of funny things. They will be changed going forward. I'm going to reverse these changes right now, so we haven't lost anything inadvertently. I find occasionally when you delete things like this with Google Docs, it deletes the next sentence as well. I'm not quite sure why but it's potentially dangerous.

Number three again was final but there's a comment by Peters. "The position supports my opposing argument to note for working party under item one with regards to global ALSes."

PASTOR PETERS: Are you [inaudible]?

ALAN GREENBERG:

Obviously, for the global ALSes that we are talking about, they will be assigned to a region. So they will still have a region and that doesn't alter anything here. And that's presuming that goes ahead which is not obvious at this point.

Number four is final review and there's a comment here. In both four and five we have a timing of 30 days or one month, so I believe they're not sequential but are talking about the same time period. I'll make an adjustment unless anyone has a strong objection to that.

Justine in the chat said just click on the cross to delete. Trust me, in some of these cases, that doesn't do what you want it to do.

All right. Any further questions on number four? I see no hands up. Sorry, I'm confusing whoever is doing the scrolling. Let's go to number five now.

There was a comment added on 5c with reasons as to why they are not in a position to make recommendations. That's already included in the next paragraph. If the RALO does not include such a rationale, the RALO may request it and the RALO may provide a rationale. All right. I see no hands. Let's go on.

There's a question to the working party. That was how much time should be allowed? And if a rationale is requested should be allowed if a single member requests it, if a majority, specific number. There was a comment added in line. The decision of all ICANN activities has been

based on simple majority. The fact that the ALAC disagrees with the rest should constitute a delay in the process.

Once due diligence has been completed without any query and the RALO has made a recommendation, it's essentially saying the ALAC shouldn't have to take a vote.

A couple of comments. First of all, due diligence is a term that refers to what staff does before this goes to the RALO. So let's not confuse the terms. The RALO then has an opportunity to comment and make recommendations to the ALAC, but it is the ALAC which is the only official organ of ICANN within this overall entity that makes the decision that's part of the ICANN bylaws and I believe there was a strong decision last week not to reopen that.

Comments of a couple of people are noted, that they believe the ALAC should not need to make a decision or should not be allowed to alter the recommendation of the RALO if there is one, but ALAC members have an obligation to vote as their conscious and perhaps as their RALO would recommend, depending on how they got there.

All ALAC members have an obligation to do what is best for At-Large, not just their own region, and they have to be given that opportunity. Nadira, please go ahead.

NADIRA AL ARAJ:

Thank you, Olivier. My question might not be related to the [inaudible] but it has connected with a whole setting of RALOs and ALAC. From my understanding, each RALOs have their MoU with ALAC. Is this a

connection? Because I'm trying to understand why ALAC is the decision making here. If I'm beyond the track, you don't have to answer to my question. Thank you.

ALAN GREENBERG:

The answer is pretty simple. The MoUs are not with ALAC but with ICANN, which is the legal entity, and those MoUs essentially lay out what the responsibilities of the RALO are. They're essentially to help the ALAC do its business to coordinate activities of the ALSes. You can read the MoUs. There's five different ones but they all basically say the same thing. And they are in agreement with the RALO to support the At-Large environment in their region. The bylaws and the ALAC rules give them some responsibilities that are not questionable. They elect their own leaders, for instance, subject to the overall rules that are in place. But they don't have a decision-making responsibility from an ICANN point of view. They're there as a support organization. Peters, please go ahead.

PASTOR PETERS:

Thank you. I don't know what is the best time for me to address the issue that was kind of kept [inaudible] today while I was driving last week.

ALAN GREENBERG:

We'll address it when we get to that item.

PASTOR PETERS:

Okay because it does have to do with the ALAC [inaudible] on—

ALAN GREENBERG: I understand.

PASTOR PETERS: Okay.

ALAN GREENBERG: All right. Are there any further questions? Sorry, there is one more question on item number five. Sarah suggested last time that AFRALO has, on occasion, wanted to put an application on hold for an indeterminate amount of time to see how the ALS, the applicant, matures or how it develops over time.

Certainly I find it problematic if we put it on hold for a time that ... For reasons the applicant has no control over and it's for an indeterminate amount of time. That makes it very difficult for us to meet our overall objections.

Certainly we could tell the ALS—the applicant—to come back in six months, that we will hold the application in abeyance, that we're not proceeding with it. But I don't know how to do that without the ALAC getting involved.

It seems to be a rather problematic thing and I guess I'd like to understand to what extent this applies in other regions. Does anyone have an innovative way of addressing it? Cheryl, who has a wide history in this, may have some comments on it.

CHERYL LANGDON-ORR: Thanks, Alan. I do have a wide history on it. Very true.

ALAN GREENBERG: I do, but I'm the chair and I'm trying to look for other input.

CHERYL LANGDON-ORR: I know. I understand the rationale, but there needs to be a point in time when the advice—and it is advice—of the regions simply has to be done and the ALAC has to make a decision.

Now, if further time is required by either the applicant or the RALO in that advice, then as you said, Alan, a formal pause where the applicant knows there is a pause and the purpose of the pause, they could indeed object to the pause is a reasonable way forward.

But to sort of somehow pseudo-accredit them and say, "You're on probation, and depending on whether the region you're allocated to likes what you do or not, we will or won't continue it," is fraught with danger as far as I'm concerned and I doubt would get through the rigor of what ICANN legal would want to see happen as well. So, I would not go down that path personally and I would encourage us not to go down there as a group.

The other thing that I think is a real risk, and it's not the intent I'm sure of a region putting a period of apprenticeship or testing onto an At-Large Structure, the almost accredited or recently accredited, is that depending on where that happens, we could find ourselves subject to

concerns on [inaudible]. With the one thing that ALSes can do [inaudible].

ALAN GREENBERG:

Okay, thank you. I don't think Sarah was suggesting we accredit on an interim basis. She was saying put the application on hold before it goes to the ALAC and before any decision is made. I could see doing it for a short period.

CHERYL LANGDON-ORR:

Well, we do have a maximum amount of time, and whoever is on the call, who wants to dust off the old advice from the ombud's office, which quite specifically says how timely and transparent and accountable men are, all of this process must be done, I think that would be a very good thing. It would be excellent reading for everyone involved in [inaudible].

ALAN GREENBERG:

Cheryl, I presume when we finish this, we will involve the ombudsman and if the 12- or 14-year-old ruling has to be changed, I'm sure that we can make sure that gets accomplished.

I can see putting an application on hold for a short amount of time, under a month if there's some reason. Clearly, if the applicant asks to put it on hold, that's not a problem. Our rules as we're writing them will accommodate that. It's us putting it on hold for a longer period of time and one month or a few weeks doesn't seem to address the issue that Sarah was talking about.

I think the only thing we really could do is add a new category of advice from the RALO saying we do not believe the applicant is at a state where we can recommend it. We think it may be soon. We reject it right now but suggest that the applicant reinstate it or it be reinstated at some period of time in the future. That I can see we can write into the rules. I'm a little bit reluctant to do that but I think that meets the needs that we're looking at right now, although it may be sending a bad message to the prospective ALS that we're rejecting them at least at the moment. Cheryl, your hand is up.

CHERYL LANGDON-ORR:

Yes, it is. I understand where you're coming from, and if we go down that pathway, there would need to be an awful lot of finessing and very particular guidelines and guardrails on how that happens because we have to be very fair to the aspirational At-Large Structure as well and there's a whole lot of reasons why things can get missed over [inaudible] people don't have what they believe is sufficient information to make what is only a recommendation—an informed one we trust, and a valuable one we think. Nevertheless, a recommendation. And there could be a forcing of a mismatch so that the ALAC would have to actually vote regardless of having received a RALO who [inaudible] other problems. We just need to be very careful here.

OLIVIER CREPIN-LEBLOND:

Okay. Thank you, Cheryl. My inclination is to say this is probably something we don't want to do, but given that it has been raised, I will write something up that I think is a viable way to go forward, although

personally I would recommend that we not do it. But let me write something up and present it to the group for next week.

Number six. The only issue here is there was a comment by Sarah that she thinks the internal list previously had some non-appropriate people on it, that it wasn't being kept up to date and I'll make sure that gets checked.

Item number seven. The ALAC and its members will have five business days—typically one week. Again, we're going to have to refine all the timelines so they talk in the same terms—in which to ask for additional information. If there are further questions, they will go to the RALO leadership and potentially to staff for forwarding to the applicant. The applicant will be placed on hold for pending replies, but effort should be made to limit this to no more than five consecutive days.

I'm not sure we really need this last sentence, but we'll leave it in for the moment. Any comments on item number seven?

And I realize there's something we missed in a previous one, so once we finish with seven, we'll go back. No comments on seven.

Then we're going to back to the previous one and it is a comment from Yrjo that indeed is talking exactly about what we have been talking about using different words. Yrjo's comment is, "According to the new EURALO bylaws"—and I would really like to understand from staff how these bylaws were approved without the ALAC understanding what they're saying—"If EURALO decides to recommend certification, it also provides the applicant with provisional membership in EURALO. When

the ALS status is certified by the ALAC, the applicant will be granted full membership in EURALO.”

That of course begs the question of what happens if the ALAC refuses. So, I'd like to ... is Yrjo on the call? Yes, he is.

YRJO LANSIPURO: Yes, I am.

ALAN GREENBERG: First of all, I'd like to ask Yrjo what happens if the ALAC refuses? What do you do then?

YRJO LANSIPURO: Well, thank you. The bylaws, the text, is silent on that point. I think that this will be made more precise in the rules of procedure which will be worked on. The work hasn't started yet, but there will be new ROP and this is one of the details that will be sorted out.

If I can just give my personal interpretation or opinion, I think it's quite natural that since this provisional membership is dependent on the pending approval by ALAC, if the ALAC doesn't approve, it seems logical to me that the provisional membership in EURALO would also end. Thank you.

ALAN GREENBERG: May I ask a question? Given that the timeframe from the recommendation going to the ALAC making a decision is typically under

two weeks, what is the need to do it? That was aimed at someone from EURALO. Anybody? No one else wants to answer, so I guess it's you.

YRJO LANSIPURO:

Yeah. Well, I think that while these EURALO bylaws were worked on and approved by EURALO, we didn't know how long the procedure will be to this approval by ALAC and so on and so forth.

So now when the document we are working on will be ready, of course that question may be asked. But as the bylaws are now, this is what it says. Thank you.

ALAN GREENBERG:

Again, I'm somewhat curious. At the time these bylaws went into place, we had 12 years of history of approving ALSes. So I would have thought we had plenty of information about how long it takes. Anyone else want to comment? I see Cheryl has her hand up. Please, go ahead, Cheryl.

CHERYL LANGDON-ORR:

Thank you, Alan. [inaudible]. And Justine asks a very good question as well in terms of what privileges does such provisional membership grant? And let me explain what happens from the APRALO perspective, and it may be that we have terminology being used, so this might be almost a lost in translation between [inaudible] action in what's going on with the EURALO wording.

For example, an At-Large Structure and indeed an individual member who seeks to join the Asia-Pacific region gets all the privileges with the

exception of voting that any other person who is an individual member accredited or an accredited ALS gets. And that's not a whole lot. They get welcomed to our meetings and they get access to our list. And I'm not sure what other privileges beyond that, beyond voting, that an At-Large Structure could possibly get.

They also, we do note that it does not include anything such as any travel support that might be being given and all that sort of stuff, but I think we can work this out without it being a status that is a membership status, rather that [inaudible] open and welcoming. There is no inability for them to contribute to a conversation and join the discourse, and in fact get themselves up to speed and ready to go when they do have all the privileges, which would be the occasional vote. Thank you.

ALAN GREENBERG:

Thank you, Cheryl. I see David has his hand up. Just one comment. I have no problem with the concept. I have a problem with the title that is calling it provisional membership which implies something, which especially if it is not formally approved by ALAC ends up being somewhat problematic.

David, if we can go to you. And Herb, if you're on the call, do you see any issues here by calling it something like provisional membership, given what you've heard so far? But David first, please go ahead.

DAVID MACKEY:

I've got a question specifically addressing what you've just mentioned, Alan, which is the title that we use. It sounds like rather than a provisional member, this is the ability to accept observers into our process and our documentation. As an observer, I think that's something that we would welcome and help people understand what we do.

And if, as an observer, someone or some group feels that they want to participate, then they can make a formal application to join. And rather than getting into a debate about what membership means or doesn't mean, I really think it's important to have a clear distinction on what a member is and what a non-member is. And in this particular case, maybe an observer. Thank you. That's what I wanted to say.

ALAN GREENBERG:

Thank you. Just to be clear, with the exception of some RALOs which have internal lists, which are just I believe the official representatives of the ALSes—and I think two of the RALOs have such a thing. Other than that, all of our lists are open and you do not have to put an application in or anything else to get on all of our lists and join any of our meetings. So currently that is the case. Observers are welcome everywhere and can actually participate, not just observe.

So the real question is, is calling it provisional membership problematic? And Herb I see has his hand up. Please, go ahead.

HERB WAYE

Yeah. Hi, Alan. Hello, everybody. Herb Waye, for the record, the ombudsman. I don't think the terminology is as near as important as the concept, and it seems pretty clear that the concept here you're looking for is that somebody would be permitted to, in waiting for their approval of their ALS, that they are granted some form of participation into the process. So, whether they are [accorded] boarding rights or whatever, probably not. But ability to observe. Alan, your point is bang on, because I am just an observer in this call. I didn't have to ask any special permission to do that.

So, whether you call them provisional, probationary, pending is much less important I think than the concept of it's temporary, it's until they receive approval. And if they don't receive approval for their application, then that status is revoked. So, I wouldn't stick so much on the terminology, on the wording, the actual words, as look at the concept.

And if everybody kind of agrees that provisional means that it's temporary until you are either approved or disapproved by ALAC, then that stands and that's fair. I don't know where there would be ... You folks could work on that, but I don't know whether there would be any confusion around that concept. It's very clear to me and it should be clear to anybody else that you apply, you obtain [inaudible] for a limited period of time until you are approved, you are a temporary ALS or whatever you want to call it.

ALAN GREENBERG:

Okay.

HERB WAYE: Think of the idea. Go with the idea first and then the words should come afterwards. I think you have the idea nailed down.

ALAN GREENBERG: Okay. I think we can document this and documenting it to make clear to the prospective applicant is really the critical part. Jacqueline, your hand was up before. Why don't we go to you? Then back to you, Yrjo, for the last comments.

JACQUELINE MORRIS: Thanks. I just would like, because we have seen in LACRALO that the Latin legalities and the way they say things and what they believe and what they think things mean as opposed to what we in the Caribbean and our British [inaudible], we have had several issues with that before and I think we should run that by them just to make sure that the concept of provisional membership doesn't mean something else because there are a lot of lawyers in the ALSes in Latin America, I wouldn't want At-Large to do something that causes trouble in our region.

So, I'm not the one to talk to about that, but there are many lawyers—Humberto, Alberto Soto. So maybe we can run it past one of them just to make sure. Thank you.

ALAN GREENBERG: Thank you. And some of those lawyers are on the ALAC who will be seeing all of this. What I will do is document it and note that this classification, the status, might be known under various different terms within a RALO but it doesn't alter the outcomes or the implication of it. We'll make sure it's well documented and hopefully that will address the issue. Yrjo, please go ahead.

YRJO LANSIPURO: Yes. Thank you. I thank everybody who participated in this discussion. As I said, we are going to define the concept more clearly in the rules of procedure and I think that—personally, I think that observer is pretty much the content of this term. So, thank you.

ALAN GREENBERG: Yeah. I would hesitate using the term observer, because in many contexts, that has a very clear connotation that you can watch but you may not speak. And I don't think that is the intent, from what you have said or from what Cheryl said in regard to APRALO. So, let me give a hand at trying to formulate some words and we'll have at it next week.

Okay, where are we? I think we had finished seven and we're onto number eight now, so if we can scroll to number eight. Number eight is a relatively long one, so we can just start at the top. Who is trying to speak?

REMMY NWEKE: It's me, Remmy.

ALAN GREENBERG: Okay, please go ahead.

REMMY NWEKE: Thank you for allowing me to speak. I've been trying to call your attention for a while. The first thing is that, many of times from my standpoint, the [regional tag] on other memberships or [inaudible] actually goes down to [inaudible] maybe a service provider [inaudible], so that if you went off any bridge within that provision, it could be withdrawn. That's why usually it's called provisional.

I also want to support the proposition by [Olivier], but it would feel more better if you will [inaudible] on the observer status, of those who lack [inaudible] and move on with it. But [inaudible] end of this, [inaudible] into trying to [inaudible] in flowing this [inaudible] ALS [inaudible]. Thank you very much.

ALAN GREENBERG: Thank you. Noted. And David says we should call it observer with speaking privileges. Please, let me try to draft something, and if we don't like it, you can comment at that point.

We're on item number eight now. At the end of the ALAC review, either with or without additional questions, the ALAC will conduct a vote to decide whether to accredit or not. And there's a comment inserted in line from Peters saying in casting the vote, we are saying the ALAC could decide to vote against the accreditation of an ALS when it is past due

diligence and fully recommended by the RALO. The answer is, yes, that could happen.

UNIDENTIFIED MALE: Is it possible for one to ask how that could be or why that should be?

ALAN GREENBERG: Presumably, there is some reason and the ALAC might be called upon to explain why that is to the applicant. That would be within their rights to ask, and hopefully there would be an answer. But ultimately it is the decision of the ALAC.

Now, I would suspect that if the ALAC were to overturn a recommendation, it would not be a very clean recommendation from the RALO. There have been cases where RALO recommendations have been very, very fuzzy. And I'm not going to speak to any specific cases in the past. I certainly think it would be a rare occasion, but it is an obligation of the ALAC to make a decision and that is what would have to happen. Go ahead.

UNIDENTIFIED MALE: By the time I speak to the issue that is [inaudible] having to do with the powers of ALAC as [inaudible] address some of my concerns.

ALAN GREENBERG: I'm sorry, I didn't quite understand.

UNIDENTIFIED MALE: [inaudible] allowed to [inaudible] on the issues that have been kept in [inaudible] with regards to ALAC and ALAC powers in terms of [inaudible] relevant sections of the ICANN bylaws.

ALAN GREENBERG: This is currently a responsibility of the ALAC. It is listed as a responsibility. After consulting with and getting the advice of the RALO, the ALAC must make a decision. That's not a verbatim quote from the bylaws, but it's very close.

UNIDENTIFIED MALE: Like I said, when I am giving the floor to speak on what was kept in [inaudible] today, [inaudible].

ALAN GREENBERG: You can certainly raise it again at that point. All right. There's a formulation of the vote wording that is given. I'm not going to read it out. Essentially, it gives a uniform way of voting yes to accredit, no to not accredit, or to abstain. In each of the yes or no, it will include a statement of a RALO recommendation, if there is one. Does anyone have any questions about that recommendation, about the wording of the ALAC vote?

This has been subject to much discussion in the past and we have had a significant number of wordings which did not work. This one I believe would work and would be understandable.

All right. The next part is on secrecy and the question was already answered. I believe I have some wording later on that addresses how the secrecy, the privacy, should be addressed.

Next. Decisions of the RALO. Decisions are made in accordance with the standard ALAC majority decision process per ALAC rules of procedure 1.2.1. That is in the footnote at the bottom and it simply says that we could the number of for votes and the number of against votes, and if the number of for votes is larger, then it wins. That is, abstains do not count in the count. There has been significant debate in the ALAC over the years for whether abstaining votes should count as nos. That is, just count the yeses. Or if we ignore abstaining.

We have made a conscious decision to ignore abstaining. That presumes there still has to be enough votes cast, so we have a significant quorum. That is, at least five members have to cast non-abstaining votes. I cannot see the ALAC revising its method of counting votes at this point.

Peters put a comment in the footnote saying, "What constitutes issues requiring supermajority?" That is specified in the ALAC rules of procedure. There is a small number of decisions that are deemed to require supermajority. If I remember correctly, they include revising the rules of procedure themselves and making decisions on behalf of the ICANN empowered community. That is, with the ALAC as a member of the empowered community and those decisions require supermajority.

I don't think there are any others, but regardless, whatever requires a supermajority is specified in the bylaws, in the rules of procedure as it stands right now.

Peters added the comment, “It’s interesting the only section of the ALAC rules of procedure referenced by the proponents of these changes—” This is not a change, by the way. This is always how decisions of the ALAC are made. “What about section 1.2d VII, VIII, X and section E. Those are not part of the ALAC rules of procedure. Those are numbering and 12.2 happens to be purely coincidental. 12.2 is the section on the advisory committees and 12.2d is the section on the ALAC and those are subsections of the ICANN bylaws that describe RALOs and the relationship to ALSes.

I really don’t know why we would mention them at this point in deciding how to count votes of the ALAC. Peters, if you’d like to comment, please go ahead.

By the way, we did decide last week—and it’s documented in this document now—on David Mackey’s suggestion that if we are not already pointing to the section of the ICANN bylaws under which all of this applies, that we will in the future. Please go ahead.

PASTOR PETERS:

Yes. Thank you. My reference to the sections there are reference to ICANN bylaws. I wasn’t referencing ALAC rules of procedure. My position or concern as to [inaudible], whatever we are doing here as a working party should not negate from the ICANN bylaws.

So, if it goes contrary to the provisions of the ICANN bylaws, it simply cannot stand because this is [inaudible] law. [inaudible] sections. [inaudible] to the issue of by the powers of the RALOs, and [inaudible] apart from this section that [inaudible], I want to [inaudible] comment. I

want this to be carried by the ICANN bylaw as contained in section 12d IX and F and to G.

But if you will, if you [inaudible] fast. I'll read section F. It says provisions to certify or decertify an At-Large Structure shall be made as desired by the ALAC in these rules of procedure. [inaudible] any changes made to the rules of procedure [inaudible] At-Large Structure application shall be subject to the review by the RALO and by the Board, meaning it is not absolute for the ALAC just to decide, but the RALOs still have to have a position on this.

Section G [inaudible] decisions as to whether to accredit or not to accredit or discredit an At-Large Structure shall be subject to review according to the procedures established by the Board. H, [inaudible] the ALAC mustn't give advice.

Now, my argument on [inaudible] the underlined section F [inaudible] the rule of the ALS, that the ALS also has a role to play with review [inaudible] promote the activities. So, the powers of ALAC in section H is not absolute but a possibility, so this is subject to G above. [inaudible].

So, in summary, I was advised that whatever we are doing right now [inaudible] it must fall in line with what the ICANN bylaws. Yes, ALAC [inaudible] but the rules of procedure does not override [inaudible] the ICANN bylaws. That is my position. Thank you.

ALAN GREENBERG:

Okay. Thank you. A number of comments on that. When you made reference to these in regard to why are we mentioning 12.2, that was

part of the Rules of Procedure and that was the [inaudible]. You're free to mention bylaws anytime you want, but it was not clear from that context you were talking about bylaws.

We are here to rewrite the rules associated with ALSes, to recommend to the ALAC. That of course must go along with the current bylaws, unless we are recommending a change to the bylaws. If we recommend a change to the bylaws, which will have to be approved through normal processes, then clearly we can [suggest] new ones, but they're contingent on approval. And at this point, in most cases, we are not altering that.

The section about subject to approval of the Board and the RALOs is the procedures. So, yes, when these procedures go to the ALAC, the ALAC has an obligation to involve the RALOs. We do that through the RALO-appointed members on the ALAC. Should one of those RALOs come back and say, "We have a problem," then the ALAC will have to address that. We don't necessarily need unanimity, but we certainly would have to address it.

Any of these procedures are going to be subject to approval by the Board because that is specifically said.

Now, just to note, ALAC rules of procedure are not subject to approval by the Board. Advisory committees make their own rules and the Board does not have to approve them. They must, of course, be in line with the bylaws, but that's different from the Board actually approving.

That's different from supporting organizations, like the GNSO, where the Board must actually approve their rules of procedure.

PASTOR PETERS: Can I respond to you?

ALAN GREENBERG: Yeah, please, and can we please have the timer with the alarm on it? I don't know why we have to keep on ... Yes, please, go ahead, Peters.

PASTOR PETERS: Okay, thanks. What [if we work] as a working party, as a working group, whatever we [inaudible] to do should be guided by what the general rules of ICANN says, so which is [inaudible]. Yes, ALAC can set up its own rules of procedure just like the RALOs and [inaudible], but the [inaudible] the ICANN bylaws.

So, the reason why I [inaudible] just mentioned that most of the things were [inaudible] ALAC will look into it and follow due process. I know that. [inaudible] approved or not. But it should save us a lot of time if we are guided along as a RALO and everyone of us [inaudible] what the ICANN bylaws says. [inaudible] engage in efforts [inaudible] spent time, hours and all that [inaudible] at the end of the day by virtue of not following this and then all the efforts will be [inaudible]. So that is the reason why I am concerned.

And that also leads me to the issue of the [inaudible] comment that ALAC is the only formal body [inaudible] there's a [portion] down the line where [inaudible] also asks if any entity within ICANN here, a formal entity or [inaudible] bodies within ICANN.

So, what's my interest has to do with [inaudible], whatever will do even at this stage or whatever stage must be carried by the ICANN bylaws.

ALAN GREENBERG:

Thank you, Peters. I can say with some assurance that nothing we are doing is in violation of the bylaws and I can't speak to how many times various members of this working party have read the bylaws. I can assure you I have many times and there are at least a few other people on this call who I know have read the bylaws and almost have them by heart—not quite but close.

So, I think you will find that nothing we are doing is in violation of the bylaws and nothing we are doing is going to be allowed to be in violation of the bylaws. So, it is a concern perhaps, it's not one that is a major problem that we have to address right now. May we proceed? I see no hands.

Where are we? Normally, as other non-personnel ... Sorry. Yeah. Decisions to accredit or refuse to accredit of an ALS shall be subject to review as provided in ICANN bylaws section 4.2 reconsideration. That has always been there. We have never, to my knowledge, ever had an ALS or prospective ALS use that clause, but it is there and it has been there and must be there.

Normally, as with other non-personnel related ALAC votes, the results include how each ALAC member voted. The exception is for personnel related votes. We make that a secret ballot.

For ALS accreditation votes, at the request of any ALAC member the details of how each member votes may be kept confidential. Those details will still be available to staff and the ALAC chair in case a rationale for rejection may need to be formulated. Questions on that?

That is an adopted policy of the ALAC from I think about eight or nine years ago. The origin of it was there was an ALS vote where there was a belief by some ALAC members that if they were seen to be voting against it and documented to be voting against it, there could be political repercussions against them and they believed that we had to be able to do this in secrecy. I can't remember whether I was ALAC chair at the time or it was Olivier's time. I think it was Olivier's. No comments on this? Then we're happy with it.

Staff will notify the applicant. It did say ALAC and Peters pointed out that it should be a staff responsibility and that was changed. Will notify staff the applicant of its accreditation decision, and if applicable, provide information on requesting a review of the decision.

In the case of a decision not to accredit at the sole discretion of the ALAC chair may include a rationale for rejection. Normally, our rejections do not include a rationale. Historically, they have not but they have on occasion.

And then there's a comment noting that a few ALAC members—or a few working party members—believe that the ALAC should not have to vote. Comments on section 8 before we consider it final or close to final? I think there will probably be enough changes that will come back to this group again. I see no hands.

We're on the hour. Does anyone have any final comments before we adjourn the meeting and continue next week? We didn't quite get through going through all of these items.

PASTOR PETERS: [inaudible] finalized it [inaudible] notes on minority and there was a comment I made which wasn't addressed. Are you going to address that message?

ALAN GREENBERG: Which comment was that? Just tell us which comment it was so I know what we're talking about.

PASTOR PETERS: By the ALAC, the formal entity [inaudible]. Is there any [inaudible] within ICANN? [inaudible] formal relationship with ICANN. What is our definition of formality in this regard?

ALAN GREENBERG: Yes, there are entities within the group, such as if, for example, the Registrar Stakeholder Group does not necessarily, or the Intellectual Property Constituency, is an integral part of the GNSO but does not have a relationship itself within ICANN. So it has rights within the GNSO but does not have any rights within ICANN as such. So yes there are many entities that are associated with an AC/SO. Every government that is a member of the GAC, for instance, has a relationship with the GAC

but does not have a relationship with ICANN, as such. The same is true for most of the ccTLDs.

PASTOR PETERS: Now, what about [inaudible] RALOs and an ALS? Do they have a relationship with ICANN formal or informal?

ALAN GREENBERG: The RALOs have a Memorandum of Understanding, which means there is no formal linkage between the two but they will work together. That's the definition that's normally associated with a Memorandum of Understanding. The ALSes are part of At-Large because they are approved by the ALAC. So the relationships are different for the two different groups.

PASTOR PETERS: The ALAC ... The members of ALAC are elected by the RALOs.

CHERYL LANGDON-ORR: No, they're not. Only two-thirds of them are.

ALAN GREENBERG: Two-thirds of them are selected by the RALOs. Don't use the term elected because elected is not necessarily required. They are selected by the RALOs. That may be through an election or through another process. That's where two-thirds come from.

CHERYL LANGDON-ORR: And one-third are appointed by the Nominating Committee.

PASTOR PETERS: Two-thirds is a majority. But then, beyond that, we still haven't had much discussion [inaudible] position on this as to whether the leadership of the RALOs or the ALS are formal or informal or whether it is true to state that ALAC is the only body that has a formal relationship with ICANN as opposed to bodies—

CHERYL LANGDON-ORR: Yes, it is true.

ALAN GREENBERG: It is the only formal entity—

CHERYL LANGDON-ORR: As much as the RALOs only have an MoU. Sorry, Alan.

ALAN GREENBERG: They have a relationship but they're not part of the group. That's different. For instance, AFRALO has a relationship with AFNIC. AFRALO is not part of AFNIC. AFNIC is not part of AFRALO but there's a Memorandum of Understanding to say they have a relationship between the two. They're independent organizations, though.

PASTOR PETERS: Yeah. I think I would request a position of the ombudsman on this or [inaudible].

CHERYL LANGDON-ORR: This is not our work, though. Pastor Peters, this is not the work of this working group. We hear that you would like to have a total change of the relationships that exist in the current bylaws. Perhaps when—

PASTOR PETERS: No, no. My—

CHERYL LANGDON-ORR: Listen to me, please. Perhaps when after we have an opportunity for a holistic review of the whole of ICANN, your view may be sufficiently supported to make that change.

PASTOR PETERS: [inaudible] Cheryl.

CHERYL LANGDON-ORR: We are dealing with the rules as they exist now.

ALAN GREENBERG: Please, let's let people speak.

CHERYL LANGDON-ORR: Apparently not, Alan.

PASTOR PETERS: I understand. I understand that provision. What provision I was talking about [inaudible]. My comment, concern is [inaudible] that ALAC is the only formal body within ICANN. That was the statement I made and [inaudible]. So, I am saying that I am not going to take your definition of what formal relationship is. I still have my choice or my right to speak for [inaudible]. And that's what I said. But I have the right to speak [inaudible] legal arm of ICANN. It appears to me that the ALS or the AFRALO maintain or enjoy a formal relationship with ICANN or not. And that is what I just said. It [inaudible].

ALAN GREENBERG: Okay. Please. Two things. Number one, the chair decides who can speak and that is the general working rules within ICANN. And we have legal opinions on that. And number two, I did not say the ALAC is the only formal entity that has the relationship with ICANN. I said the majority accepted that ALAC is the formal entity within ICANN that has the responsibility—and that references to approving ALS accreditation. That's all it said there is the ALAC is the group that has to approve ALS accreditations and that's in the ICANN bylaws. There was no statement there that it is the only formal entity that exists.

PASTOR PETERS: Okay. Can I quickly respond?

ALAN GREENBERG:

No. We are six minutes over. We'll give you an opportunity to respond. But the work of this working party is well-defined. We are not rewriting the bylaws here and we're not even interpreting them to the extent that is not necessary to do our work here.

Now, I understand that not everyone is happy with those bylaws. I'm not happy with some of the bylaws. But that's not what we're here to change, unless it's required for the ALS mobilization work that we're doing here.

We'll continue this next week. Thank you. I see we have hands up, Sarah and Peters. We'll have to deal with it next week. We're over time already. Thank you, all.

PASTOR PETERS:

Have a good night.

CLAUDIA RUIZ:

Thank you, all, for joining this call. This meeting is now adjourned. Please enjoy the rest of your day.

[END OF TRANSCRIPTION]