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**ATRT2 SEPT Mtg in DC - DAY 1**  
**Thursday, 19 September 2013**

BRIAN CUTE: Alan?

ALAN GREENBERG: I'm here.

BRIAN CUTE: Did you get my e-mail?

ALAN GREENBERG: I did, and as soon as I get a computer unpacked and sit down, I'll try to start the meeting.

BRIAN CUTE: Okay, Alan, yeah I had bus-stop duty. I'm probably about a half an hour so away. If you would kindly take the chair and get it going, I'll be there soon.

ALAN GREENBERG: I will do my best as soon as I get unpacked and get semi-organized. I'm running a little bit later here.

BRIAN CUTE: No worries. I'll leave it in your good hands, and I'll see you in about half an hour, maybe a few minutes more, but not too much more than that, okay? Thanks.

ALAN GREENBERG: Brian, are you there? Brian has dropped off. He's in a tunnel somewhere. On behalf of our absent chair, I welcome you all. Do we have to start recording or something like that? It's all done? I have no opening remarks, and if your chair arrives on the phone, I'll ask him to

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do them. Are there any changes in the statements of interest? No changes in the statements of interest.

Alice or Larisa, is everyone here who you think is supposed to be here? Who are we missing?

FEMALE PARTICIPANT: We're still missing Stephen Conroy. He is here. I saw him this morning.

ALAN GREENBERG: I've seen him, too.

PARTICIPANT: He went out for coffee.

FEMALE PARTICIPANT: And David is here in the office, but he's not in the room.

ALAN GREENBERG: Conrad?

MALE PARTICIPANT: He went out for coffee, too.

ALAN GREENBERG: He went out for coffee, also, I think.

FEMALE PARTICIPANT: I think that's it.

ALAN GREENBERG: They don't like the coffee we have here. All right, the next item, barring our lack of opening comments, is adopting the preliminary reports. I am again in the situation where I haven't actually read them. Does anyone else feel comfortable with approving it or do we want to defer that until tomorrow? Is anyone awake here? I see no comments that anyone wants to approve them. We'll defer that until tomorrow, and please, everyone try to read them before then. Thank you.

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Update on accountability and transparency benchmark and metrics project. Larisa?

LARISA GURNICK: So Christina Laybourn from One World Trust will be dialing in about ten minutes.

ALAN GREENBERG: All right.

LARISA GURNICK: Because Brian is not on the line either, may I suggest we cover another topic until then?

ALAN GREENBERG: Well I was going to suggest we take a ten minute break and everyone can read their morning e-mail. We also can't do the next one because that's also someone dialing in, and the next item is a coffee break. The next item is SSR, and David is not here. Then we have lunch. Is lunch ready? In the absence, we're making great time here.

PARTICIPANT: Maybe you should give the speech.

ALAN GREENBERG: WHOIS recommendations. I can summarize the WHOIS recommendation. I assume Michael is not on the line with us. No? Is anyone on the line with us?

LARISA GURNICK: Is anyone on?

HEATHER DRYDEN: Morning, everyone.

ALAN GREENBERG: Who's that?

HEATHER DRYDEN: Heather.

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ALAN GREENBERG: Good morning, Heather. I can talk about WHOIS recommendations, but it will take me five minutes to get the document up and such. Do we have a screen here? It will. I have a stiff neck. I can hardly see it, but I will turn around at the right time. We can go back to that and we skipped. We're up to 1015 in SSR recommendations right now.

MALE PARTICIPANT: We're just rolling along, aren't we?

ALAN GREENBERG: Actually, we were past lunch before you came in. We have a speaker coming in ten minutes. Do you have anything worthwhile saying for ten minutes on SSR to chop it off your time?

DAVID CONRAD: No. Not even. At all.

ALAN GREENBERG: Well you're going to have to say something.

DAVID CONRAD: I know.

ALAN GREENBERG: But not yet.

DAVID CONRAD: But not yet. I can be done in thirty seconds.

ALAN GREENBERG: Go for it.

DAVID CONRAD: No, I actually don't really have anything to say of particular note at this point in time regarding the SSR stuff. In fact, even later on, when I have I think an hour and a half to talk about SSR stuff –

ALAN GREENBERG: Excuse me. You're right, an hour and a half. This is your hour and a half.

DAVID CONRAD: Yeah. So let me just say that that's a little more time than I will need. So the current status of the SSR stuff is I've had meetings with Patrick. I have all of the various outstanding issues that had remained during our discussions in Durban and they've now been essentially clarified, at least from the staff perspective. I'm in the process of taking the write-up that I'd done at Durban and converted it into templates, and I'm not done. So that's my story and I'm sticking to it. I yield the remainder of my time to the gentleman from Canada.

BRIAN CUTE: This is Brian, Alan.

ALAN GREENBERG: You're back. Would you like to do your opening remarks? We've already gotten to past lunch at this point.

BRIAN CUTE: Sorry, I dropped off. I'm on route, folks. I apologize. My wife was on business travel, and I had bus-stop duty. I should be there in [Washington] hopefully within a half hour or so. So I apologize for not being there at the opening.

I just caught David's remarks on the Work Stream 2, but let me just frame this from my perspective a couple of important points for what we do today and tomorrow. Number one, the dynamic of this meeting is decidedly different from what we've done in the past. We cannot engage in long discussions about views, or issues, or opinions. We really need to cut to the work now and walk out of this in two days with some clarity around draft recommendations so drafters can finish drafting them.

It's very clear to and, for myself, I am missing a couple of contributions that I was assigned to. That's my fault and I apologize. But it's clear we have a good amount of the work in draft, in terms of templates to work off it, and there are some missing parts. What we need to do is work through what we have, come to some conclusions, and start drafting as of Saturday. Those are the high points in terms of managing time. When I get there and I'm with you today and tomorrow, I'm going to keep very tight time on discussions.

I think the approach for any recommendation or assessment today and tomorrow is if you have a significant issue, problem, or concern with what has been drafted or has been proposed as an assessment of ICANN's implementation of recommendation or a drafting recommendation, please bring that to the table. Be concise with your points, and we will have time as a team to discuss it and put it to bed one way or the other. But I will be watching the clock and keeping 10 minute or 15 minute blocks of discussion, at most.

Otherwise, if you don't have a serious concern – grammar could be better, the point wasn't perfectly made – I'm going to ask you to not bring up those points because the drafters will polish and massage the recommendations and the templates accordingly before we get to mid-October.

That's what I think we need to do for the next couple of days. To David's piece of work, David, I caught the last end of your remarks. I heard you were trying to take the draft that you had put together and break it up

into templates, which is important because I believe the templates will end up being the Appendix A of this report – the templates themselves.

But of course, we're going to need text in the report itself that speaks to our assessment of ICANN's implementation of Work Stream or SSR. Focusing on what you've got, David, finishing up the templates, and the draft that you've had so far, using that to create text in the report. Where do we stand? How much more do you have to do, and when do you think you could get it to the finish line?

ALAN GREENBERG:

Before David answers, Brian, I think one thing that you omitted in what we're looking for is not only problems we have with the recommendations on the table, but omissions. There are a number of things we've talked about but in retrospect don't seem to have made its way into the actual list, so I would like to include those as well as the things that are just wrong with what is on the list. David?

BRIAN CUTE:

Agreed.

DAVID CONRAD:

Since I'm sitting next to Steve, I'll say probably 68.75% complete. More seriously, I'm I guess, I don't know, maybe a third through converting the text I had written before into templates. There's actually some additional research that I need to do within the context of the templates – the summary of other inputs and community inputs, and that sort of stuff. I'm still going through various documents, public comments, and all that sort of stuff. That work is ongoing.

I'm fairly confident that time is not going to be that tight of an issue for me. I do have some questions on, at some point, in how to take the templates and convert that into text that will then go into the report, but I'm not quite at the point where it's worth me raising that, so I'm just going to shut up now.

BRIAN CUTE:

Well, let me ask you a question, David, because the report itself is going to be written by a small number of people – very small. For the report itself, I think it's important that it should have a singular tone and presentation style, so hence, fewer writers – one or two, maybe – drafters.

The templates which have been drafted by a by a number of team members I think are perfectly fine. Having different style and different voice is reflective an effort of a group of volunteers. Checking grammar and small points just to make sure it's clean and correct is something that will happen, but in terms of what you've got in written material, is it in a shape that you could hand over to the report drafters so they could literally do some copying and pasting and draft some narrative around that for you to check and confirm for consistency? Is there enough of a draft there, or is it not in a form where people could start working on it?

ALAN GREENBERG:

It's Alan. Let me get in before David because I'll tell you what I was planning to do for WHOIS. The WHOIS templates are all basically done. They're in tabular form, but they have the right titles.



In light of the fact that, for WHOIS, most of the work is ongoing. There are a number of specific problem areas and a number of areas where there's a level of disappointment. My intent was not to, in the body of the report, go over the 16 recommendations, but to have some overall descriptive text, and then identify particular problem areas. I wanted to say that first because, if that's agreeable to everyone, then it's up to David to say, "Yes, that fits for SSR," or, "No, it doesn't."

DAVID CONRAD:

Yeah, that was actually sort of the question I was alluding to. My assumption here is that the templates are going to be sort of the reference material, and the text within the context of the report is going to be sort of a high level of review that makes reference to the various templates and the appendix.

To answer your question specifically, Brian, there is text. It's incomplete, I guess would be the best way of saying it. But for the context of the report, it might be sufficient. I'm not sure if that's sort of the right way to go because there is maybe some additional information that will be collected in context of the templates, but I guess I'll leave that to you. The stuff that I believe I'd center around a while ago – sort of the report that I had put together for the SSR stuff at our previous meeting – has sort of this high level summary of what will be in the template, so that might be sufficient to actually derive the content from the actual report.

BRIAN CUTE:

I think all the documents that you have in whatever state we can take a look at. Again, the templates themselves provide a basis for drafting text in the report, so that's useful as well. I'm just confirming what I think the structure should be. Appendix A will be the templates which

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provide the deeper detail, and the report itself will be narrative text that speaks to the assessments of the Review Team on implementation or new recommendations. I also think it's important to aim for a shorter – I don't know what that will be, whether 20 pages is unrealistic, or 30 – hopefully not much more than that – pages in terms of the report, with fuller templates in the appendix for people who want to take a deep dive.

With that being said, I just want to make one more remark. It's very clear to me – and I hope it's clear to everybody – that this draft report is just a draft. We have developed the work to this point. Some of the templates still need more [facts], more links to other documents. We need to be very clear in communicating if this is a draft and it's a work in progress. We will have time, from mid-October to really roughly mid-November to finish filling any gaps of data, gaps, facts, or documents [for] the templates, to make sure they are full and robust and reflect the basis of our assessment. We need to be very clear in communicating that this is indeed a work in process. I think that's the approach I see.

Alan, just for me again, recap on Work Stream 3 where you are in terms of draft template, and what you think we can move forward at this point.

ALAN GREENBERG:

Yes, certainly. Thank you, Brian. The templates are almost finished. There were two items – and I'm sure I need to go over them and refine them – but basically, they're all done, with the exception of two items – numbers 11 and 13 – that Michael and I had to discuss. We have

discussed it. I just haven't had the time to go back and write the text yet.

So the templates are close to being done. One of the things we're going to have to decide is do we freeze them at some point – the WHOIS implementation is still ongoing, and we'll note [out] change by October, and again, by November. Are we trying to make this a living document or simply say it was frozen in time at the 30<sup>th</sup> September, so be it? I don't think there's a lot of merit in trying to keep it moving. Sorry, Brian?

BRIAN CUTE:

If we're putting it out for public comment, it's going to freeze at some point. We know what we know at the time. We put it out for public comment. It's still a process that's ongoing until December 31<sup>st</sup>. From a practical standpoint, we can iterate this work beyond in October. The iteration has to stop realistically at the end of November, beginning of December at the latest, so we can have a clean and full report out. So that's my view on that.

Let me ask, have we adopted the agenda and approved the preliminary reports, because we've got about five minutes to the hour, and I know ICANN staff have a couple of back to back presentations they're looking to make to us.

ALAN GREENBERG:

We're supposed to have someone coming online three minutes ago. I don't know what the status of –

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BRIAN CUTE: Okay. [inaudible] the agenda and the preliminary reports and get through those first items.

ALAN GREENBERG: The preliminary reports we deferred until tomorrow, part because some people hadn't read it and part because of the few people who were in the room at the time.

BRIAN CUTE: Okay.

ALAN GREENBERG: Approving the agenda – no, I forgot to do that. Does anyone have a problem with the agenda? I think it's going to change radically as we go along because we've almost already done three hours of work that we had allowed time for. But within the bounds of what we know now or what we knew ten minutes ago, does anyone have a problem with the agenda? No? Then we approve that. Larisa, what's happening with our One World Trust lady?

CHRISTINA LAYBOURN: Hi there. I'm on the line. Just now I didn't want to interrupt in the middle of your previous discussion.

ALAN GREENBERG: Okay, thank you. Before we turn it over, Brian, what's your ETA now?

BRIAN CUTE: I'm in traffic just outside of the bridge. I'm 20 minutes to half an hour. I'm on the line. I'll listen in, and please continue.

ALAN GREENBERG: Okay. In that case, I'm turning it over to Larisa first.

LARISA GURNICK: Thank you. This is Larisa. I wanted to provide an update on the accountability and transparency benchmarks and metrics project. Since the last time we spoke about this, we engaged One World Trust to help

us with this project. Christina Laybourn is online, and she will provide an overview of the project and the plan. They've been engaged just as the beginning of September as we anticipated, so it's still pretty early in the process, but she will talk to you a little more descriptively about the plan to reach out to several organizations, both in terms of standard setters, as well as other similar multi-stakeholder internationally-based organizations that will be used for case studies to collect information.

Also, Christina will be assembling a list of ICANN stakeholders, community leaders, as well as staff to interview as part of her process, and she'll talk about this more fully as well. Christina, let me turn that over to you.

BRIAN CUTE:

Larisa? Sorry, Christina, this is Brian. I'm sorry to interject, and I'm looking very much forward to your presentation, but since we have limited time, if you don't mind, I'd also like to just frame a couple questions that I think are of interest to the Review Team.

CHRISTINA LAYBOURN:

Certainly.

BRIAN CUTE:

If you could, along the way, be sure to hit on the following. Number one, it's understood that ICANN is, in some ways, a unique organization in terms of its role, mission, and structure. That's very clear to the Review Team, but what we're looking for really is what I would call the meat and potatoes approach to metrics. So one question is: is there something different about metrics or benchmarks for accountability and transparency mechanisms, as opposed to other types of metrics for financial results or corporate objectives? Is there something different? If

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so, can you identify that clearly to us so we have an understanding of what's different?

Secondly, while it's obviously important to have other points of reference – other organizations – who have implemented metrics for accountability and transparency as points of reference, is it, in your view, necessary to create ICANN-specific-type metrics as we go forward down this path? Those are two questions that are top of mind for me, if you could speak to them along the way.

CHRISTINA LAYBOURN:

Certainly. I will try to address them among the course of my description, and then, if I don't feel I have, I might come back to them right at the end just to answer them specifically.

First of all, thank you very much for taking the time to hear from me today. Just to clarify, I'm one of the team of three who will be working on this project, along with [inaudible] and [inaudible]. Unfortunately, with a short notice, they were unable to join us. In several cases, I'm speaking on their behalf, so I hope I do that appropriately.

As you're aware, we've been commissioned to develop a draft set of metrics and benchmarks which will help ICANN assess and track their accountability achievements, but will also give a sense of how ICANN is going in comparison to peer organizations around the world.

When we started thinking about this project, I had some extensive discussions with Larisa, and we established some of the criteria that these metrics and benchmarks will need to meet in order to be

successful. They're guiding our process, although I'm sure they may be added to.

One of the most important things was that they will be concise and easy to communicate to a diverse range of ICANN stakeholders. They're also going to be tailored to ICANN's unique structure and objective, and perhaps that's a good point. Onto Brian's question, yes, I do very much think there is a need to tailor these specifically to ICANN's organizational structure, but also the objective that ICANN has in its work.

As I will comment to, there are many global standards that other organizations sign up to. I'm not saying that they're irrelevant to ICANN, but my experience is, for all organizations, having an internal accountability framework and a way of measuring achievement against that framework is essential in being able to establish specific activities, and policies, and processes that need to be developed to move the organization forward.

Another aspect that we're keen to achieve is that the metrics will be measuring practical accountability achievements, not just where the policies or processes are present, but actually how ICANN is [inaudible] think that's possible to measure in other organizations, in terms of benchmarks. But certainly with the metrics, we'll be looking at the practicalities.

We're also working on the presumption that these metrics and benchmarks are something that will be further consulted on, expanded,

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and developed. As I said, initially we're looking at something quite concise and easy to communicate, but the expectation is that, within two or three years or more, they can be expanded and extended in order to get more into the nitty-gritty of what accountability really means for ICANN.

We are at the very, very initial stages of our research into this, I will warn you, and so I'm really able only to speak to what our plans are so far. Our research is full of preliminary –

BRIAN CUTE:

Sorry, this is Brian. I just want ask a question on that point. In terms of the timeline of your work, we have to deliver a report by December 31<sup>st</sup>. We really need to have all the substance into our process by the end of November at the very latest. It's going to be important for this Review Team to comment substantively. If not, make recommendations with respect to metrics. Does your work timeline afford you the opportunity and us the opportunity to have substantive exchanges that can form this report?

CHRISTINA LAYBOURN:

The timeline that I've agreed with Larisa has the final submission of metrics and benchmarks draft submitted I think the week just before Christmas. Prior to that, there are two opportunities, two weeks of process draft, to submit a draft to ICANN and for comments to be received. We had engaged in discussions about this project several months ago, but it has taken some time for the consultancy to be agreed on and to be kicked off. We're really putting all our energy behind driving this forward, but we are on a tight timescale as it is.



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BRIAN CUTE: Okay. Well, thank you very much for the overview. I guess this is for the ICANN staff. It's going to be very critical that the Review Team has substantive inputs and an opportunity to interact substantively with One World Trust to factor in their thinking to this report. As you know, our inputs really have to be in our process by mid-November to the end of November at the latest. The request is whatever needs to be done to make that happen, we are asking that that be done.

CHRISTINA LAYBOURN: Okay. I will certainly discuss this with Larisa, and we can try to work to that timescale. I absolutely agree that having your input will be very valuable. May I continue, possibly, with describing the research?

BRIAN CUTE: Certainly.

CHRISTINA LAYBOURN: Thank you. Our plans are that our research will involve three principal aspects. One is documentary review of ICANN accountability policies and practices, and also looking at external commentary on ICANN's accountability standards. That will be accompanied by interviews, as Larisa said, with ICANN stakeholders, staff, and Board members. We'd very much like to speak to members of the Accountability and Review Team. Perhaps you might be able to nominate one or two representatives who could speak to us, and also members of the ICANN stakeholder community.

Obviously, as we're becoming aware, there are some very divergent opinions about ICANN's accountability and we're keen to establish a good balance there.

The other two aspects then of our background research involve looking out with ICANN to see where international standards and expectations of accountability are for non-profit organizations. This is in order to establish where ICANN fits and what ICANN should be aiming towards in terms of expectations of your peers.

The first part of that involves an analysis of four of what we call standard setting organizations. They're setting standards of accountability for non-profit organizations. One of those, I will freely admit, is the One World Trust's own global accountability framework, which was formed through an extensive process of consultation and has been used to assess over 100 organizations, I think including ICANN back in 2007, and has subsequently been revised in 2011.

We're taking our own accountability framework as a starting point and a framework of analysis, both for ICANN and subsequent external organizations.

We take a stakeholder perspective on accountability, and we define accountability as involving transparency – the sharing of information, but also decisions around non-disclosure of information.

We then look at evaluation – how an organization reflects upon whether it's meeting its accountability commitments or not, and that includes engaging with external stakeholders and consulting with them.

The third element is participation and how stakeholders are engaged in the organization's processes. We include within that internal

participation in the governance of the organization, so that includes Board operations and Board governance mechanisms.

The fourth aspect is of complaints and redress; how internal and external stakeholders can raise positive or negative feedback about an organization's activities [inaudible] been provided on the initiative of the stakeholders themselves, and then how the organization responds to such feedback, and whether there are opportunities for appealing any decisions that the organization makes in response to that feedback.

The fifth aspect is a new addition to One World Trust's framework of accountability, and that involves accountability strategy. What guides the development of accountability policies and processes from the very top of an organization? That is really in response to our experience over many years on our engagement with other organizations and our conclusions that, without strategic direction, it can be very difficult for an organization to successfully push forward accountability.

So those five aspects are going to drive our analysis of ICANN and of other organizations. Moving on, quickly – I'm aware I'm talking an awful lot – the other three standard setters we're going to be looking at are the code of ethics for NGOs, the INGO Accountability Charter, and the HAP Standards in Accountability and Quality Management. These are three internationally respected [inaudible].

ALAN GREENBERG:

Christina, you're breaking up a lot. I don't know if it's something you're doing or an accident of technology.

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CHRISTINA LAYBOURN: Oh, I'm very sorry. Is it any better at the moment?

ALAN GREENBERG: Right now it's perfect.

CHRISTINA LAYBOURN: Okay. I think possibly my microphone is a little loose, so I'll hold it in place. We're looking at the humanitarian accountability partnerships founders and accountability because, obviously ICANN is not a humanitarian organization, but the HAP standard is widely recognized as really pushing the levels of accountability internationally, and their principles are relevant to other non-profit organization, so I've included it because I think it offers an interesting comparison where expectations could be [inaudible]. Those will be the four standard settings [inaudible] some key internationally accepted principles of accountability.

We're then conducting case studios of three other international organizations and looking at how they meet their accountability and transparency challenges. We're doing this in order to identify good practice and learning which will inform how ICANN [inaudible] are developed [inaudible].

ALAN GREENBERG: Christina? We lost a sentence of two there. If you could just back up a little bit and go try again.

CHRISTINA LAYBOURN: [inaudible] in terms of – I'm sorry, have you lost me?

ALAN GREENBERG: We can hear every third word or so. How are you connected in? Is it better, perhaps, if we try dialing in again?

CHRISTINA LAYBOURN: Yes, I'll try calling in again. If you could just give me [inaudible].

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ALAN GREENBERG:

Go ahead.

LARISA GURNICK:

While Christina is dialing in, I just wanted to share some elements of our draft timeline in response to Brian's comments. The summary of key points to emerge from the interviews and the draft of the proposed metrics is scheduled for mid-November. As Christina refined this timeline, I will share it with the Review Team, but we do have a work plan, so while the final report is due at the end or middle of December, before the holidays, there are various touch points at which One World Trust will be providing updates, as well as drafts of their work, which we'll be able to share with the Review Team.

CHRISTINA LAYBOURN:

Hi there. Christina here. I've managed to return the call and I hope the line is better now.

ALAN GREENBERG:

It sounds good at this very moment. Let's continue going then.

CHRISTINA LAYBOURN:

Great. So I was describing how we've gone about selecting the three organizations which are going to be our case studies. Just to clarify something – and I think this was where I broke up the last time – from our initial understanding, I wouldn't say that any of these organizations have implemented accountability and transparency metrics internally themselves at this stage. From our knowledge, it's actually quite an unusual approach. We can perhaps come back and discuss this later, but we will be looking at is how the organizations have met their accountability challenges to their stakeholders in different ways and how that will be able to provide learning for ICANN moving forwards.

We selected the organizations according to whether they have an international perspective, and also a multi-stakeholder structure. We felt this was very important in order to be able to make useful comparisons with ICANN's accountability requirements.

The three organizations also answer to diverse stakeholder groups. They conduct a range of activities with those stakeholder groups, including governments, NGOs, and consumer groups. We've also selected organizations which have an established accountability practice, and we believe this is important. This is not about seeing where ICANN is in terms of other international organizations. It's about finding useful lessons for developing the metrics and benchmarks. So it's important that we're actually talking about organizations who are already doing some good accountability practice.

In the final criteria, it's somewhat obvious. It was where the consultancy team already has some access and familiarity with the organizations, partly because of the reduced timescale we're working with. Also it's reflective of these organizations already having engaged in accountability discussions.

Our three organizations are the World Fair Trade Organization, which is a membership representing fair trade organizations from around the world. They have five regional chapters reflecting the five continental groupings, and they have a particular stated commitment to ensuring that the interests of producers, especially small-scale farmers, are represented in their policies, their governance, and their decision-making.

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We're looking at the Forestry Stewardship Council as well. That's a global, multi-stakeholder membership organization which promotes responsible forest management. They have quite an interesting structure. Just to fill you in, their general assembly of members are divided in to three chambers – environmental, social, and economic – but they're also then subdivided into north and south sub-chambers to try to ensure that there is diversity and all voices are represented and heard, which I think it quite an interesting approach.

And then, finally, we're looking the International Organization for Standardization [ISO], which I'm sure many of you are familiar with. It's a network of national standard setting bodies from 163 countries managed by a general assembly.

These organizations, in various ways, engage with both government civil society and consumer groups. In some cases, representatives of NGOs are actively part of their general assembly. In some cases, they're involved in technical consultations in government, and IGOs are often involved in their consultations. So a combination of their multi-[hit] stakeholder structure but also the different stakeholder groups which they engage with in other respects in terms of forming their policies and developing their standards and certification processes make for some interesting governance challenges, and also solutions to address those.

As I said, that is the initial part of our background research. From there, we will then be going on to develop a draft set of internal metrics, looking at how ICANN meets its accountability challenges in practical

terms, and then also a broader set of benchmarks, which will be able to compare ICANN's achievements with other international organizations.

Our expectation is that these are very much at a draft stage. There will be further extensive consultation and development, I imagine, in the next year or two if they're adopted and taken forwards, because I do think, with something of this nature, it's very important to engage fully with all of ICANN's stakeholder groups in order to ensure that they're really meeting the objective. Are there any questions regarding this that I can answer just now?

ALAN GREENBERG:

There's no one in the room with their hand up. Brian, are you still with us? I guess not. That may mean that some questions come in by e-mail afterwards. We don't know exactly when Brian dropped off, but I don't think there's anybody in the room right now.

CHRISTINA LAYBOURN:

Okay. If I may, I would just like to say that I very much welcome any feedback or any commentary from members of the team if anybody thinks of anything later on.

As I said, we'd be very keen to speak with one or two representatives of ATRT-2, and perhaps if you're able to nominate who those members might be, I'd be keen to get in touch and speak as soon as possible.

ALAN GREENBERG:

Okay. When you say speak, you just mean an hour interview or something like that, or something more substantive?



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CHRISTINA LAYBOURN: No, n.o. We're looking about an hour into discussing current accountability, strengths and challenges, but also what forms these metrics and benchmarks might take.

ALAN GREENBERG: I'm sure we'll find some volunteers.

CHRISTINA LAYBOURN: Thanks very much.

ALAN GREENBERG: Thank you very much, Christina.

CHRISTINA LAYBOURN: Thank you. Good-bye. Have a good day.

ALAN GREENBERG: In theory, we have Mark McFadden joining us in ten minutes. There was a gap in the schedule at this point. Brian, I assume you're still not with us? No. Does anybody have anything we want to do in the interim? Avri?

AVRIA DORIA: I don't know that I have anything I want to do, but I do think that the work that they're doing with the accountability metrics and the whole suggestion that I think we're putting forward for the annual transparency type of report should, in a sense, get joined and that those metrics, as they're pulled and as they're developed on a yearly basis, should be part of what gets fit into it. So I just wanted to basically put that down as sort of one of the linkages that this work shouldn't be sort of a one time, but it should have that notion. And also to put myself on the list as being more than happy to be included in the people I talk to.

ALAN GREENBERG: Okay, thank you, Avri. It strikes me that, if what you said is not the case, what is the alternative? You do an annual report and you have metrics,

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but you don't tell anyone, so I would hope that, even if metrics were bad, you would not do that. If they're good, you certainly would want to.

AVRI DORIA: I just wanted to get it said so that it wasn't just dropped and forgotten. Yes, you're right, I was stating the obvious. Forgive me.

ALAN GREENBERG: We have Denise, and then Steve.

DENISE MICHEL: It's a useful thing to raise and good to clarify, especially for this group. So the intention of the output might take away from One World Trust's efforts and coordination with this team is that ICANN will have both metrics and benchmarks and an annual process that we go through to measure the agreed-upon elements, incorporate those in an annual report, and benchmarking exercise.

ALAN GREENBERG: Steve?

STEVE CROCKER: I apologize for having this thought only now instead of somewhat earlier. I think all of this is fine, and I think the idea of having regular reports against benchmarks is fine. I don't want to undermine that or criticize that at all.

However, any time a framework has been in place with some measures, there's always an inherent question of whether or not what's being measured is really wanted, so turning that observation into a suggestion, I would suggest that we leave room in the reporting for free-form comment from – I haven't finished the thing yet – but some commentary in which there is musings or an opinion as to a sense of

whether or not what's being measured – and we're being very careful about that – how closely aligned that is with issues that we see coming up so that we at least lay the foundation for coming back and revisiting the validity of the measurements from time to time.

ALAN GREENBERG:

When you say, "the report," do you mean our report or their report?

STEVE CROCKER:

I was responding to this annual process. One could raise it with respect to their report or respect to our report, but I was thinking more on a continuing basis, there's a natural tendency for the measurement process to take on a life of its own, and for there to be a bit of divergence, which can increase over time. So I thought it would be helpful to have a place in which it's okay to ask the question or raise issues, even while we're being very careful and assiduous about doing the measurement, to say, "It's not clear," or, "It raises this issue," or whatever, and just have that be part of the unstructured commentary that goes with any such report.

I realize that opens the Pandora's Box of whether it undermines the credibility of the whole process, and I want to find the right balance between not being willing to have any discussion about it versus undermining it completely. But over time, at some point, one has to ask, "Are we measuring the wrong things?" or "Are there things that we don't know how to measure but we think are important?" I want a placeholder for having that included. I see Avri shaking her head yes, which is all I need. Thank you.

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ALAN GREENBERG: You're really addressing the issue of, "The numbers are very good, but..." and an opportunity to make sure that's heard if indeed it's felt.

STEVE CROCKER: Yeah. One could cast it in more positive or more negative light as one chooses, and I really mean this from a very neutral objective point of view.

ALAN GREENBERG: Avri?

AVRI DORIA: Yes, thanks. In fact, since I'm one of the ones who's writing that particular template, I'll add sort of a notion of a sort of a self-reflective view of the metrics being collected.

The other thing that came to my mind while you were talking, and I thought you were going to head in this direction but didn't, so I'm going to throw it in, is another problem one finds with metrics is the thing that was found in education. You start teaching through the metrics. You start performing actions that give you good metrics after a while, but aren't actually achieving the intended goal, so I think, in addition to reviewing, "Are the metrics that we're collecting still as relevant and still as important?" are we indeed getting the results, or are we teaching to the metrics?

STEVE CROCKER: No metric left behind.

ALAN GREENBERG: Hopefully, no transparency left behind. Anything else? Any idea if Mark in on the line yet? I deem this a five minute break until Mark gets here.

DENISE MICHEL: Mark, is that you?

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MARK MCFADDEN: Yeah, it is.

DENISE MICHEL: Hi, Mark. This is Denise Michel. Some members are grabbing coffee. We'll be ready to reconvene in just a couple of minutes if you could just bear with us.

MARK MCFADDEN: No problem.

DENISE MICHEL: Great.

EMILY TAYLOR: Hello, it's Emily.

DENISE MICHEL: Hi, Emily. This is Denise Michel.

EMILY TAYLOR: Hi, how are you?

DENISE MICHEL: I'm well. How are you doing? I hope very well.

EMILY TAYLOR: Thank you.

DENISE MICHEL: Your voice is a little faint, but the ATRT team is just reconvening from a quick coffee break, so we'll be ready to get started in just a couple minutes.

EMILY TAYLOR: Okay, thanks for the info. My colleague, Mark McFadden, will be leading our side of it as usual. I'm just along for the whatever.

DENISE MICHEL: Moral support.

EMILY TAYLOR: Support, yeah.

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ALAN GREENBERG: Brian, are you there? Brian is not there. Then I guess we go ahead, in any case. Does someone want to introduce him, or did we just turn it over to Mark?

LARISA GURNICK: Sure. So we got on the line the team from ICC that's been commissioned by ATRT-2 to conduct the review of the PDP process, and they're here to provide us with an update. They have a presentation that you will be seeing on the screen. At this point, Mark, I will turn it over to you.

ALAN GREENBERG: Thank you.

MARK MCFADDEN: Yeah. Okay. I'm going to take 30 minutes out of your schedule here to get you up to date on this particular element. And then, Larisa, there's nothing in the Adobe Connect Room shared, so I can't see that presentation right now. Looks like that's being fixed.

LARISA GURNICK: Mark, do you see it now?

MARK MCFADDEN: Yes, I do. Thanks. My goal here is to sort of give 15-20 minutes of talking about where we stand, and then have 10 minutes for questions and any comments that you might have. Remind me of what [inaudible] objectives that were in the Terms of Reference that you sent out at the end of July, a full review of documentation of the existing PDP, a quantitative analysis of what's been going in recent PDPs with a view of sort of reporting on a series of metrics that's been a very interesting process, and then an evaluation of the extent to which the PDP satisfies the mission of ICANN in regards to policy development; and finally, a recommendation from us on issues that we think the

ATRT-2 should consider in regarding the PDP and the relationships, perhaps, between actors and stakeholders with the PDP process. So that's what we're after. Larisa, if I could have you go to the next slide – or whoever's in control here. That's great.

Let me tell you what we've been doing, starting really with the first week of August. We've been going through the full [effort] of each PDP in very great detail since the PDP was last revised – or had its last major revision, that is. Essentially what that is is [nine] PDPs [inaudible] and that reflects the current operating procedures that the GNSO has and reflects really how the PDP is currently working.

The review of the [full record] is a review of all of ICANN's archives – so all the mailing lists, all of the comment processes, all of the reports, all of the conversations between working group members. It's quite an extensive trawl through the database and it's actually amazing, in a way, that ICANN has all of that. It's a tribute – and you'll hear me say this later. It's a tribute, really, to the success of the transparency part of the model. But all of that is publically available and you can do research. I have not had to reach out to ICANN staff to ask the question, "Where is the X of Y?" because it's all available. Now, it may be hard to find, but it's all very much available.

We're also doing data collection from participants and stakeholders on a very wide range of topics related to the PDP. A little later I'm going to talk about some challenges related to this that we've had and that we're trying to solve, and we'll try to solve that before we give you a final report.

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We also have two staff people working on investigations of other global and regional policy processes that are built from the stakeholder community. I'm trying to find one that had bottom-up processes built into them so they can be compared – if it's possible – it can be compared to an ICANN PDP.

Finally, we're taking a long look at additional documents – so things like the bylaws, operating procedures, and basically the rules of engagement inside the organization, because what we want to do is compare those rules of engagement to what actually happens when the rubber meets the road, and also compare that to what's intended. Does it actually result in policy that meets the goals of the PDP? Maybe I could have you go to the next slide.

I talked about the ICANN archive. I could actually rave about it if you wanted me to, but I can tell you that what's remarkable – and it speaks to the issue of transparency – is that, for the GNSO PDP, I would say that the information that's publically available represents an enormous portion of what actually resides in the PDP. Anyone who's really interested can find out about it, so if you were interested in Fast Flux, almost everything is published, and you can locate it. So in terms of transparency, the PDP is remarkable.

One of the things that we've done is we've conducted interviews with stakeholders, participants, and other, so it's part of our hope to get metrics associated with the actual participants. Unfortunately, this is the place [inaudible] some difficulties have arisen. One of the things is that we started in August, and in North America and Europe, August is a

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month of vacations and holidays, so it was very, very difficult in the first three to four weeks to get a hold of people to participate in the interviews.

What we did was we sort of tried to mitigate that problem by continuing to do outreach. People who didn't respond to the initial request for an interview got a second one. We prepared an online version of the survey so that if they didn't feel comfortable talking to us, they could actually complete an online version as well.

So we believe that it's possible here that there's going to be some significant data that comes out of the interview. The interviews are standardized. By that, I mean interviewee is given the same interview. What we're really doing right now is finishing up the interview process, collecting the data, and next week finishing up the analysis of it.

We're also looking at other information sources, as you can guess, and I won't spend any time on that, although one of the things that could be very interesting when I talk to you in the next ten minutes is the participation records from the GNSO are very intriguing. So if I could have Larisa go to the next slid.

Let me tell you what we found – some of the things we found. This was not an exhaustive list, but these were trends that I could speak to and feel very confident about in terms of talking to you.

One of the things that comes up in every interview that Emily and I have done is the GAC's relationship to the PDP. There is much discontent and

much concern that the GAC's input does not get into the PDP process early enough or effective enough. Based on interviews with stakeholders, this was a concern that's almost a unanimous concern. It doesn't matter whether you're a contracted party, a non-contracted profit party, a registrant, someone who's just a volunteer who's commented once in the comment process. It simply doesn't matter. This comes up every time, so it's a real trend here. If it's 100% of the interviews, it's not so much a trend as much as something right in our face, that there's something that's not right about the relationship between the GAC and the PDP.

We'll probably make suggestions about this because the GAC, as an advisory committee, seems to feel that they have certain limitations in the way they do their work, and we think there's a structural problem here – a structural problem that ATRT-2 can solve.

There's a second one, and that's global non-participation. I'll give you some statistics a little bit later, but there is a shockingly low amount of participation from Latin and South America, Africa, and Asia. It's shockingly low. It's really vanishingly small, and this is another problem that we think is a structural problem and needs attention.

Resource availability and exhaustion – at the working group level, the amount of time and energy and the cost of being a participant in the working group is enormous. So ICANN, as a community, goes to its volunteers in very fast order. In fact, the most common number of working groups that a person commits to is one. We're going to call this in our report the "One is Done Principle" in that once they've

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participated in one working group, we tend to lose those people because the investment is so high. That appears to be the reason. It's just an exhausting experience. So finding a way to break the work up in the working groups is something we're going to talk with ATRT-2 about in our report.

Finally, we think that one of trends that we've seen are there are external and internal structural mismatches. Some of the people who actually work in the working groups who are [inaudible] comment don't do it in the way that we're used to – sort of a constituency model or a model where you have subject matter experts. We're going to actually talk about that.

We think that each of those four large trends that is in the both in the data that is in the historical reference and also the data that we've gathered from stakeholders in the process are interests of legitimacy for the PDP. So in effect, the policy would get developed. If you have absolutely no participation and no contribution from roughly half of the world and you represent yourself as a global organization, there's a question there about whether or not you've legitimately met that sort of standard of being a global organization. So we'll talk about that very briefly as well. Can I go onto the next slide?

I've hit some of high points, but I generally believe that one of the things we're seeing is that the relationship between the GAC and the PDP is a structural problem, partly built into the bylaws, partly built into the working model of the GAC, and partly built into the working model of the PDP. The ATRT-2 I think should have something to say about that

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because I think there are implications for the problems that have been identified, the challenges that the GAC finds of speaking with one voice, and providing advice to the Board that basically sets the GAC up into a situation where they provide their input at a very late stage of the process.

The GAC input, by the way – I want to stress this – is very much valued in different ways. There's lots of people we've interviewed that said that the GAC input, when it comes, is excellent. There are people who, to be honest – and I don't know if Heather's on the phone – sort of resent the GAC input sometimes because it comes so late in the process it feels like it's a second-guessing activity. We get that input. But it's timing and impacts on what are the structural problems here. So that's a problem that has to definitely be talked about in the ATRT-2.

There are two issues that keep coming up in our interviews, and the first one is a thought of suggestion if the bylaws perhaps might be re-crafted in a way to allow the advisory councils to actually participate directly in the policy work of the GNSO and do that explicitly. That's one of the things that comes up.

The question that comes up all the time is, even if you made those changes to the bylaws, would it actually have the strategic effect that you tried to provide? And that is to provide more effective and more immediate GAC advice into the PDP process at an earlier point. So you'd ask yourself if the GAC has the resources to do that. Does the GAC have ways to do that? Currently, the GAC is organized [inaudible] very, very often like to speak with one voice, understandable as an advisory

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concept. You sort of have these two nagging questions about resources available.

ALAN GREENBERG: Mark, before you go on, I have a question. It's Alan Greenberg speaking.

MAR MCFADDEN: Hi, Allen.

ALAN GREENBERG: Yeah. Currently, in light of the New gTLD Program, there are innumerable discussions on the GAC involvement – why weren't they involved earlier, how should it have been done differently? To what extent are you letting that sway your results, because as a participant in a lot of PDPs, I suspect that the interest of the GAC is close to zero in many of them, and that's demonstrated, not only by the fact that they're not involved, but when the policy goes to the Board, they don't object to it either at that point. They're just happy.

So to what extent are we focusing on this issue, which is an important one, but is it a generic GNSO-PDP problem, or is it really one that has showed itself in this particular policy which has, of course, a very different history and was done under a different set of rules than we're currently working with now.

I guess I'd like you to frame, either here or certainly in your report, to the extent that that issue – is it a generic one, or is it one that is relevant on occasions – important occasions, but occasions.

EMILY TAYLOR: Hello, Alan. This is Emily. Just to say, I think that what we're describing at the moment is what's coming up through the data of our interviews – so it's one of the interview questions that we're asking everyone – is

about the effectiveness of the timing and content of GAC intervention. It's the timing of GAC intervention and effectiveness of it. So it's coming up through the interviewees, but thank you very much for raising that issue, and it's something we will obviously take account of as we move into writing up.

HEATHER DRYDEN: Heather online. If I could ask a related questions or make a related point.

MARK MCFADDEN: Sure. Great.

HEATHER DRYDEN: So, Alan, you've drawn the attention to something that I think is possibly useful to us to come to grips with this issue because one of the problems with hearing – there's frustration on all sides and concerns – you still need to get hold of what are really the practical things you can do about it, and how is it really coming up?

I think Alan's right that it's going to depend a lot on what the issue is, and is it something that's controversial or particularly difficult? At the same time, as the GAC interest will increase in wanting to understand what is the process, what is the issues and wanting to express views or provide info for that process, at the same time, it's often going to be more difficult then for the GAC to participate because, if it's an issue where there's a wide array of views in the GAC, then you also have that additional problem of trying to – as was pointed out – you're not able to as effectively have one person representing a government actually coming in and giving a sufficient indication of those broad views that

really do exist in the GAC, as well, of course, the consensus for this, which takes time.

So it might be worth looking at one of those particular issues. There are a number that the GAC does not pay attention to because it is a lower priority, and it doesn't necessarily mean that the GAC is okay with it. It probably means more that the GAC just hasn't paid attention to it and views it as a low priority. Anyway, I hope that's helpful.

MARK MCFADDEN:

Well, let's move on. What I propose here is to go the next slide. That was very helpful. I think Emily's point about reporting on the results is how I would answer Alan's statement, and if I had more time, I would tell you that one of the things we're finding seems to be independent of the New gTLD Program. The people who have not really been involved in the New gTLD Program have had that same comment – that same sort of feeling.

Let's move to another issue, then, and that is the working group structures. Working groups are actually something that, when you volunteer for a working group, you're committing to a significant amount of work. One of the comments we're getting repeatedly is that there needs to be more support. One of the things that's happening is that the working group – volunteers that we've talked to – don't feel like they're getting the same level of support that, say, GNSO counselors are getting.

And so what is sort of interesting about that is there is a sort of structural perception that the working groups aren't valued as much as

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higher levels of the organization. When I say “higher levels of the organization” I’m referring to like the council, other SOs, other ACs.

It’s an interesting point because one of things we did is we went back to the history of the last time that the GNSO was reorganized and these working groups came into being, and really the focus at the time was to put as much of the work into the working groups as possible.

But there is this sort of thing that I keep hearing over and over again, especially from people that we talk to on working groups, is that it’s a lot of work, and takes a lot of time, and it affects who participates on them. I want to stress that part of it. We all know that working in a working group is a significant commitment, but that significant commitment means that the talent pool is smaller than it probably should be and we don’t attract people into the working groups. We don’t really nurture more participants in that, and that’s an interesting trend. That’s something we’ve also seen, both in the numbers and in the interviews. I would go to the next slide here.

Something that we see directly in the numbers and a key area that we hope the ATRT responds to is global participation. My next slide actually has a little chart on it. Stakeholders in the Asia-Pacific, African, and Latin-American region – or maybe I could go back to the previous slide there. Thanks, Larisa. That’s a wonderful quote. What we see if people from these three ICANN regions are not showing up in the process in any meaningful way. If you look at the statistics – and I’ll read you some of them in a second – you look at the statistics, what you’re finding is



they are – I don't want to use the words shut out of the process – but they're not involved in the process is a much better way to say it.

There's a structural concern here about global legitimacy. I think this a real strategic concern for ICANN. How do you involve people more in the actual policy development process? How do you ensure that they get engaged in the beginning and there's some way of sustaining their engagement over time?

Now, maybe I'll go to the next slide. One of the things people have talked to us about, when we talked to people who are not in North America or not in Europe, is they do talk about the language barriers. One of my interviews gave me this wonderful quote when I asked her whether or not language was a barrier for participating in the PDP. She said, "Well no, language isn't a barrier at all, as long as you're completely fluent in English." One of Emily's interviewees actually said the second quote. "It's as if you've studied Spanish long ago in high school and you come to a session and I'm speaking very fast with my friends." So language is a problem, and it seems to be affecting participation.

We also think – and this is actually very recent data – we're also getting the sense that there are some cultural mismatches, and if I could go to the next slide, I think my next slide is the one that has my little graphic on it. This is just to show you the absolute dominance. This is a statistic of working group participation, and if you take a look, 74% of the participants in working groups in the last five years have been from North America and 17.3% have been from Europe. You add those

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together and you get 91.3% -- the marooned in the grey tiles together. The black tile is Asia Pacific, Latin America, South America, and Africa. I don't have to say anymore words. I think the graphic itself sort of speaks for itself there. So there is something there, and it comes up in any analysis you do in the participation, whether it's comments or participation in the working groups, and so forth. Let me go to the next slide because I do want to have time for questions here.

One of the things that's very recent -- it's in the last week, to be honest -- is that we've started to receive comments about what we're calling a participation mismatch. There is this sort of concern we're hearing from participants in Asia and South America, for instance, and one participant in Africa, that the constituency and stakeholder group model doesn't map well onto the way they get input.

So when you go to a place like Brazil or Argentina and reach out to the experts who would comment on either technical things like Fast Flux or things that are more of a legal or process nature, like IRTP, they don't have just one person that they go to. So part of the lack of participation may be a mismatch in the way that the PDP reaches out to people. Mismatches may be the best way to actually say this.

We think this also happens -- there's evidence that this happens -- internally. Some advisory councils are routine participants in the process. ALAC, for instance, for the last four years at least, has been an absolutely regular participant in the commenting part of the process. But then there are other organizations and ACs where the count is near zero, and it could be because they have no interest in particulars. You

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could ask yourself, “What would the address the address council or the address supporting organization have to say about IRTP?” That’s a legitimate question, but some of them have work that they do that hasn’t had an obvious policy component.

For instance, if you look at the recent controversy over name collision, one could wonder why the early SSAC report on that didn’t get back to the GNSO in a way so that they council might have taken it on as a work item. Let me go to the next slide.

BRIAN CUTE:

I’d like a little bit of clarity though about on what you said the cross-disciplinary. What I heard you say was that, whether it’s a technical issue or a legal issue, they don’t just reach out to one person. I really want to understand what you’re hearing from this perspective. There’s two topics there: issue expertise and people, number of people in that statement. And what I want to understand is, when you say reach out, is that an aspect of their process that’s different from the PDP? So can you put a little more clarity around those statements so I really understand what it is you’re hearing and contrasting against the PDP process?

EMILY TAYLOR:

One thing I’m hearing from our interviewees on this is to say that it’s partly a comment on the constituency structure as well to say that, in many developing countries, there isn’t a ready constituency place for a lot of the work in the way the work is structured in developing countries. One person I was speaking to was saying that lots of the people who are experts in our region working on things like IXPs or they’re working on various aspects, and when you look from a developing country at the constituency structure, you see business,

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business, business, and non-commercial. That's the feedback that we got on that. Maybe, Mark, you have a different take on it.

MARK MCFADDEN:

That's [inaudible] bottom-up through the constituency model is just not how they can sort of populate the process. Having a [inaudible] representative from a developing country be expert on a wide range of things is not something they can provide. So that's a problem that Emily and I have both heard, and relatively recently. We haven't been fishing for it. It seems to be that the process that we use, which is an issue report – the process is very flexible and I'm going to gloss a little bit – but the process we use in our issue report [inaudible] a PDP, and then having an initial report and comment about that, a final report, and comment about that, a long sort of period that is effectively a long conversation.

For people who say to us, "Well that's a really North American style of getting a result," and that it doesn't meet – [inaudible] are used to working that way. I guess that's what I talk about the mismatch, that's what I mean by it.

BRIAN CUTE:

Thank you.

MARK MCFADDEN:

Okay. I hope that was clear. I know I'm running over my time, but I'll finish quickly here. Another thing that is a significant friend is that, five years ago, there were many individuals commenting in the process. So whether it was on the individual report, draft [inaudible] report, in the e-mails around, what you had was a much larger number of individual participants that were simply speaking up as participants.

Now what we see, much more recently in the last sort of two years of PDPs, is a move towards the aggregation of common viewpoints, and you see organizations, whether they are constituencies or stakeholder groups, or if you look at like the IOC/Red Cross, external organizations. And instead of having individual voices, gives sort of a richness and nuance to the conversation, what you're getting is sort of institutionalized comments in the process.

We think that there's a question there. Does that mean that we're losing minority viewpoints because the conversation is dominated by organizations instead of individuals?

A second thing is that, since you don't have such wide variety of comments, are you losing some of the nuance there, and is there something that we need to do in order to regenerate on the behalf of individuals who are commenting the process? Or is it just that more recent PDPs have appealed to organizations? That very well could be, as well.

One of the trends, to be honest, is that, when you look constituencies and stakeholder groups, they are commenting on PDPs far more often now than they were five years ago. And then I'll go into my next slide, which I think is going to be my last one. I'm sorry I've gone over here.

I thought I'd bring you some good news. Beside the GAC issue, which is a nearly unanimous issue, the ICANN policy staff has been absolutely praised to the sky. I hope Denise is not in the room to hear that because her head will get big.

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One of the things that has happened is that almost every interview we've done, people have commented on the quality and effectiveness of ICANN's policy staff. It's in a private, anonymous setting. We're not attaching their names to the comments in any way, so they had an opportunity to be critical, and to the reverse, they're not. So the PDPs are [getting], we believe, very, very high-quality policy staff work.

Another thing that has happened that's intriguing to us is that there's been absolutely no criticism of the transparency of the process. Everyone sort of talks about why we as ICANN capture everything and make almost all of it public. In the PDP process, almost everyone we talked to actually salutes that and says very good things about it. I want to go to the next slide here. I think I'm done.

So what happens next this week and earlier next week, we're still collecting some of the interviews and adding it to the accumulated record. We actually started drafting the report that we're going to be sending you. That's going to be completed in early October.

We are also looking at a way to make the data available to ICANN and to future ATRTs. The idea would be that is that if a future ATRT wanted to, it could actually build on the data that was collected as part of this report so that it would be a one-off sort of data collection effort is something that staff could take advantage of, a future ATRT could take advantage of, and other looking at ways of making the data available, as you know, as our conclusions.

With that, Brian, maybe I'll hand it back to you. If there are other questions, I'm happy to take as many questions as you want. I know your time is very valuable here and I don't want to get in the way of your agenda. But if there are any questions, I would take them.

ALAN GREENBERG:

Thank you, Mark. It's Alan here. Brian had to step out for a moment. I have a comment and several questions linked together, and then we'll turn it over to anyone else.

You were talking about non-participation, largely geographic, but I know there's also an issue on the part of some parts of ICANN – some of the stakeholders – and particularly those whose day jobs don't pay for anything related to ICANN. And the time commitment, as you pointed out, is high.

One of the things that I certainly have seen and actually tried to architect is, since the number of PDPs has increased radically over the last two years and since it is hard to get participants, so we're not likely to have five At-Large people on a PDP, there has been a conscious effort to make sure that the one person there can say honestly they are speaking on behalf of the group. So I think some of these things are all linked together. They're not accidental happenings. But the lack of resources has forced people to say their speaking on behalf of groups so they aren't just lone voice in the crowd. It has a lot to do with workload, and certainly from the non-commercial side, given that no one is paying for their participation, it's going to be rather limited. So anyway, think about that when you're working on the analysis. Anyone else in the room have any questions? We have Olivier.

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OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan. It's Olivier speaking. Could we go back to the diagram which has the percentage of participation from around the world? Could you repeat the numbers, please? Because I didn't manage to catch them. I was quite interest in that.

MARK MCFADDEN: I'd be happy to do that, Olivier. I have it right in front of me. For North America, the sort of new one, is 74.0%. The grey one, which is Europe, is 17.3%. It turns out that Asia Pacific is 3.1%. Latin America and South America is 2.7%, and Africa is 3%. I have it in front of me, so I'll just tell you there's a gender imbalance as well. None of us will be surprised by this, but in terms of working group participation, 82.9% are men and 17.1% are women. So that is the background of those slides.

OLIVIER CRÉPIN-LEBLOND: Thank you very much. I just want to put to the record, have you found any correlation between the lack of participation of participants in Africa, Asia, and Latin-America and the criticism of ICANN coming from other policy organizations, like the ITU members, for example?

MARK MCFADDEN: I don't have enough material to make that correlation. Your common sense would tell you that's a real possibility, but I don't have any hard evidence that is either statistical, or things we've gotten out of the interview process, that I could point to that is hard evidence of that.

ALAN GREENBERG: Thank you, Mark. No one else has a question right now. I'll add one more. Have you made any attempt – and I don't know it's all that easy – to correlate these numbers with the actual participation in ICANN in other things, other than the GNSO-PDP, whether it's attendance at meetings or things like that? Clearly, the pool available from certain



regions is a lot lower, and there's no way one could expect the GNSO participation to be large when the pool itself is a very small percentage. So I'm wondering to what extent you've attempted to related to that, as opposed to unattractiveness or difficulty of the PDP process itself.

MARK MCFADDEN:

So let me answer that by telling you that one of the things we've done is attempted to correlate public comment processes in the PDPs against other activities that have taken place in ICANN. For instance, do people – and NCUC would know about this as well as anyone – do people find themselves in a situation where there are multiple public comment periods open at the same time, and as a result, find it difficult to participate in all the ones they're interested in? So we are doing that. We are correlating that.

We're also correlating the timing of the comment processes against public meetings, and if there are any regional meetings. So we've done that. We've also tried to correlate the public comment process against things like WSIS and IGF – things that this Internet community would also be naturally interested in. Some of that is going on.

What we do is, the recent sort of – what should I say? The sort of speed at which PDPs are coming right now that some of the comment periods have overlapped. But I don't have hard data yet that actually says to me, "From that you can draw the conclusion that there are some people who don't participate because there's too much to work on at one time." But that's something that we're working on here in the final few days of gathering data.

ALAN GREENBERG: Thank you, Mark. Any other questions? Olivier, we're starting to run out of time, but let's keep that brief.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Alan. I'll be very quick. Have you, Mark, managed to find a correlation between the regional breakdown and also the breakdown among contracted parties and other applicants – sorry, other participants?

MARK MCFADDEN: We haven't finished that. So we're looking into that. We have not finished that yet. I can say that there is more diversity in terms of contracted parties geographically participating in ICANN than there is diversity of geographic parties participating in the PDP. That I can say for sure.

ALAN GREENBERG: Anyone else? I see no more hands. Thank you, Mark and Emily.

MARK MCFADDEN: Okay. Good luck with the rest of your work and the rest of your day.

ALAN GREENBERG: Thank you. We're now officially on break. The break was supposed to end in five minutes. Let's make it a ten minute break total and try to reconvene at 10:20 or 10:22.

BRIAN CUTE: All right, we're going to reconvene, folks. Folks, before we get going, I wanted to have a minute to have Theresa Swinehart, who is the new senior advisor to the president for global strategy say a brief hello to all of us here and tell us how we're going to be seeing you soon more often. Theresa?

**THERESA SWINEHART:** Yeah, I'm sorry I couldn't be here in the morning when everyone started. I had a conflicting call, but I just said I wanted to say welcome and it's great to be here at ICANN. As you probably know, part of the portfolio is looking at the strategy area and how all the different areas interconnect with each other, the structural reviews – obviously the important work of the AOC process and what comes out of that and the ATRT – and then we obviously have the strategy panels that are coming in. So a lot of what we'll be looking at is how do these things interconnect and how to get the best value and implementation out of all the work, and what we can improve, so working with Denise and the entire team, we'll be looking at that sort of area moving forward. Happy to answer any questions. I'm only on day three officially. Today's Wednesday – no, Thursday. And Monday – four.

**PARTICIPANT:** Can you get the bridge for your previous attendance?

**THERESA SWINEHART:** Well, no. This is a brand new organization. It's a very different organization – a vastly improved organization – and so I'm taking it from learning everything from scratch, again, which is fun. But if I can answer any questions on day four of my job, I'd be happy to, and otherwise open to questions at any time. I'll come in and out just to sit in and listen in on the work of the committee and all of that as well during the days.

**BRIAN CUTE:** I know many of you know Theresa. For those of you who don't know here, she is a long-time veteran of ICANN. She served on ICANN years ago under Paul Twomey, and she's been –

THERESA SWINEHART: Stuart Lynn.

BRIAN CUTE: Stuart Lynn. Stuart Lynn and then Paul Twomey. Thank you. And she came over from ISOC, where I knew her very well. Theresa has an absolutely firm grasp also on the global Internet governance environment and what is evolving on the global Internet governance stage. So truly her experience and views on strategically where ICANN needs to go, and how this piece of work strategically plays into where ICANN needs to go is going to be indispensable, so I'm thrilled you're here. I'm looking forward to our interactions.

THERESA SWINEHART: Thanks, and I'm thrilled that you're –

BRIAN CUTE: Thanks. Is the recording started? Okay, ATRT-2 recommencing on Thursday, September 19<sup>th</sup>. This is Brian Cute, and welcome back to the first session where we will discussing the proposed assessments of ICANN's implementation of prior Review Teams. Then tomorrow we will get into new recommendations coming out of Work Stream 4's work.

But I want to set a couple of ground rules first. First of all, we're going to start with Work Stream 3 WHOIS, and how we're going to approach this work is as follows. We, as a team, have discussed at great lengths all of the work that's been developed. We are now stepping past that stage. This is not a time for long discussions, views, opinions, and exchanges. We now have to signal to the drafters our comfort with their work. I know that all of us have a high degree of confidence in the individuals on the team who have taken on the role of drafting their pieces of the reports, so that's assumed and understood.

What I'd like us to do today and tomorrow – and we'll start with Work Stream 3 and WHOIS – is approach the task as follows. We have the drafts that have been created for each work stream, and I want to ask Review Team members if you have a significant concern about the draft assessment or draft-proposed new recommendation, before we put it out for comment in mid-October, now is the moment to raise that significant concern. I use concern in a constructive way – that “There's really an important that I think is omitted.” “I strongly disagree with the conclusion you've reached, based on the facts as we know them.” That's what I'm asking for. I'm not asking for, “Well, I kind of see it differently, and let's talk about that.” We're not going there.

So what I want to do sequentially is start with Work Stream 3 WHOIS, which has been drafted by Michael and Alan, and use the time that we have in front of us to ask the question, “Is there any serious concern here – a missing fact, a conclusion with which you very strongly disagree for a fact-based reason, not opinion – and if so, let's identify that.” And then we as a group will go to that language in question on that screen.

I am going to give us ten minutes, and I'm going to run a stopwatch because we need to manage our time. So as an issue comes up, I'll start the stopwatch. We'll have ten minutes. Please be concise and clear. Hit your points. Let's move toward an agreement that, “Yes, you know what, Alan? For that assessment of implementation X, you overlooked this fact. It's really important to incorporate that into your report. Please go forward and draft that fact into your assessment.” Or, “We thought there was a problem on this piece, but we've talked it through,

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and actually, there isn't. Please proceed to finish your assessment in the draft." That's what we're looking for. Is everyone okay with those ground rules or have any suggestions otherwise to augment them?

Okay. So we'll start this session with Work Stream 3. We will go to Work Stream 2 after that, and then after the lunch break, move to Work Stream 1 and proceed.

So, Alan, do we have the Work Stream 3 draft report up on the screen? Or can we do that? I know, in some part, we have draft templates and also draft reports. The question applies to each – the draft reports or any of the templates that have been developed – whether there are significant questions to raise.

Is Michael on a conference bridge? Michael, are you there? He thought he'd be starting later, too, which is unfortunate. But okay, Alan, let's proceed then.

ALAN GREENBERG:

Okay. I'll go through them one by one in a moment, but the overall tone I think is that, in general, progress is being made. Progress is being made in virtually all areas. We've certainly had problems getting the information, but at this point, we can confirm that. There is extreme disappointment in some areas about the time some things have taken, and how far out the expected completion dates are, but overall, things are progressing.

That being said, there was also a significant concern over the way this was worded in terms of the Board recommendation and the documents

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that went along with it, which has caused a lot of confusion in the community. But overall, things are progressing well. Brian, do you want me to do them one by one, I assume?

BRIAN CUTE: Not so much. Let's put them up on the screen. Let's put the first page up on the screen, and the question is, "Are there any significant concerns with respect to the assessments here?"

ALAN GREENBERG: Are we looking for staff concern also?

BRIAN CUTE: Steve and staff, yes. Steve?

ALAN GREENBERG: There is no way I can use the microphone there and watch the screen, also.

BRIAN CUTE: Steve Crocker?

STEVE CROCKER: I'm in an uncomfortable state in that I have not had time to go back and read what I really need to read, and I appreciate that Denise has supplied what I've asked for.

There are two questions that I wanted to probe into. One is what did we say – the Board – and what did we adopt to do, compared to what the WHOIS Review Team said? And then the second is how well are we implementing what we said we would implement.

Part of looking at that – and again, I'm in this very uncomfortable state that I haven't had time to go through it in great detail, and you guys are ahead of me – where the expectations by the Review Team out of sync with where they should be? Now that's a very subjective statement, I

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recognize, but I want to share that I fully understand that they are unhappy. What I don't understand is whether or not it's appropriate for them to be unhappy. I can unpack that and go into greater length, but the mere fact that they're unhappy is not the end of the story from my point of view. There is a syndrome of many, many groups – this one included, for example – of taking ownership that goes beyond the remit, and from an overall system point of view. We've had parts of this discussion.

I just wanted to share that, for me, that's an open item that I want to look closely at this, and either if I can do it in the confines of during this process, I will definitely have to do it on the receiving end, so I'll be inescapably right front-and-center as you deliver the report.

BRIAN CUTE:

I'm going to ask, if you permit me, Alan, just for clarity and to sharpen your question so that we can focus on it. I'm hearing you to question, was the unhappiness of the WHOIS Review Team reflected in the assessment, and was the unhappiness of the WHOIS Review Team appropriately analyzed in terms of its validity or not? And I say all that neutrally. Is that your question?

STEVE CROCKER:

I think so. Close enough.

BRIAN CUTE:

Okay. I'm going to start the stopwatch, Alan.

ALAN GREENBERG:

To answer that question or keep on going?

BRIAN CUTE:

Answer the question. Start the discussion.



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ALAN GREENBERG:

I can't speak to the unhappiness of the Review Team members in the general case. I can speak to the unhappiness of a few of them I've talked to.

The level of dissatisfaction with the way Board – the specific detailed way – we can speak offline and I can go into some of the details, which we don't need to do here – has in my mind significantly clouded their ability to look at what's actually being done.

I believe that the work that the Review Team requested is being done, and there is progress, some of it slower than anyone envisioned. Whether that is sufficient to cure the unhappiness because of how the history has unfolded, I'm not convinced. Certainly I know in some cases it is not sufficient. Is that clear enough? But I'd be glad to go over the specifics of why they were unhappy, but I don't think we need to share that with the whole group.

STEVE CROCKER:

Yeah, that feels like a good characterization. What I don't know is whether there is anything actionable out of that. If they made a recommendation and that recommendation – I'll take one extreme case. If they made a recommendation, that recommendation was totally appropriate, and we said we're going to take it on, and we either didn't take it on, or we haven't executed it, I can understand a high degree of unhappiness.

At the other extreme, if they made a recommendation which they feel very strongly about, but which in fact wasn't well informed and needed to be shaped up and what we adopted was a best faith effort – a good

faith effort – to do what we thought made sense out of their recommendation, and we took that on, and the system, being unhappy about that, I don't have anything useful to suggest other than, "Get over it," more or less – that it's inappropriate and un-useful for them to keep perseverating on that, and as you suggested, may cloud their vision as to what's actually going on. So I don't know where we stand in that spectrum, and I think that may be helpful to untangle. Or it may be too hard to untangle and we just all move on.

BRIAN CUTE:

Let me add a couple of observations of my own from listening. Unhappiness is important, but we need to get away from that to some disagree. I think, from listening to this discussion, I would observe that, "What are the sources of the unhappiness?" is the question to focus on. I think, potentially, a misunderstanding of the AOC might have been at the root of it. In recent discussions – and Michael acknowledges – that the Board is not obligated to accept the recommendations of a Review Team is a point that surfaced. Michael seemed to acknowledge that was something he didn't understand himself, but now does and accepts.

But part of the AOC also requires that, if the Board doesn't accept a recommendation, then in the spirit of it, there's a clear rationale given as to why. So I think that might be one source of the unhappiness that we should think about in our assessment.

Others that I've heard – and this comes out of meeting with the WHOIS Review Team in Beijing – were signals they received during their process that suggested strongly to them that the Board was not likely to accept their recommendations. These are things I've heard. I'm not putting

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judgments on that at all, but I'm trying to say we need to focus on if there's unhappiness, what on our record might be the source of that unhappiness. That was something else I heard that maybe there's exploration, but at a minimum, there was a disconnect of understanding I think on the AOC, and that the Board is not obligated to accept recommendations. It could also be that there's a communications issue here that is part of the assessment. I'm not sure.

STEVE CROCKER:

Let me offer a couple comments on that. It will be very helpful to know, with respect to that they were getting signals in advance that might not accept, whether or not that was prior to them finishing their report or during the period after they turned in their report before we responded. That second part took several months probably pushing – if not, maybe slightly exceeding – the expected standardized six month period to respond, and during that period, there may well have been signals completely sensible, in my judgment, that the result of all of this was going to be maybe slightly different from what they expected.

Another point, which I will say both specific with respect to the Board, and a higher level issue we might want to speak to as part of this process, I would say, yes the Board is not obliged to accept completely as written, and I completely agree that if we don't, we should say – I'm speaking from Board position now – we should say why it is we're doing.

Let me put in slightly different terms, both as a statement and as something this committee might want to examine. I would say that the Board has an obligation to examine and consider the recommendations from a Review Team – and this is really a blanket comment – for expert

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advice from many, many quarters, from advisory committees, from whatever. It has an affirmative obligation to look at that advice and consider it consider it against some very general criteria – including feasibility, resources, and so forth – not to substitute its judgment on the subject matter, per se, and be cavalier about throwing out the advice but to look at it from the overall roles and responsibilities that the Board has in these things. Viewed from that lens, I would say to them and to everybody including this group here that to expect 100% adoption and 100% implementation with perfection is I'll call it a low-probability event.

BRIAN CUTE:

Thank you. I had two people in the queue, and Denise wants to get in at least. Who had their hands up? Olivier, Alan, and Denise. Steve, please finish.

STEVE CROCKER:

Just this point. Both specifically with respect to the WHOIS and as a general perspective of how the Board operates, I think that's an interesting point that this Review Team might want to speak to and I can't think of any other group that can speak to it better than this group.

BRIAN CUTE:

Thank you. Oliver, Alan, and Denise.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Brian. I'm not sure who to target this question to, whether it's to the wider group or to Steve. Has there been any indication that the creation of the Expert Working Group, on a parallel process effectively to look at WHOIS and look at other means of data provision, has significantly impacted the rate at which the WHOIS

Review Team recommendations have been implemented or considered?

STEVE CROCKER: I was going to turn immediately to Denise anyway.

DENISE MICHEL: No. The Board made very clear that these are distinct and parallel efforts and directed staff to move forward in very explicit ways with the guidance they gave on implementation of the WHOIS Review Team report, so those have gone forward independently.

STEVE CROCKER: Let me add. There's an interesting misunderstanding in a complementary way that the Expert Working Group has a kind of implicit feeling that they're going to make some recommendations and those recommendations are going to go forward. And I have tried to insert into that process at every opportunity that they may be overreaching in their expectation that we will look at the output of the Expert Working Group, again through the same lens, and ask the same questions and make a decision about it. So there's a potential for a similar syndrome of unhappiness to emerge from that process.

Now, I could say more about why that might have been set up that way, but the more important thing is that the output of that working group will be subjected to a very firm examination and not just moved directly to, sent over to the GNSO and saying, "Here's your starting point. Please, make a PDP and don't waste any time about it." That's not my vision of what that sequence is going to look like.

Again viewed very broadly, I think there's plenty of room for – many instances in which a group sort of has a focus on what it's doing and then thinks that it's got a complete picture of what's going to happen, and then they get a bit unhappy that their output doesn't become law instantly. And from my point of view, it's actually extremely important that we proceed very carefully through these steps and that those be substantive reviews but not undoing or substituting, the Board doesn't substitute its judgment for those things. I mean, if there's a serious question of that type, then I think we have to go engage in a different process, but we're not cavalier about just overriding something.

BRIAN CUTE:

Okay, Alan's in the queue. I'm going to call time on this and then give summary of what I've heard for Alan and Michael's benefit. Alan?

ALAN GREENBERG:

Okay, thank you. The issue of whether there was an expectation that the Board must do everything a Review Team says, yes, there probably was that expectation. Certainly, in the general community, there were some who believed that. I don't think that's the core of the problem in this case.

I think the core of the problem is a combination of bad timing and poor communications, both on the part of the Board and the security and stability report that was issued. I'd be glad to try to document this either privately for Steve or for the whole group and to characterize what the issue is. I don't think we're going to necessarily fix it on the short term, and I don't think we need to worry about that a lot. We need to make sure, however, that it doesn't taint future endeavors, and at this point if you speak to any of the participants from that Review

Team, it will. So I think we need to address it. We're not necessarily going to fix it. And I think the problems are pretty easy to understand once you look at the details, but it does go down to nitty-gritty of wording and I don't think we want to spend time talking about it in this forum today.

BRIAN CUTE:

Okay, I'm going to hit what I think are some of the high points here. and thank you, everyone, for that. Clearly, one element that should be in the assessment is the expectation of acceptance by the Board, which may have been or was misplaced as factoring into the WHOIS Review Team's view of implementation. Communications is critical. Misunderstandings arise from lack of effective communication, so that's an area to focus in on. The issue of the Board's resolution is one that we touched on, and clearly being viewed through two different lenses. And what role that played, I think, is important, because again the AOC would expect that the Board would provide a rationale for whatever it does if it accepts something or rejects something, so to my ears that's also a critical piece. Did I miss any critical piece? And we're summing up here. Denise?

DENISE MICHEL:

To answer Steve's specific question, both the WHOIS Review Team and the SSR Review Team were told early and often that the Affirmation of Commitments requires them to provide their recommendations to the Board, and ultimately the Board will decide whether or not the recommendations will be accepted and implemented, and that's well documented.

And then as to the specifics of the wording here, I think it would be useful, Alan, just in my view if you clarified what you meant by

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supported by lack of replies to specific queries in the third column. And then also in the last column when you note that the issue is no longer being ignored, that sounds sort of like a subjective comment and I'm not sure exactly what you mean by that. It might be useful to clarify that as well.

ALAN GREENBERG: If you could put that in writing and just a very brief e-mail so that I don't forget.

BRIAN CUTE: Okay, thanks very much. Steve?

STEVE CROCKER: I apologize for pushing on this, and I know I'm sort of hijacking this particular discussion, but let me bring one more element in. When I think about where the recommendations and advice comes into the Board and this general pattern of the Board has to look at it and make a decision, the expectations are interestingly varied from the different groups. So the GAC gives advice, and we have this very formal process. If we don't accept the GAC advice, we have to go through this rather elaborate formal process of pushing back and negotiating and so forth.

The ASO is a case by itself. Their view, I believe, is that when they have gone through their full policy process and passed something to us that the Board's job is to ratify I think are their words. And we have 60 days, and if we don't ratify and we don't do it promptly, we're in violation and as best I can tell from their attitude is – and we don't have any choices about all that. Now, I may be coloring it a bit, but I think that there is a fair element to it.



So it's interesting from the perspective of this review team's charter to try to understand the dynamics between the Board's role and each of the supporting organizations – advisory committees, expert groups, AOC-chartered review teams, and so forth – on the role of advice and the process by which it's taken in. And I don't know whether or not there's room in this report to touch on it, evaluate it, say anything about it. But I wanted to share with you that from where I'm sitting and I look at all these streams coming in they aren't entirely uniform and the variations lead to some potential heartburn from time to time or just difficulties in being even-handed about it all.

BRIAN CUTE:

Thanks, Steve. That's sounding like a Work Stream 4 issue perhaps that we might want to emerge. Okay, we've got to move on time wise. Could we move to the next screen? Same opportunity.

ALAN GREENBERG:

Can we move up a bit so we can see what it is? Thank you. This one is the creation of a single WHOIS policy document. The document which was created is a set of pointers to contractual terms and the few GNSO policies that exist and we deemed to be 100% completed. It is not clear that the recommendation was actually implementable in that the implication is that there should be a single document which could be understood by a non-legal person as to just what WHOIS is all about and at the same time could be used as a contractual term pointed to by registry and registrar agreements, and I'm not convinced certainly that one can satisfy both of those at the same time.

That doesn't mean you shouldn't do it as two documents and be able to do that, and that seems to be where we're going right now. That is,

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although the recommendation was deemed to have been 100% implemented in the Web page with pointers to contracts in it, there is now work going on – and I think was ongoing at the time this was said – to try to summarize what WHOIS is all about and put it in a way that is accessible to non-experts in the field. So there is progressing.

This may be one of the areas where what they asked for couldn't be done exactly as they said, but there seems to be work going on in both directions. And I assume from an ICANN contractual point of view, it would be nicer to have the stuff all in one place than fragmented all over the place. So I think there's going to be a natural inclination to do that part anyway, and the user part is being done. So although that wasn't the message we were given at the time, the progress today seems to be in a much better state.

BRIAN CUTE: Any significant issues with the assessment?

DENISE MICHEL: I have a comment.

BRIAN CUTE: Michel. Denise, I'm sorry.

DENISE MICHEL: I go by both.

BRIAN CUTE: Cute. Call me Cute.

DENISE MICHEL: All right, Cute. Stating that the ATRT-2 is disappointed in the amount of time it has taken to address this objective – and I think this is a comment that I think relates to this as well as overarching, and Alan and I discussed this a little bit – but keep in mind that the output of all of

these reviews so far has always come in the middle of fiscal year without specified budget resources, obviously, and on top of the existing work plans.

And so there may be ideas of how quickly this can be done, but with the staff working at 125% not to mention the community's workload, I think we should be clear on how much time the staff says it will take and whether or not they're on schedule. And I think a more useful way to approach this is ensuring that staff is setting the right expectation, that they have enough time to review, create their work plans, research and move forward.

BRIAN CUTE:

Thanks. Let me offer just an editorial remark. You zeroed in on the word disappointed and I zeroed in on it because I don't think this Review Team has emotions. I was very emotional when I was in my car stuck in traffic and my mobile phone died this morning, but I don't think this Review Team has emotions, so let's steer clear of words like disappointed. We need to give objective, fact-based assessments, and I think there are plenty of words we can use to signal when we feel like implementation was not done well or poorly, but I'd avoid that word for that reason.

I also think, though, in the same vein that we have to make fact-based assessments. And Denise, to your point, assessing whether staff is establishing sound expectations in implementation is certainly a valid question for us to look at. I don't think that we've looked carefully at that question in many places, but at the same time we do need to look at, how did implementation take place? If there were expectations or

timelines established, were they met? If they weren't, why not? And if there is a why not, is that a valid why not? And go about our business that way, so that's my only observation and reaction to that exchange. Alan?

ALAN GREENBERG:

Yeah. With regard to Denise's comment that this process started in the middle of a budget year, that's true but the Review Team's work started way before that budget year and the Review Team itself was scheduled to work way before the budget year. There's no reason that there couldn't have been a budget allocation in the knowledge that there would be WHOIS work to be done once the Review Team was accepted. So maybe you're asking us to give a recommendation saying ICANN should do its budgeting with the knowledge of what review work is coming, but other than that, that's not my problem.

DENISE MICHEL:

Sure. And so just to reply, thanks, Alan. So when the budget is created and then finalized in June of each year, we do hold in reserve some funds in anticipation of new implementation work, but as you can imagine, it's difficult to forecast, for example, where this group is going to come out on every single implementation and what then the implementation will entail, what it will cost, how much resources it will. And so we set aside some funds, but we don't start taking action for the most part until we have a clear sense of what the recommendation is and what the Board direction might be, but yeah I understand.

BRIAN CUTE:

Okay. Any other significant concerns on this one? All right. Let's move on. And, Alan, also just an editorial comment. Alice. Thank you. Margie?

MARGIE MILAM: Yes, hi. It's Margie, and I've joined the call. I wanted to point out one issue related to the timing. As you look at the implementation of all the recommendations, you have to remember that the Board resolution wasn't until November and we're not even a year out from when the Board resolution was adopted and a lot was happening during that time, including the very important negotiations that were taking place to clean up, if you will, some of the obligations which directly impacted what would go into the WHOIS portal. And so there are reasons for the delay that weren't because of the implication that perhaps staff wasn't interested or not providing the proper resources or attention to it. And so I just wanted to point that out.

BRIAN CUTE: Alan?

ALAN GREENBERG: Yeah, thank you, Margie. And I guess I will say that's exactly why I did use the word disappointed, and if it's not the right word we'll try to find one. It wasn't necessarily a feeling that ICANN was slacking off. It's just that because of circumstances – all sorts of circumstances – it has taken a lot longer than anyone envisioned at the beginning. And that's why I was trying to get that connotation in there.

BRIAN CUTE: Okay. Then I would think it's important that we identify the circumstances in our report as well so everyone understands what those are. At a high level, it's incumbent on ICANN the organization to do proper planning, budgetary and otherwise. On the Review Team side of it, it's important for Review Teams to have a clear understanding from ICANN on the question of implementability – costs, resources, timing.

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I think this time around, we've finally connected on that issue. We're asking staff to provide us – and we will have an implementability discussion even after this report goes out for public so we can have that exchange, make that part of the fabric and expectations of a Review Team's work. That's important progress. At a high level, that's how I see it.

[DENISE MICHEL]:

Yeah. And again, it takes final Board action in order for some recommendations to actually go forward and be funded and resourced. And I think Margie raises a very important point. The feedback we've gotten from many, many areas of the community is happiness – to counter, I guess, that disappointment – happiness at the result of the negotiations with the RAA and the registry agreement. And there are several elements of that, of course, that relate directly to the WHOIS Review Team recommendations. So as Margie noted, that was also going on during this period as well.

BRIAN CUTE:

Any other points on this one? Let's move on. And, Alan, if you would, just a time perspective, a little more concise on the overview. Most folks should have or probably have read this report, but if you can just be a little more concise on the overview. Thanks.

ALAN GREENBERG:

I think my overviews are in general one sentence or so. Can we scroll up to see all of 3? Can we scroll up a bit, please?

BRIAN CUTE:

We're on number 3?

ALAN GREENBERG:

We're trying to be on number 3.

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BRIAN CUTE: Okay.

ALAN GREENBERG: Okay. This one says more communications, particularly outreach to organizations or parts of the community that are not necessarily participants in ICANN. The current assessment is there. And if you look at the descriptions of what has been done from ICANN, there have been a lot of discussions triggered by the RAA. It is less clear – and I’m not saying it hasn’t happened, because we haven’t seen the evidence – that there has been much improved communications outside of with ICANN contracted parties and at ICANN meetings.

BRIAN CUTE: Significant points? Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you, Brian. Just to mention in there that the Expert Working Group work was certainly carried in news organizations outside of ICANN, but none of the WHOIS RT has been carried as such, and so it’s quite unclear as to how much publicity has been made outside of ICANN as to what this process is trying to achieve.

BRIAN CUTE: Thank you. Any other points, significant? I translated that as supportive of the conclusion or the assessment. Okay? Shall we move on?

ALAN GREENBERG: Number 4. This one says ICANN Compliance should do a better job. We’ve had relatively little input other than from At-Large. The designation of the vice president was not exactly what the Review Team recommended but in the right direction. The whole issue of staff FTEs and the, wording in the recommendation is, full transparency on resourcing and structure I believe has not been met. There has been a

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significant lack of clarity in terms of staffing levels, organizational structure within the compliance. And the monthly updates which have been produced have been confusing at best, although they are getting better.

BRIAN CUTE: Significant issues? Nothing? Larry?

LARRY STRICKLING: So I'm just trying to understand the 15 to 13, why we think that's a disturbing issue. I mean, is it outside of the norm for staff turnover? I'm just trying to understand why we think that's an issue here.

ALAN GREENBERG: I think outside of the norm is the lack of clarity when it happened. I think if staffing issues with compliance are something important, then we need accurate, regular, and timely updates, and that is not happening.

BRIAN CUTE: Olivier, then Denise.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Brian. Larry, you asked about staff turnover. It is high in compliance.

BRIAN CUTE: Denise?

DENISE MICHEL: Yeah. And Louisa can get from Compliance more specifics on this, but they try and keep their Web page updated on the staffing, but we'll give you some more information on that. And, of course, as people leave and additional people are brought on, it may be useful for the team to also look at or note the open positions they're interviewing for, and we'll certainly give you a more complete look at the actual staffing. Also, as



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there are open positions and people leave, the staff is also supplemented by consultants as well. I don't know if you want to take that into account, but we can get you some information on that too.

ALAN GREENBERG: I think the issue is not so much what has been given to the ATRT but what is just generally available on an ongoing basis.

BRIAN CUTE: Any other points?

MARGIE MILAM: Brian, it's Margie. I have my hand up.

BRIAN CUTE: Yes, Margie.

MARGIE MILAM: I just wanted to draw your attention to the document that I had circulated that had all those milestones and items. And in response to this particular one, I just wanted to point out that it's not only the monthly compliance updates that provide information to the community, but there's a series of other documents.

And unfortunately Maggie is not here to describe it, but if you look through the milestone charts that I had circulated, there's the annual report. There's the audit report. There's a series of reporting metrics through the myICANN.org. And there's also at every ICANN meeting a Compliance update. And I sat in on the Compliance update at the Durban meeting where the Compliance team went a fair amount of detail on some of the improvements that they had accomplished with respect to the WHOIS issue, moving the complaints process, and those sorts of issues.

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And so I just wanted to note that there are other ways that the information gets out. This doesn't address specifically the staffing issue [inaudible]. I'm not sure if the actual number is report at all times, but generally their progress and their audits and the other activities that they have.

BRIAN CUTE: Thank you. So we should make reference to that document as we move toward a final draft.

ALAN GREENBERG: We will do our best. Again, if from both Margie or Denise, I'd appreciate something in writing just summarizing the points so we don't miss something. I really don't think I plan to listen to the recording in full again.

BRIAN CUTE: Thank you. Anything else? Let's move on. Larry.

LARRY STRICKLING: I hesitate to raise this, but I look at what the recommendation was and it seems to me the recommendation was really, is the function being managed in accordance with best practices? Is ICANN providing all necessary resources to manage and scale Compliance team's activities? So we're now looking at this in our role as the Accountability and Transparency Review Team, and I would think that we could look at that question and say, "Has that happened or not, and has the Board appropriately responded to the recommendation?"

I'm a little nervous about the fact that we're fly-specking this a little bit by saying, well, that same question I raised a minute ago which is, so there has been some turnover in personnel. Well, I mean, that's

inevitable, but what does that tell us about whether or not ICANN is operating in accordance with best practice principles and providing all necessary resources? The fact that the staff dropped by two doesn't tell me anything by itself with respect to what it is I think we're evaluating.

And then at the end, the general comment that negatives notwithstanding, there does appear to be improvement. Again, improvement in the sense that we do think the Board has responded appropriately or not? I'm just trying to, again, come back. That's why I say I hesitate to raise this because this cuts across the board with what is our standard on every one of these in terms of what exactly are we assessing and what should be opining on at the end. But this is just an example of ones that give me a little problem in terms of us getting into the details and maybe missing the overall question that we should be addressing. So I'd raise that more as a question as opposed to a position or an opinion.

BRIAN CUTE:

Thank you. Alan?

ALAN GREENBERG:

Yeah, I think part of the problem – and it's not well phrased here – is the opacity of some parts of it. I can tell you they said at one point it's 15. When we counted later on, it's 13. I have no clue what the approved headcount is. You know, there's just this fuzzy thing, "We plan to hire more people in Singapore and Istanbul," but there's a vagueness about the whole thing. We don't know where they are along with the process. We don't know what the targets are.

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And then you have operational problems because the people aren't there. In the reports – of which there are numerous reports – there's a certain obfuscation in the reports that one can say is due to lack of understanding or deliberate, but there is lack of clarity in many cases. Now, I can go into more detail, but I don't think we wanted to here.

[LARRY STRICKLING]: I guess maybe let me ask Alan directly, is it your view and would you recommend that the ATRT here adopt a conclusion that the Board and in fact has not provided all necessary resources to manage and scale Compliance team's activities as the Review Team had recommended?

ALAN GREENBERG: I don't have a clue because I don't know what the Board has through financial and staffing process allowed for.

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you, Brian. I think what Alan is trying to say is there doesn't appear to be any target as to how many people should be in that department. There doesn't appear to be any target as to what the maximum staff turnover should be in that department. There's no target at all that's clearly defined, so we're told, "There's going to be more people," but at the moment we see a decrease rather than an increase.

[ALAN GREENBERG]: So let me target publicly defined.

BRIAN CUTE: Okay. So the transparency point on that is understood. Let me ask a couple questions just to probe here. So transparency issues heard and put to the side, there is a senior executive who's on the job. There are

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13 human beings who are in that office. We know this. So, I mean again, to Larry's high-level question, it certainly seems like quite a lot has been done to ensure that there is resources and management. I'm just playing Devil's advocate here. Is the unique point the transparency and how they've communicated what has been built up? And by the way, it's important for the community to know that we're actually targeting 17 heads, and is that important or not? Stephen?

STEPHEN CONROY:

Could I agree? I mean, while a general statement that not enough has been done or a statement that it has been done, I'm not sure the role of this Review Team is to try and flush out whether there is or is not a number of staff guaranteed for each individual part of the organization. I don't envisage that as the mandate at all. So I agree that we might not be able to get a specific answer at a specific point in time, but management would reserve the right at any time to increase or decrease staff in any given unit. So I would tend to agree with Brian's sentiment that is there a point to getting a number revealed when it could be changed tomorrow anyway?

BRIAN CUTE:

Thoughts? Alan?

ALAN GREENBERG:

Look, I think we're trying to deal the situation that if we talk to individuals around ICANN, there will still today despite the somewhat increased headcount – and I don't know exactly what the increase is because I don't know what the target was two years ago either – despite the multitude of reports, there is a very strong belief among many parties that Compliance is not up to and will not be up to doing the job that is going to be expected of them despite all of these

changes. Somehow that message, we've got to include at least part of that in what we're talking about. The things that have been published and are said at meetings is not sufficient to meet the recommendation that was made.

BRIAN CUTE:

Thank you. Steve? And we have five and a half minutes left.

STEVE CROCKER:

Is it within the competence of this group to actually have an opinion and make a judgment – they can obviously make a judgment, but one that has stature to it – on the question of whether or not the implementation by management is sufficient? I mean, it's one thing to say this is a very important topic and that we have to staff up to it, but we're now moving into, it feels to me, management consulting mode, and I don't know that that is either within the purview or within the core competence of this group to do that. Is that clear enough?

BRIAN CUTE:

That's clear, thank you. And concise. Avri?

AVRI DORIA:

Thank you. It occurs to me that there's really a middle solution to this, first of all by I think mentioning within the description of the information gathered that that concern has certainly been voiced by many members of the community. I think though in terms of us not getting into management consultant mode, I do think that perhaps we can put a metric on the performance of conformance function and sort of an indication that there must be – using 80/20 rule – there must be at least 80% something within a certain period of time type of metric. And I haven't thought out, but the notion is that this group shouldn't be telling them how many full-time employees are necessary to do a

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function. That is beyond us. But to sort of say, “We expect at least 80% of all Compliance issues to be resolved within a three-month period” or whatever is the right thing – I haven’t thought that through – is something that would be within our purview to do. Thanks.

BRIAN CUTE: Thank you. Alan, and then Larry.

ALAN GREENBERG: Except I didn’t think we were supposed to be making new recommendations at this point. WHOIS?

BRIAN CUTE: No, we don’t. You’re right.

ALAN GREENBERG: Okay, sorry. I’ve been corrected on that five times, so I thought I had it right. A lot of the problem here comes from a lack of understanding, but talking about the metric that Avri suggested, it would be nice if we could look at the reports and have a number like that so we could decide, “Yeah, good; no, bad,” but there aren’t metrics like that. There aren’t even measures like that.

BRIAN CUTE: Larry?

LARRY STRICKLING: Yeah, I think it’s not our role to come up with a metric, but here’s an approach. And again, I hesitate to raise this because I’m not an expert on the WHOIS record. I haven’t looked at the comments that were filed. I don’t know what’s in there. But the key recommendation in Number 4 seems to be providing all necessary resources to manage and scale Compliance team’s activities. So we’re now looking at this from the perspective of accountability and transparency, and it seems like there are some comments that could be made on transparency. Again, I have

to say I'm not sure if these comments are that important or not. I just don't have the framework within which to say the fact that a staff list is sometimes out-of-date is a big problem to people. It may be; it may not. I don't have a framework to say that, but it does seem like you could make some comments on transparency.

On the question of has the Board after getting this report followed this recommendation to provide all necessary resources, it seems like there the question would be, okay, how did the Board respond to this? Did they approach it in a reasonable and meaningful way? They may have gotten it wrong. We don't know that. If they decided 15 is the right number and it turns out it should have been 20, I don't know that we can speak to that.

But the question is, did the Board process get them to where you can say, "Yes, they have looked at this"? Maybe you could say, "If you're doing this as a responsible Board and being accountable for it, you would probably want to have a metric by which you could then evaluate whether or not your staffing increase did the trick or not." And we could comment on that if, in fact, they didn't do one or suggest that, but it feels like we're kind of jumping to what Stephen raised as a concern, which is we're kind of injecting ourselves into some of the choices that we made and saying, "Well, that's not enough, or there's a little bit of improvement, but not enough," as opposed to looking at whether or not this Board was accountable to the recommendation in the way that they responded to it. Again, I think there's something of a distinction in terms of what that inquiry would be.

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Another way to test this would be once you have the description of what the Board did, you can certainly use the public comments as a way for us to assess accountability as well, but all I see is that representatives expressed concern. I don't know what the record actually shows. If you actually went in and looked at the comments and took the quotes, what would it tell us? What would it show us? Which goes back to this admonition that we really ought to be fact-based here and not operating on rumor and hearsay. But again, these are tough questions, and it's hard to be raising them here at the end of September in terms of how we proceed on this stuff.

BRIAN CUTE:

Thanks, Larry, and we're at 10 minutes. Olivier, and then we'll wrap it up.

OLIVIER CRÉPIN-LEBLOND:

Thank you, Brian. I tend to agree with Larry, but I would insist on the lack of clarity and transparency in the resourcing. And Number 4 does say with best practice principles, including full transparency on resourcing and structure. At the moment, it's a bit of a black box. We don't know how many people. We don't know who does what. And that recommendation specifically asked for it. Thank you.

BRIAN CUTE:

So trying to sum up here, transparency so as to be able to see the effect – and the effect is important – but transparency looking at excess granularity as do we want to not go too far in that direction is the question on the table and are we measuring the Board's accountability to the recommendation as drafted versus getting into management consulting? That's my wrap on the conversation. So Alan and Michael need to take those points into the next iteration of the draft. Alan?

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ALAN GREENBERG: Then I guess we're going to need some information from staff. We don't have a clue what the headcount was at the time the Review Team worked when this recommendation was accepted. I don't. You I'm sure do.

UNIDENTIFIED FEMALE: Yeah, it's public record.

ALAN GREENBERG: And I don't know what the target is right now. I don't even know, for instance, if those numbers reflect the vice president at the head or not. If you want us to gauge how good a job that was done, we need to understand at least the numbers involved.

BRIAN CUTE: Let me just, how good a job was done though, I want to underscore what I'm hearing is, did the Board do its job in an accountable way in implementing this recommendation versus is the Compliance senior director doing a good job managing her resources and heads? Two distinctly different questions. Do we understand each other there?

ALAN GREENBERG: Both of which were asked in this recommendation though. We're talking about, did the Board implement? And then it's saying it has to be managed in a professional way to be effective.

BRIAN CUTE: Okay, anything else on this? Steve, and then we're moving on.

STEVE CROCKER: I'm just sort of continuing to digest this. Sitting from a Board position, if I were trying to have this same conversation with our chief executive and we were grilling him about how many positions have been filled and so forth, it's not 100% clear to me that this would go comfortably and I could well imagine the response would be, "You guys are stepping into

my territory. You want me to get the job done. We get the job done. It's my job to figure out how many people we need. It's my job to figure out how to allocate the budget, figure out what effect you're interested in and – depending upon which chief executive we're talking about and which tone of voice – it would fundamentally be “and stay the hell out of my territory.” The current chief executive would be much smoother about the way he'd say it, but I would expect something along those lines no matter what.

And that's from the privileged position of having the [inaudible] of he's accountable to us and we're not going away. We're there all the time, and it would be sort of the same – I mean, even more a question of an external Review Team comes by and makes a recommendation and then comes back later and says, “You didn't do what we said.” And the internal reaction that I would expect from the chief executive would be, “Oh, my God. What the...?” But he would find a way to give a civilized response, but it really does feel to me that we are going beyond getting at the impact that we want to have and getting into the methods of implementation. And so I challenge us here as to how much of that we want to push on.

BRIAN CUTE:

Yes, Olivier and then Steve.

OLIVIER CRÉPIN-LEBLOND:

Thank you, Brian. Steve – Steve Crocker. No, the other Steve there. Steve, would the chief executive challenge you on your requesting transparency and clarity with regards to headcounts and management? In other words, what I'm asking is whether the Board has carried through this recommendation and said, “Yes, we will ask this.”

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STEVE CROCKER: Yeah. So I could sort of see that coming. I think we'd say – they have said actually – why don't you tell us what your plan is, and then tell us how you're doing against your plan. And if at the next step we didn't get answers that matched up with what was said before, we'd say, "Well, look, this kind of misses the fundamental thing of remember what you told us and speak to that again."

So at that level, yes, but it's a delicate balance there. We wouldn't say, "Well, look, you can't do that job unless you have 20 people. You've allocated 15." Then we're into management mode. On the other hand, if he says, "We need 15 people, and here's where we are on the hiring, and here's what our troubles are," we'd say, "Okay, thank you." And at some point if it looked like it wasn't coming together at all, we'd say, "You've got a problem here that you're not solving." And then on the other hand, if he's able to present a continuous story that feels relatively okay, then we'd say, "Fine. This is kind of what real life is all about." But the touchstone actually has to be on getting the job done and on giving the management team the room to get that job done.

BRIAN CUTE: Yeah, Stephen Conroy, Larry, and then we'll wrap it.

STEPHEN CONROY: Yeah, I think we've helped sort of drive Alan into a bit of a cul-de-sac. He's trying to, using a metric, assess whether or not a task has been done, and so that's why he's asking the questions that he has. I think the sense of the recommendation is that there has not been quite as much progress. Though there has been good progress, not as much as many, and Alan and Michael have been working on this closest. So where we're sort of caught at the moment is Steve's rightfully saying,

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“Hey, look, we’re almost micromanaging the CEO and how many staff he needs to complete the project.” Alan’s trying to make a judgment about whether or not there have been enough resources and his frustrations, and I think it was said that we’ve got some more information that we can give to help Alan out.

But I think the sense of what Alan’s trying to get across is absolutely valid, but we’ve trapped him by saying, “Hey, there’s a metric that you’ve got to have a test against,” and then we’re a little sensitive – as we should be – about, well, is X staff or Y staff the right answer. So I’m sure we can work our way through it in the next iteration. I don’t see there has been a great disagreement between where we’re at other than we’re trying to get a particular point that may or may not be relevant to the thrust of what Alan’s trying to say.

BRIAN CUTE:

Thank you. Larry?

LARRY STRICKLING:

Actually, I hope we stay away from landing on a number. So I just wanted to respond to Steve Crocker because I think what he said is absolutely the case for the way a Board ought to operate with senior management, except when you’ve got recommendations coming to you from one of these AOC Review Teams because at that point it does seem like the Board has a certain responsibility in terms of its accountability to ensure that these recommendations are handled in an accountable and transparent way.

I still don’t think – I agree with you – it doesn’t get into the Board second guessing 20 versus 15, but it does seem like there would be a

couple aspects of that that I think a Board would follow. One would be to ask the chief executive, “What is your plan for assuring that we have the necessary resources?” That’s number one, and then number two will be, “And how will you evaluate whether you get it right?” And that, I think, is what’s missing here from our assessment which is we haven’t really looked at those questions to see, did the Board and senior management conduct that evaluation and do they have that feedback mechanism then to determine whether or not they got it right or not?

So frankly, it wouldn’t bother me if today one could say, “You know what? There aren’t still enough Compliance people on the job.” That by itself does not tell me that the recommendation was or was not followed. The question is, is there a process in place that will correct that so that the Board can be able to say – and we can affirm – that the Board has an accountable and transparent process to deal with this?

UNIDENTIFIED MALE:

I think we’ve converged to a [inaudible] agreement.

BRIAN CUTE:

And let me just add, I think the question for us is, is the Review Team providing an assessment and making observations about the transparency and availability of certain data that would allow the Board to assess how well this has been managed, or are we drawing conclusions that it hasn’t been well managed ourselves? And to me, that’s the dividing line. Alan?

ALAN GREENBERG:

I don’t think we’re competent to decide on what the right number is. We are competent to decide on if there’s a target of 55 and we’re at 15, we have a problem. We don’t have those metrics. We haven’t been

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given them. The reports that we've been given have made it almost impossible to understand whether there has been an improvement or not. If anything, the reports imply that there has been a decrease in performance, but we don't know that.

BRIAN CUTE:

I think we're good on that. Went a little long. Move on. Okay, good conversation. Thank you. Next one.

ALAN GREENBERG:

Okay. The next one says we should make sure that WHOIS information, that the requirements for accuracy are understood, including internationalization. There's a lot of work to be done. Little has been seen by the community at this point, so it's hard to understand. Part of the staff response was the Expert Working Group has significantly completed its work, which we deemed to be not particularly relevant since they have issued a report which has, among other things, been heavily criticized, and they're going back to do more work. Can we scroll a little bit?

The registrant rights and responsibilities, which has been changed to benefits – terminology which the community has viewed as downplaying the importance of this – that is, it's only a benefit, it's not a right – is a significant issue. And we think based on what we've been told in the last couple of weeks that the planned WHOIS portal should address at least some of the communication problems or communication needs. So overall, we're in an in between stage right now. I can't say much more about it.

BRIAN CUTE:

Olivier and Denise.

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OLIVIER CRÉPIN-LEBLOND: Thank you, Brian. I'd be cautious at drawing conclusions on registering benefits and responsibilities. A question was asked by Evan Leibovitch in the last public forum. There has been no reply from the Board yet, and it is unknown whether the use of registrant benefits and responsibilities rather than rights when rights are [coded] further down on the same page is actually a clerical error or is something that was designed to be as it is. I guess I would turn to Steve to perhaps provide us with an answer on this or ask whether this has been considered. Registrant benefits and responsibilities, and registrant rights and responsibilities, both quoted on the same page of the – I forget what book it was. Was it the Applicant Guidebook? Whether this is a clerical error or whether this is a designed change. Registrant benefits and responsibilities. There's a big difference between the two.

[ALAN GREENBERG]: So I can't answer authoritatively, but I know that there was some evolution in the choice of words over time, and I'm trying to remember what the sequence was. It started out as a registrant bill of rights, and then that was withdrawn and replaced by rights and responsibilities, and I don't know that I ever heard benefits. Anybody on the staff know more about this than I do? I hope somebody on the staff knows more about this than I do.

UNIDENTIFIED FEMALE: Somebody does. I think Margie would be the best. Margie, are you on?

MARGIE MILAM: Yes, yes. This emerged from the negotiations with the registrars on the 2013 RAA. And as some of the earlier versions were published for public comment, there was a fair amount of criticism I think from the Non-Commercial Stakeholder Group and perhaps ALAC about that what was



listed in the actual document was merely more of contractual terms instead of something that was elevated. And they were looking for something else that would be called a bill of rights or using those words, rights versus benefits. So the reason it's benefits as opposed to rights is because it's linked to what's actually in the contract versus some different notion that would be a higher-level principle thing. Does that make sense?

BRIAN CUTE:

I think so. I just want to come back to the wording of the recommendation, as we did last time. And is this document we're talking about directly tied to the recommendation, and if so...

ALAN GREENBERG:

Yes, it is directly tied because it is what tries to put in simple language the requirement – because that's the requirement part, not the first word – that registrants provide accurate information. So, yes, it is tied to it. But the publication of it under the name it was has significantly decreased its usefulness because it reinforced the belief among some people that registrars do not want to grant rights to registrants. And therefore, the impact of the document – even though we're not looking at the rights part, we're looking at the responsibilities part – has significantly decreased in the ability to use that document to publicize the requirement part. So it's a nebulous issue. It's one of these communication things that it should have been something that the whole community could take and run with. Instead, it has been something that people have been griping about. I'll call on Olivier since our chair is busy.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan. I call on the RAA page 68 – that’s what we’re speaking about, page 68 – registrant benefits and responsibilities, and then the line underneath there is a subheading domain name registrant rights. Is it rights? Is it responsibilities? Is benefits in there in error? That’s the crux of the question here.

BRIAN CUTE: Okay. So if I can ask a question. I’m not trying to be coy here, but does the title really affect what the obligations are in the rest of the document in terms of what registrars are required to do vis-à-vis WHOIS and what registrants are expected to do vis-à-vis WHOIS? Question.

OLIVIER CRÉPIN-LEBLOND: I’m not a lawyer. I cannot tell you whether it does make a difference. What I do find is a discrepancy between the title and the contents underneath on the same page. And since this is a legal document, I would have thought that this would be important. And certainly many voices in the community – well, this has raised an eyebrow. Maybe there is a simple explanation. Maybe it’s a clerical error, in which case it needs to be addressed and it needs to be changed.

BRIAN CUTE: Thank you, Olivier. Alice. Margie, please.

MARGIE MILAM: Oh, thank you. I wanted to point out that the documents we circulated to you that have the draft content of the WHOIS portal have a section that relates to this document. And we’re looking at it from the perspective of communications, and is there communications out to registrants about their obligations with respect to WHOIS accuracy? That’s an important part of the portal that will be going live shortly and one of these days we’ll hopefully be able to provide you with a demo of

it. But the communications steps that would go out to registrants is all linked to this launch of the portal that is to take place. So we may not have visibility on that yet because that hasn't been launched, but when that launches that's part of the communications plan.

**BRIAN CUTE:** Thank you. So I think we've hit on an issue of communications and clarity of communications raising different perceptions, and that's important to the implementations recommendation. Any other key serious issues with this assessment? Olivier/

**OLIVIER CRÉPIN-LEBLOND:** Thank you, Brian. I'm sorry to be sounding like a squeaky wheel on this one, but are we or are we not going to be talking about registrant benefits or rights in the document there. Because if we do mention registrant benefits – and this is an error on page 68 of the RAA – then we just are compounding the error effectively and I'd like to be quite precise.

**BRIAN CUTE:** Could staff please clarify for the Review Team which title we should be using, and we'll use that title.

**UNIDENTIFIED FEMALE:** The title is Registrant Benefits and Responsibilities.

**BRIAN CUTE:** Okay. So we've got this input. Alan and Michael need to progress their draft to final stage. This is clearly an issue. Staff, if you have any clarifying explanation or communications perspective around this that helps make it clearer to the team, please provide it to Alan and Michael in the coming days so they factor that in to their next iteration of the

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draft. Any other issues? We're going to keep pushing forward, folks.  
Next one.

ALAN GREENBERG: Can we scroll down to 6, please?

BRIAN CUTE: And there are 14?

ALAN GREENBERG: There are 16, but the last two are not as onerous. Okay, this is the critical one of the number of bad WHOIS records should be decreased by 50% within 12 months and 50% again over the next 12 months. The initial answer we got from staff was essentially this is not implementable because it requires telephone conversations, and that's not budgetarily effective.

The current answer is they are going ahead with planning for it. They will be using telephone communications, and clearly, whether the 50% target is going to be met is unclear. We're about two years late, or a year plus late in the process. We haven't set the baseline yet for what the decrease will be from, and therefore it's not clear we will know when we've reduced by 50%, but that 12 months has not even started yet. So clearly there is progress being made. The recommendation is being implemented pretty close to what was asked for, but that has come very late in the process.

BRIAN CUTE: Thank you. And first a question, Margie, how much longer do we have you?

MARGIE MILAM: I have to leave in an hour.

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BRIAN CUTE: Great. Any significant – significant – issues with this one?

DENISE MICHEL: I have some first, then maybe Margie can fill in as well. So I think – and we can send you the specific text – but on the implementation side of this recommendation there was actually a number of issues that staff raised, not just the issue of calling people, in terms of fully complying with or guaranteeing the 50% reduction in a year. So I think it would be useful to clarify that in the final column. So it was more than the methodology or calling people. And then, Margie, did you want to add? And then, of course, Chris Gift has provided you with some initial input on the plans there, and we can provide you with additional information. And, Margie, did you have any other facts that you wanted to add at this point? We can do some follow up.

MARGIE MILAM: Yes. This is one of those recommendations where the Board action took a different approach, and so one of the discussions that obviously came up was whether we had the ability to impact the accuracy in that manner – in other words, reduce by 50% in 12 months and then again in 12 months. And so the alternative approach was to do the actual statistical analysis, and that’s the work that Chris Gift is working on. And so it was just one of those areas where it didn’t seem feasible to commit to reducing accuracy by 50% but that we would provide tools to be able to monitor it and track it so that there is transparency with respect to whether progress is being made.

BRIAN CUTE: Thanks, Margie. Any other critical points here? Good to go? Okay, let’s move on to the next.

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ALAN GREENBERG: Number 7. Sorry?

BRIAN CUTE: Is 7 related to 6?

ALAN GREENBERG: It's related, yes. That's basically document the progress published reports. Could we see the full answer? And the only thing is annual reports are meaningless at this point, given that we haven't really started the process yet. We've started working on it, but we haven't actually started the process of reducing WHOIS errors with any conscious effort.

BRIAN CUTE: Okay, so this is tied to 6. Any questions? Significant points? Okay, no hands up. Move on.

ALAN GREENBERG: Number 8 says there should be a clear, unambiguous, and enforceable chain of contractual agreements for registries, registrars, and registrants. I think with the new RAA, to a large extent that is happening. One of the staff comments was they hoped to do better, but there was registrar pushback. And that yields the disappointing part – which, again, we can change emotions – but nevertheless, it's unfortunate that ICANN had to lower its goals in that critical area. How effective it will be, we don't know. The agreement is just kicking in now. And there's actually a timeline over which the various clauses of the agreement kick in, and I'm not quite sure where this one fits. So we have no real measure of whether it's going to work or not, but clearly there are contractual terms where there were none before.

BRIAN CUTE: Anything?

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ALAN GREENBERG: Number 9?

BRIAN CUTE: No. Larry's got that look on his face, so I'm just giving him a minute. What's that a reference to?

ALAN GREENBERG: It's a reference to the staff response saying that they were looking for a certain type. I believe it was regard to verification, and they got – I don't remember the exact words. Denise or Margie can come up with them – but there was statement of they were not able to implement that because of pushback from the registrars, and so the terms in the agreement are not what ICANN originally wanted.

DENISE MICHEL: I don't know. Yeah, I'm not sure about that. Margie, do you have a better recollection, or we can provide written follow up for you too. Go ahead, Margie.

MARGIE MILAM: Sure. That was probably in a very early response when we were still actually negotiating. And at the time, it didn't seem like we were going to have that clarity with respect to reseller obligations. But as we closed out the negotiations, I think we're pretty comfortable with where we landed and I'm not sure that we have the same reservation that we did when we first made that statement.

BRIAN CUTE: So, Margie, could you provide a write-up of sorts to Alan and Michael for them to factor in to their assessment.

MARGIE MILAM: Sure.

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ALAN GREENBERG: Margie, my recollection is this was on an issue of whether they verify telephone numbers and addresses, or either/or, or both. I thought that's what it was in reference to.

MARGIE MILAM: Oh, I thought you were talking about the contractual [chain]. Yeah, that is true. We were pushing for either e-mail or phone number. There's no doubt that we wanted both of them as part of the validation. But as you can imagine in a negotiation, at some point it was clear that we're not able to achieve that in a negotiation. Hence, we ended up with the e-mail or phone number. So that part is true. I think from the staff perspective, we're pleased that we received a validation obligation, and we're working very closely with the registrars to find ways of implementing those parts of the agreement.

ALAN GREENBERG: Yeah, I don't think, Margie, anything you said is disagreed with. We were hoping for more. We didn't get it all. What we got is a lot better than what we had.

MARGIE MILAM: That's correct.

[LARRY STRICKLING]: Well I guess, again, this comes back to the same discussion we had on Number 4, which is the recommendation was that ICANN should ensure there's clear, unambiguous, and enforceable chain of contractual agreements, and it goes on. I guess – and I'll ask Alan – I said, "Alan, do you think the Board and ICANN have accomplished what's in 8 in terms of what the recommendation was?"



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I understand the effectiveness of all this may be in question, but again I don't know that it's up to us to be speculating on that. It would be appropriate for us to make an observation or make a conclusion that the process that was used in doing all this does not lead to a clear understanding of how effectiveness will be measured or something like that. But I'm worried about we're off into blue-skying things here that I just don't see what they have to do accountability and transparency.

ALAN GREENBERG:

I think the target here was to get accurate WHOIS information. What we have is contracts which are enforceable and presumably will be enforced to make sure some of the information is correct. In parallel with that, allowing some of the information to be incorrect with no ability of ICANN to control it.

[LARRY STRICKLING]:

So to my question, do you feel the Board has been accountable and transparent in responding to recommendation 8?

ALAN GREENBERG:

I believe the Board has been accountable and transparent. I do not believe that the target of the recommendation has necessarily been met completely or not as well as it could have been.

[LARRY STRICKLING]:

Then why would you say the Board has been accountable if they haven't delivered an outcome that you think meets the recommendation? I'm just trying to focus us on what I think is the important issue here as opposed to us speculating as to whether or not we think it's going to work or not. I just don't see how that's in our [inaudible].

ALAN GREENBERG: We know it's not going to work because there is no way to enforce it working, and we have had problems in this exact area before. Did the Board and staff do the best job they could have under the circumstances under the fact that we were in a negotiation position and couldn't get everything we wanted? Yes, I believe they did a quite responsible job.

[LARRY STRICKLING]: So I guess I'm still confused.

BRIAN CUTE: If you look at just the words of the recommendation, you could conclude that the recommendation was implemented. When you add context of what was the problem that they were trying to solve – and I'm not saying context is unimportant; it is important – but that can bring in the dimension of, were the targets sufficient, using e-mail, phone? I mean, you can get down into the weeds pretty quickly. Go ahead, Alan.

ALAN GREENBERG: I don't think we're getting into weeds. That recommendation says there should be a complete, clear chain of command and way to make sure WHOIS information is accurate. We do not have that today. We have a way of ensuring that some WHOIS information is accurate.

[LARRY STRICKLING]: Why do you say that?

ALAN GREENBERG: Because if a registrar chooses to say, "We will verify phone numbers but not addresses" – which the current RAA gives them the prerogative to do – or vice-versa, then the WHOIS information for the thing they aren't

verifying is not necessarily accurate, yet the WHOIS policy says the registrant must provide accurate information. So there's a hole there.

[LARRY STRICKLING]: I may not completely up-to-date, but I thought the issue that was negotiated was whether or not the registrar needed to get confirmation by both e-mail and phone number of the information that was there as opposed to accepting confirmation by one of those channels that the information is accurate.

ALAN GREENBERG: Sorry. I've lost you. The target in the negotiations was to ensure that both things be verified. That was not achieved.

[LARRY STRICKLING]: Well, first of all, it's not both. There's a multiplicity of pieces of information: there's the e-mail address, there's phone number, there's postal address. So let me make the count three of the pieces of information that have to be verified or that are collected. I thought that the key point in the negotiation was whether or not the registrars were obliged to use both the phone number and the e-mail address in order to verify that those were working as opposed to one of those channels to make sure that there was confirmation of the feedback. I don't believe that there was ever – and again I'm not in the middle of this – but I don't believe there was ever a plan to force a test of all of those pieces of information as opposed to just accepting what comes in at the moment.

ALAN GREENBERG: I don't remember the details either. Margie probably does. I remember that it was a target higher than what was achieved, and as a result some things may be unverified.

UNIDENTIFIED MALE: In any case, a very big issue is whether the resellers are under the same set of rules as the registrars. And then a separate issue was what the specific implementation mechanism is. And I think it would be helpful to separate the discussion along those two lines.

BRIAN CUTE: Okay, I've got Margie then Avri, and we're going to draw a line.

MARGIE MILAM: Sure, a couple areas. As you recall, the WHOIS Review Team recommendations related to the current policy, how effective was the current policy implemented? Under the current policy, there's the notion that registrars have to provide accurate information, but there was no verification or validation obligation that applied to the registrars. So though the negotiations, we tried to change that, and we in fact were successful in changing the current policy to one where there is some validation of some fields.

I think that's where the disconnect lies is that clearly the notion that registrant information should be accurate, but that doesn't necessarily address what the registrar obligation is. And under the old RAA, there was no validation or verification. Under the new one, we were able to achieve some validations methods, but we did receive pushback because of the complexity of, for example, validating phone numbers all over the world and in particular in underdeveloped areas where that might actually impact people's ability to have a domain name registration. And so that's why I understand there was frustration in the negotiation, but I don't think that means that you can say that the recommendation was not fully implemented because the recommendations related to the existing policy and not new policy.

BRIAN CUTE: Thank you, Margie. Avri and then we draw a line.

AVRI DORIA: Thanks. I guess on this one, and I'm trying to go back to looking at it from the perspective Larry was giving of was the Board and staff accountable to the recommendations, and I think that the answer has to be, yes, they were accountable. So what we're getting into is kind of like the weeds – and I think that this is probably more a job for the next round of the WHOIS group – of looking at how it was implemented, how they followed through, and whether they needed to recommend more, whether they needed to recommend more specificity.

But by the same token that we hit earlier, and I was reminded and had to slap my own wrist, that we are not supposed to be making further recommendations, we're not supposed to be indicating disappointment, we're not supposed to be whatever. They did meet. They're accountable. Now what we're getting into is the next WHOIS group has to look at how it was done and see if they have further recommendations to make. So that would be my view on it.

BRIAN CUTE: Thank you, Avri. And we can indicate disappointment, just my suggestion is use a different word. Alan?

ALAN GREENBERG: I think we need to take this offline because I really don't want to continue doing this here, but the recommendation says make sure you have rules so that the policy can be enforced, and right now we are missing part of that analysis simply says that. It's not slapping anyone's hands for not being a better negotiator. It's just noting that if you find out that Registrar X never checks street addresses, you can get away

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with putting a bad street address in, in violation of the policy, and get away with it with no way to enforce it. It's just noting that. I think Margie agreed though.

BRIAN CUTE: Clarification, please. We really need to draw a line.

UNIDENTIFIED FEMALE: Was not contradicting Steve. I think Margie just adding more details.

BRIAN CUTE: Margie.

MARGIE MILAM: Oh, yeah, that's correct.

BRIAN CUTE: Okay. Let's move on. My plan is to go to 12:30. Break for lunch. We've got 20 minutes. Let's see if we can get through the rest of these. Yeah, Larry?

LARRY STRICKLING: I know you want to move forward, but I think we need to be really clear in terms of how this needs to change to go to the next version. It does seem to me, and I agree with Avri's comments, that most of what's in the box for Number 8 comes out or has to be redone because we shouldn't be speculating as to how effective this will all be and saying it remains to be seen. It seems to me that's beyond where we're at. I mean, the first point of this, there ought to be some statement about whether or not we think the Board has been accountable and transparent, I think, on each one of these. But then most of the rest of this, I would do as dictum that doesn't really remain in the discussion.

ALAN GREENBERG: Maybe I don't understand this whole process, but I didn't think we're just looking at the Board. We're looking at ICANN and whether the

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recommendation has been implemented, not whether the Board had the intent to recommend to get it implemented. So I think we're looking at how effective these changes have been. If we're just looking at whether the Board did it in good faith, I think we're shortchanging this process a lot.

LARRY STRICKLING: Yeah, but even under that test, you're language doesn't pass because it's how effective this will all be remains to be seen. You're now speculating about the future. I mean, maybe there's a way to rewrite it and put it in terms of the adequacy of the implementation of the recommendation, but the future speculation I can't agree with.

ALAN GREENBERG: Where am I speculating? I'm sorry. It says how effective remains to be seen. We don't know. We do not know how effective this will be. I think that's a statement of fact. I don't know whether it will be horrible or great, so I'm not sure how I'm predicting anything.

BRIAN CUTE: All right, let's get to this. Am I going for a show of hands almost. I know, I don't, yeah.

ALAN GREENBERG: I'll rewrite anything.

BRIAN CUTE: Let's take another draft and circulate this, and I'm going to ask everybody on the team to pay particular attention to the next iteration of this draft and provide feedback. Thank you. That's a good out. Let's move on to 9.

ALAN GREENBERG: All right. This was a recommendation that something be done regarding that tracking information to say how effective the WHOIS data reminder

policy is. And if that's unfeasible, the Board should ensure that an alternative effective policy be developed and implemented in [inaudible]. What this was recommending clearly was unfeasible. There was no mechanism to track it and certainly no cost effective mechanism to track it. I'm trying to see now what is it I said. The ATRT agrees that the issue can be further adjusted in looking at future activities.

BRIAN CUTE:

Significant points? Avri?

AVRI DORIA:

I guess now that I really have been forced to look at the point of are we talking about the accountability to that team's report or the details, this strays into the details. In other words, we shouldn't be getting into the details at all of WHOIS recommendations. We should only be getting into the detail of was the response appropriate in terms of accountability and transparency and not getting into the specific implementations. That is their job. That is the next round. I mean, these rounds have to be seen as sort of in their continuity, and the details of how well it works isn't our problem. Our only problem is was it properly treated. I'm sort of accepting that that was made later and that that's something that we probably need to be strict about is not getting into the weeds of the implementation of those recommendations because that's their job, not ours.

BRIAN CUTE:

Thank you, Avri. Alan?

ALAN GREENBERG:

If that is, indeed, all we're inputting, I wish someone told us a lot earlier. The job would have been a hell of a lot easier and a lot less writing.



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AVRI DORIA: I didn't think of it.

ALAN GREENBERG: Well, I made the recommendation at our last meeting, and I'm planning to make it again, that the analysis of how well the WHOIS recommendations were implemented should fall on the next WHOIS Review Team because they're the ones with the expertise in the area. They're going to be doing it at the end of the process instead of us who are not skilled at it, who don't have the particular knowledge, are doing it partway through the implementation process. I believe that would be a rational thing to do, and it's going to be in spades because we're adding one more Review Team onto the whole process.

So I think the analysis of the past implementation should fall on the next group. They're going to have to do it anyway to figure out what still needs to be done, okay? But it fell on us, and we've been told to do it. And if all we're doing, did the Board do things with good conscience, then it's a lot easier to do. It may be difficult because of what we discussed earlier on the wording of the Board resolution, but David's issue on SSR would have been a piece of cake. The Board said, "Do it. Follow them all," and people have been scurrying around doing it, and at that point give them an A and walk away from it. If that's what we're supposed to be doing, then again I wish someone had said it a lot earlier in the year.

BRIAN CUTE: Larry?

LARRY STRICKLING: Well, I think it's a little more than that. But first off, I was going to leap to your defense, Alan, that I thought the write up here seems to be at

the appropriate level, which was the Board questioned whether it was actually implementable, and you have us concurring that we see the same question mark.

So in that sense we are looking at the Board evaluation, the Board choice here, and we're basically saying, "Okay. No problem there." So I don't actually see this one as driving down into the weeds the way the other ones did. But again, it seems that you have the three Review Team outputs. We are focused on accountability and transparency. I think the whole idea was to be able to take WHOIS and security and stability and eventually top-level domains when that one comes down the road and be able to evaluate the accountability and transparency of the Board in responding to those sets of recommendations.

So I think it's more than just, did they act in good faith? I think it's more than just, did they check the box? I think one can look at the process that they used and say, "Yes, this was a good way for the Board and staff" – because the AOC does include both Board and staff in terms of implementation – "to evaluate that."

But again, to the points we've talked about before, it doesn't get us into the terms of, was 15 people the right number of people to staff Compliance? It's more, how did they go about deciding how many people they needed? Is there a feedback mechanism to adjust midcourse? That's what you look to see in terms of responsibility and accountability, and I think it's on those kinds of dimensions that we would be evaluating the Board and staff response to these things. But it is more than just, did they do it in good faith?

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BRIAN CUTE: Thank you. Avri, and we draw a line.

AVRI DORIA: Okay, thanks. Yeah, I think saying that I was suggesting that we're only looking at did they go in good faith was taking my argument out of [inaudible]. I think that the issue I have with it is not the first paragraph but actually the second one where we are making a recommendation about the appropriate way for further addressing the issue. I think at that point we've dipped out toes into the fact of the issue as opposed to the way the issue is being treated, but I wasn't arguing only did they check the box. Thanks.

BRIAN CUTE: Alan?

ALAN GREENBERG: I think that part, and in fact the last fraction of a sentence in the first paragraph, is important because the issue is if what they were recommending wasn't implementable, was a dumb idea, are we trying to get at the core of what the end purpose was and find some other way of doing it if that was a dumb idea? I mean, were they saying, "We're not trying to achieve what they were trying to achieve?" We're not saying. They're saying the WHOIS Review Team's heart was in the right place, but they recommended something that won't work, and this is what we're doing instead to demonstrate that they are trying to meet the needs of the Review Team or the intent of the Review Team recommendation. if not the words of it.

BRIAN CUTE: I'm just going to echo Avri's point, that I think the last statement gets into the how they should go about doing it, and there's a fine line we need to walk there, too, about not being prescriptive in the how, but

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identifying the process. Was it accountable? Was it transparent? Did they use processes or instruments or tools to try to attack the problem? Yes, they did. As opposed to getting into the how. I think it dips its toe into the how you should go about doing this going forward area. Steve?

STEVE CROCKER: I think I want to ask for extra credit here rather than...

BRIAN CUTE: lunch break!

STEVE CROCKER: Everybody involved – WHOIS Review Team, this group, the Board, everybody – is really focused on how to make the whole process more effective. There's a certain amount of extra participation, over-participation. We're all trying to get there.

What the Board did was take a look at this and say, "We understand what the goal is. We see some difficulties, some structural problems, in the whole system" – and we didn't say all this quite as explicitly as I'm going to say it "that will make it fundamentally hard to get to where everybody's trying to go because the system is kind of deeply flawed. You can keep pushing on this and keep pushing on it, but you're not going to get more than a certain distance.

And so it's time – and we've known this for a long time, actually. It's time to actually draw a halt and say let's go take a really strong look at this whole process. Much stronger than how do we increase compliance or should we have e-mail address and phone number? Take a fundamental look at the whole process. And that initiative on the

Board's part I think is an extremely strong response to the underlying problem.

At the same time, the Board did not say, "And therefore we won't do any of this other stuff because we'll wait for the complete solution." We knew better than that and we said we will start up this other process. We don't know how long it's going to take. It would be nice if it came in time, but we'll just start that up and then we'll set that aside and then we will take these recommendations – the WHOIS Review Team's recommendations – and we will forcefully implement them in good faith because absent a new plan, until we have a new plan, we must proceed down this path and we will do that.

It's that overhang between how effective is it going to be. Everybody understands that there's a doubt about how effective the current system is and how effective you can make it, even if you push very hard. It's based on that doubt that we started up this strategic effort. But we didn't hold back on doing the best that we can in the current system. I don't know how to do better than that. That was the strongest possible response that we knew how to do. I would argue that it is much stronger than any of the specific improvements that we're talking about here about whether we're verifying e-mail address and street address and phone number and imposing all that on the registrars. There's a deeper problem in the way all of that is set up. You can keep pushing on that, but it's an uphill battle of pushing on a string at the end.

BRIAN CUTE:

Thanks very much, Steve. And candor is very much appreciated, and I think the statement from the chairman saying there's doubts as to how

effective this could be is an important statement to have on the record. That's part of transparency. Appreciate the candor very much. Let's move on and do what we can in the next few minutes.

ALAN GREENBERG:

Okay. This is the Privacy Proxy 1. It says ICANN should initiate processes essentially to regulate to ensure the Privacy Proxy can work in conjunction with the WHOIS. The new RAA addresses one aspect of it, particularly privacy proxy services that are managed by the registrar itself. And the PDP is foreseen to address the more general case. Can you scroll up a little bit, please?

The end of the first paragraph makes a bit of a prediction, and we can take that out if you'd like, that it's going to be a difficult job. But the fact that the process will be starting is promising. Ultimately, the Expert Working Group may obviate the need for privacy proxy services to some extent, but we cannot predict it's going to disappear completely, so the issue is important.

BRIAN CUTE:

Concerns, issues? This is a recommendation that looks fairly prescriptive. And the top part of the recommendation is that ICANN should initiate processes. Have we answered that question or assessed did they initiate processes fully?

ALAN GREENBERG:

I believe so. The RAA has already put in place some of the rules and we have the understanding that a PDP is in the process of being initiated. Other than that, we can't say.

BRIAN CUTE: And the statement after being ignored for so long, is that ignored from the time that the WHOIS Review Team issued its recommendations moving forward or prior to that?

ALAN GREENBERG: That was an ancient history statement, which I can easily take out. Is that an instruction to take it out?

BRIAN CUTE: Or put it in context.

ALAN GREENBERG: Put it in context, okay.

BRIAN CUTE: Sure. I mean, the Review Team showed up and made some recommendations and processes were initiated. Other significant points? Okay, next.

ALAN GREENBERG: This one needs to be rewritten. It hasn't been rewritten yet because I just talked to Michael about it yesterday – yesterday or two days ago or whenever – and I didn't quite understand his comment. Essentially, work is progressing on this. It's a work in progress, but yes, there is action going on. The wording isn't there, but essentially we are told that InterNIC will be disappearing from the process. There will be a better full search engine available and stuff. So it looks like this is progressing, again, a lot slower than we had planned.

BRIAN CUTE: Which I understand regrettably is nicknamed WEIRDS.

ALAN GREENBERG: That's the protocol.

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BRIAN CUTE: Okay. So we've gone from WHOIS to WEIRDS. I understand and that's not encouraging. Just a stab at humor there. Folks, any serious comments on this?

ALAN GREENBERG: But they spelled WEIRDS wrong, so it's okay.

BRIAN CUTE: Any significant comments on this one? No. We move on.

ALAN GREENBERG: Internationalized domain names. The recommendation said to task a working group within six months to report, and then implement it immediately. It has gone much slower than that. We're talking about long timelines. Work is progressing at this point. I'm not sure what else we can say. Again, I have a disappointing word. If we could scroll down to the bottom, please. You can tell there's a lot of disappointment in this.

The IRD group was just – I think a call for membership just went out in July, something like nine months after the Board approved the recommendation. There are expectations of reports by September/October. Rather, a meeting by September/October because the group I don't think is actually formed yet. We're talking a lot of years out.

The last part is an editorial comment, I guess. I think it's appropriate, but people can tell me whether it is or not. We have essentially left registrars, and to some extent registries, completely on their own as to what to do with names that are registered in different languages by people who speak different languages telling them they had to have



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accurate WHOIS information and giving them no methodology whatsoever and expecting them all to comply in a uniform way. I think we should have done something on an interim basis. We haven't, and I think that needs to be said.

BRIAN CUTE: One comment from me. I think timeliness of implementation is a qualitative point, and it's being made here. I do think two things are important, that to the extent that the Review Team has facts that explain the delay – just facts – the why. Then let's make sure that's included in the...

UNIDENTIFIED MALE: [inaudible off mic]

BRIAN CUTE: Okay. And if we don't, then just the observation. And for staff, if there are facts that explain any less than timely implementation providing those to the drafters at this point in time is useful.

ALAN GREENBERG: I'm assuming it's full plates and there's only so many things you can do in parallel. But I may be wrong.

BRIAN CUTE: But you don't have facts?

ALAN GREENBERG: I don't have facts.

BRIAN CUTE: Margie?

MARGIE MILAM: I wanted to answer those questions. The reason – well, a couple things. The IRD has been convened. They had their first meeting this week. So that is underway. The reason it took so long to have the group formed is that it's working essentially on a model that the model is dependent on

the outcome of the PDP related to translation or transliteration. So it didn't make sense to start that group earlier if we didn't have the fundamental question of what needs to be translated or transliteration – transliterated or whatever the right word is in English.

The reason it's difficult – I did talk to Steve Sheng who's handling this on the staff side – to develop best practices is because it's a controversial issue within the community as to what needs to be translated, who bears the cost, what's the right standard. If you were to provide some sort of guidance to, say, registries on what to do, they would go through the process of developing that infrastructure only to change it when the PDP comes up with a different result – at least that's the indication I'm receiving from the experts on our team as to why it didn't make sense to do a best practices approach for that issue, because they were worried about the cost of making that transition once and then again when the outcome of the translation or transliteration PDP takes place.

So, yes, it is true the group took a while to get formed. But we were cognizant of the fact that the PDP needed to be kicked off. It is being kicked off. So these two projects are going on simultaneously. The people that are involved in those groups, there's a lot of overlap and they've already made the point that they need to be working closely together so that the outcome of the translation or transliteration PDP doesn't somehow contradict what's going on in the IRD work. So they're trying to find a way to inform each other so that the work would be consistent and not come up with a result that wouldn't be compatible.

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And we've identified most of this in the response. The only thing we hadn't informed the ATRT-2 is that the group is convened and they have already started work this week.

BRIAN CUTE:

Thanks, Margie. Alan?

ALAN GREENBERG:

When I wrote this a week ago, I didn't know that and was told that the group was being identified in September. It wasn't quite clear how quickly they would meet, which was why I covered my something and said September/October.

The real issue of interim specifications or guidelines or something is we are still requiring the registrars and registries to provide ASCII information in the WHOIS. They're not relieved of that requirement. So regardless of whether it's our interim rules or their own that they're following, someone should have been implementing something. I just thought it would have been better – and certainly Michael agreed with me – if it had been something uniform as opposed to ad hoc. The work had to be done by somebody and should be done, but in any case...

BRIAN CUTE:

And Margie, everything you said, to my ear, sounded logical, sound, rational and communicating it to the team so we have it. But two important points in what you said. Implementability. Clearly, there were some implementability issues you were pointing to and being very explicit to ATRT-2 about what those were. We have learned this time around the real importance of implementability and having a clear understanding. So please call that out.

But also, an issue of communications. If a recommendation is made by a Review Team and the Board takes action and the community has expectations that things are getting done, was there adequate communication about why things got staged the way they did? It sounded completely rational – got to wait for a PDP before we can take the next step. That’s perfectly logical. But was there adequate communication along the way? Something I’m just asking you to check, looking at the record and think about going forward. Alan?

ALAN GREENBERG:

Avri has her hand up also. The kind of timing that is troublesome here is, if I remember correctly, the final issue report on translation/transliteration – which is the next item, by the way, not this one – came out last December, yet the PDP is just kicking off now. So that’s the kind of timing that we worry about.

BRIAN CUTE:

Thank you. Avri?

AVRI DORIA:

Thanks. I just wanted to raise an alarm flag on implementability, and it’s something that’s been nagging at me since we started talking about it. I’m making this statement from the perspective of somebody that’s spent most of my career as an implementer of things.

Often, when you first look at something and you first get a requirement, it is not implementable. It is only once you’ve had a requirement for a while and you know you have to implement it that it becomes implementable.

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So this a priori notion that something is not implementable, and that being a reason for not making a recommendation has me concerned simply from the perspective of an implementer. We can never do it at first until we figure it out.

BRIAN CUTE: Thank you. Alan, Larry, close on this one.

ALAN GREENBERG: I'll say to Avri, based on my experience or vice-versa, we think it's implementable and when we get down to the nitty-gritty, it's a real dog's breakfast.

BRIAN CUTE: Larry?

LARRY STRICKLING: Without necessarily agreeing or disagreeing with her point, I think it does point out something for us, which is when we are looking at a recommendation where the response from the Board or the staff has been it's not implementable, I do think there's this question at that point in terms of what do we think the accountable Board and staff does in that scenario? Do they just say, therefore, we're not going to do it or do they say, well, we think we understand the intent of the recommendation so we'll do something else? Or what other possible responses might be. And shouldn't we be in our role of assessing accountability speaking to that even in the cases where it might not have been implementable whether or not we agree with that or not? It does seem like there's a question of what the accountable Board or accountable staff does faced with that challenge.

BRIAN CUTE: Thank you. Steve, then we close.

STEVE CROCKER:

Yeah. So thank you, Larry. I think the ground rule is very straightforward. If the recommendation comes in, the bias is in favor of accepting the recommendation. If we're not going to accept the recommendation, whatever the reason, the obligation is to explain what our reasoning is. I'm speaking now from a perspective of the Board. What our reasoning is, why, and what it is we're going to do or not do instead and that the guidance to us, to the Board, is to do as good a job as we can to get at least the intention, if not the letter, of the recommendation. I understand Avri's point of view about being an implementer and saying, "Oh no, that's too hard," but I think that the contrary is equally, "Yeah, we'll get it done," and then it turns out to be hard.

In both cases, the obligation is a contract one in the common sense of that term. When somebody takes on the job, they've agreed to do that. So you're transferring the responsibility. So when a recommendation comes in, if the Board says we'll do that, it ought to be on the basis of "and we've looked at it and we've assessed it and we think we can make that happen." And in order to do that, we have to do a certain amount of due diligence internally, get the resources lined up, get the agreement from the people and so forth.

And then if there's a problem with it turns out to be too hard to implement, then we erred and we'll deal with that. Equally, if we get too much resistance from staff and says, "No, we don't want to do that. It's too hard, blah, blah, blah," then we have to make an assessment as

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to whether we're getting an unnecessary amount of resistance and we have to go deal with that.

But in any case, that process is an absolutely essential process in order to receive the recommendation, accept it, and say yes or to receive it and say, "We understand what you're trying to say and here's our modification of it." But we can't be cavalier. We can't be dismissive. That obligation is unmistakable. But also, it's not an absolute one of just because somebody tells us that that's what they want, that therefore we're going to do it. I'm repeating things I've said before. So it falls I think squarely into your second path, Larry.

BRIAN CUTE:

Thank you, Steve. Margie.

MARGIE MILAM:

Thank you, Brian. I just wanted to answer the question I've asked to whether we provide visibility on this issue. If you look back at the action plan, where the Board does take note of what the actions are going to be with respect to this recommendation, it did not commit to the six month timeline. It agreed to the task of convening a working group to work through these issues, but the timeline was different than [inaudible] Review Team noted in their final report.

I hear what you're saying, that perhaps in future papers there probably needs to be – it would be better to be more explicit that there's been a divergence from the recommendation, but I just wanted to point out that there was visibility to that particular issue.

BRIAN CUTE:

Thank you, let's move on. Quick.

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ALAN GREENBERG: Just a quick note. And I'm speaking on my own behalf, not for Michael who was on that review team. I personally believe most of the timelines that were set in the recommendations were unrealistic. I don't think we were – certainly in writing my responses, I wasn't being critical because those numbers weren't met. I was being critical in places where I think the delay has been unreasonable.

BRIAN CUTE: Thank you. Next, please. 13.

ALAN GREENBERG: 13 is translation/transliteration. It's taken a long time. I don't quite understand what the delays have been. The issue report was done very timely and very quickly. It's taken a long time to get to the next steps. We're optimistically saying we'll have a report in June or December 2014. I think December is probably more likely than June. It's a really difficult issue and it's not clear there's any simple answers.

BRIAN CUTE: Serious points?

ALAN GREENBERG: Again, what is written there is not the final answer because that's one of the ones I needed to talk to Michael about. Alice. Margie?

MARGIE MILAM: Yes, with respect to the timing of the PDP, that's one of those areas that's out of control of ICANN staff. Obviously as Alan mentioned, we published the issue reports to be able to tee off the PDP that there were several delays on the GNSO Council vote, which just took place longer than you'd traditionally expect. I just wanted to raise that wasn't really an issue staff could control.

BRIAN CUTE: Thank you. Any other significant points? Let's move on, 14.



ALAN GREENBERG: There's not a lot that could be said. Metrics should be developed to measure the accuracy of internationalized data. Since we don't have the methodology to represent internationalized data, we don't have the metrics yet. Not a lot more we can say about that.

BRIAN CUTE: Comments? No comments. Significant comments. Thank you. Next. There's two to go.

ALAN GREENBERG: 15 is ICANN should develop a plan. The answer is that the spreadsheet within the staff briefing that is pointed to by the Board report by the Board recommendation was the plan. There's a line from the Hitchhiker's Guide to the Galaxy that I won't quote, but that's a rather obscure place to hide a plan if it's something so important as WHOIS. So I believe the work was done to create a plan. I don't believe a plan was created. That statement tends to try to say that. It probably needs cleaning up. It has not been proofread much.

BRIAN CUTE: Significant comments. Denise?

DENISE MICHEL: So staff continues to experiment with different ways to present information and bring things to the public's attention. In the case of the WHOIS Review Team implementation, we have blog postings, additional information posted on the website, briefings at ICANN meetings and webinars to keep the public apprised and raise all this to people's attention. And Margie can provide more details on that.

Staff created, as a follow on to the first Accountability & Transparency Review Team report, staff developed an extremely detailed proposed

implementation plans and published voluminous material and details, none of which was really actually ever accessed by the public.

We continue to try different approaches to not perhaps bury the public in excessive detailed plans, but try to deliver the information at the level of detail they need and in a way that they find useful. If you have further guidance on that, I think it would be really useful to get.

BRIAN CUTE: Thank you, Denise. Any other significant thoughts on this one? Okay, 16.

ALAN GREENBERG: 16 is real easy, if we can scroll to it.

BRIAN CUTE: Sorry. Margie, go ahead.

MARGIE MILAM: Thank you. I just wanted to confirm. Denise mentioned if you look at the milestone document that we circulated end of August, it talks about the various ways we tried to communicate the Board action with respect to the implementation. So when you have some time, you may want to take a look at that.

BRIAN CUTE: Thank you.

ALAN GREENBERG: And Margie, I already said several times that that was a marvelous document. I wish I had seen it before.

BRIAN CUTE: 16.

ALAN GREENBERG: 16 says we should have annual reports. Not particularly applicable.

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BRIAN CUTE: Comments? Okay. Let's take 15 minutes to go grab lunch and bring it on back to the room. We'll have a working lunch. We'll take a half an hour, grab lunch, come back, have a bite, and pick up in a half an hour, turn it over to David and SSR which I have a feeling is going to be extremely efficient. But let's take a half an hour. We'll be back online then. Thank you.

ATRT-2 resuming. Thursday, September 19<sup>th</sup>. The next order of business is to have David Conrad lead us through the assessments of implementation of recommendations from the SSR Review Team. David?

DAVID CONRAD: Thank you, Brian. So this will probably be relatively quick. Most of the [inaudible] people will already have seen from the last L.A. meeting – the last face-to-face in L.A. – there have been a couple of meetings since then with the Security team in which sort of the final amounts of information have been collected. So this is the preliminary document that I'm actually creating the templates out of just for information.

BRIAN CUTE: If I may, as a guide, since we have seen this in Los Angeles and you walked us through it, people are familiar with it.

DAVID CONRAD: Hopefully, yeah.

BRIAN CUTE: Hopefully. I think in terms of just concise statements about what the assessment is on a given item, if there was a material fact that you were waiting for and you want to call that out—

DAVID CONRAD: You'll see it in there, yeah.

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BRIAN CUTE: That's helpful. And otherwise, we can knock this out I think fairly well.

DAVID CONRAD: Cool. So I won't bother to read the recommendations. With Recommendation 1, the staff status indicated that it was done. At the time this was written, it was actually – the public comment was in the process of being posted. It is, at this point, completed. So there is an SSR statement out there.

Recommendation Number 2, this was the definition of the implementation of the SSR – ICANN's definition. Publish, elicit feedback, get consensus. The FY14 framework has been published, has gone through public comment. The frequency is still a subject of opinion. I'm not sure what else, if there's anything else I should say here.

BRIAN CUTE: On your write-up on recommendation 2, does "should" mean based on your assessment and the timeline it's likely to be done in that time or is that more directive, like "you should do that by then"?

DAVID CONRAD: The second one. This is where I kept struggling with really wanting to make a recommendation, but not being able to.

BRIAN CUTE: So how do we manage that? Without burning too much time. We're not supposed to be making new recommendations here.

DAVID CONRAD: I was just going to drop that out of the final template and just ensure that whoever gets tagged with being the victim – sorry, the participant firm – on SSR 2, just be aware that they probably need to do the review prior to the SSRT 2 [starting].

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BRIAN CUTE: So drop it altogether?

DAVID CONRAD: Yeah. I'm going to drop. The second sentence there will just go away in the final version.

BRIAN CUTE: Okay. And you've had a conversation with Patrick on this as well, right?

DAVID CONRAD: Oh yeah. Many.

BRIAN CUTE: Okay. Right. Thank you. Any other points on this? Okay.

DAVID CONRAD: Recommendation Number 3, once the consensus statement is created, they should use consistent terminology and descriptions in all their materials. So this is actually – it has been – the terminology doc has been published. This is an ongoing effort kind of thing. The Security team has planned to do webinars, staff instruction, modifying the publications before Buenos Aires. So this one is evaluated as complete.

BRIAN CUTE: Any questions? Significant issues here? Okay.

DAVID CONRAD: Moving right along. Recommendation Number 4, document the SSR relationships within the community. So the staff had stated that they're going through the different relationships, categorizing them, and that is accurate. However, this particular recommendation has not been completed as they haven't documented all the relationships at this stage. This, actually, my clarification on writing these up in the full templates, my assumption is that it is reasonable to state simply that this is an incomplete task. It is under process. It's an ongoing effort. Is there anything additional that I need to state here?

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BRIAN CUTE: Question for clarification. ICANN community – scope of that, definition of who falls within and who’s outside. Was that clear in the work?

DAVID CONRAD: So the interpretation that the Security team had assumed was basically the security community within the greater ICANN community. I mean, they do have a list of the groups that they’re dealing with and talking to and categorizing. That can be included if that’s what you’re saying. Or are you saying that the recommendation should have been more clear?

BRIAN CUTE: No. Just asking for information. What was the scope of that? Were these security outfits anywhere in the globe? Were the security outfits that interacted with registries and registrars, was there some definition around the universe?

DAVID CONRAD: Basically, anything that was considered sort of a security group, like APWG and the MOG and the [certs] of the world. Basically, the security groups.

[DENISE MICHEL]: So when you use incomplete throughout this document, do you in most or all cases mean ongoing?

DAVID CONRAD: Yeah. Where it says incomplete, it means that it just has not been completed. There was no recommendation that the Security team had not at least done some initial work on. In the previous version of this document, there was a discrepancy of interpretation of the evaluation between staff and myself. That has since been cleared up. You’ll either see complete or incomplete, and where it’s incomplete it means that it is an ongoing task. The process has begun, it just has not completed.

Okay, moving right along. Number 5. And there are only 28 of these. Actually, more than that. ICANN should use the definition of SSR relationships to maintain working arrangements and to demonstrate how the relationship is utilized to achieve SSR goals.

So since the definition is not complete, there actually has been some progress made. And just to annoy Steve, staff had mentioned that they were 40% complete. I will probably include that in the final template, just because I live to annoy Steve. But I mark it as incomplete, and obviously it depends on the completion of the previous recommendation. Yes, Brian?

BRIAN CUTE: So the 40% will be in the template under “staff inputs” heading and not necessarily the review time opining?

DAVID CONRAD: Right.

BRIAN CUTE: Okay, thanks. Any significant comments here? Okay.

DAVID CONRAD: Number 6, ICANN should publish a document clearly outlining roles and responsibilities of both SSAC and RSAC in order to clearly delineate activities of the two groups, should seek consensus across the groups, and should allocate appropriate resourcing for both groups consistent with their demands. Yet another Steve annoyance factor in there. We will skip right by that. I broke this into three separate subtasks, [inaudible] publishing the document outlining the roles and responsibility of the SSAC.

That is more complete, because SSAC actually has – there is a document that describes SSAC’s roles and responsibilities. However, as far as I was able to ascertain, there is no full consensus on that document that hasn’t been published. It’s close-ish, but it obviously hasn’t been completed.

6B, same thing for RSSAC. RSSAC just did a reorganization. There are documents describing RSSAC’s roles and responsibilities. I do not believe they have been published. Steve, do you know if the RSSAC reorg stuff has actually been published yet?

STEVE CROCKER:

I have not seen it. I [haven’t] been trying to track it very closely.

DAVID CONRAD:

Right. So documents do exist, but they have not yet seen the light of day beyond RSSAC and SSAC actually. So that one’s less complete than 6A. Then 6C, consider appropriate resourcing for both groups. So SSAC definitely, RSSAC now, both have budgetary allocations. As such, this particular recommendation is met. It has been considered. A resource allocation was made. Whether or not it’s appropriate is a matter of opinion that I’m not qualified to judge. Comments, questions, suggestions?

BRIAN CUTE:

Any significant issues with the assessment here? And we’re noting that the staff observations are going to drop down into the template under the proper heading and not be part of the [full] report [inaudible].

DAVID CONRAD:

Yeah.

BRIAN CUTE:

Issues with the assessment? Onward and upward.

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DAVID CONRAD: Moving on to 7, ICANN should build on its current SSR framework by establishing a clear set of objectives and prioritizing its initiatives. The process should be informed by pragmatic cost-benefit and risk analysis.

Parts of this were dependent upon the FY14 operating plan and budget process. I believe that is complete now. Is that right? The operating plan and budget for FY14 is completed, right?

UNIDENTIFIED FEMALE: Oh, yes.

DAVID CONRAD: So they're going to be undertaking this with greater energy, but it's not yet actually been completed. ICANN should [inaudible] establishing a clear set of objectives, that was constrained staff asserted pending completion of the operating plan and budget. Prioritizing initiatives and activities similarly was blocked on the operating plan and budget. Now that that's been cleared, they'll be able to move forward, but the operating plan and budget was finalized relatively recently.

BRIAN CUTE: Significant issues, concerns? Okay. Thank you.

DAVID CONRAD: ICANN should continue to refine its strategic plan and objectives, particularly the goal in maintaining driving DNS availability, the strategic plan and SSR [inaudible] should reflect consistent priorities and objectives to clear alignment. That was dependent on the development of the strategic plan. Denise, do you know what the status of the strat plan is?

DENISE MICHEL: Ongoing.

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DAVID CONRAD: Okay. So since that's ongoing, they have not undertaken much of that.

BRIAN CUTE: Issues?

DAVID CONRAD: None for me.

BRIAN CUTE: Off we go.

DAVID CONRAD: Number 9, ICANN should assess certification options with commonly accepted international standards for its operational responsibilities. ICANN should publish a clear roadmap towards certification.

So an assessment is currently underway with IANA. It's been done for [inaudible] certification. I was informed that further evaluation of certification options are on hold until a position is filled. It used to be called the CTO position. It is not so called now. I actually don't know what the title is called. But it's a position that's going to oversee the technical side of ICANN, and they have deferred moving on evaluating certification options until that role is filled. Marked as incomplete.

BRIAN CUTE: Issues? Could be the post-lunch glucose spike. I don't know.

DAVID CONRAD: Well, it's working for me, man. Let's see, moving to 10. ICANN should continue its efforts to step up contract compliance and enforcement, provide adequate resources for this function. We actually touched a bit on this in the previous discussion with regards to WHOIS Review Team. The staff's view is that this recommendation is largely complete through the work of the Compliance team in FY13. I broke this into three parts. ICANN should continue its efforts to step up contract compliance and

enforcement. I believe that is clear. They have been doing that. Whether or not it's sufficient is a separate question, not one that I feel qualified to answer at this point.

"ICANN should provide adequate resources for this function." Well, resources have been provided. Whether or not they're adequate is unclear, but again, as in our discussion on the WHOIS Review Team, it's not clear to me that we're in a position to judge whether those resources are adequate, so I mark this as complete because resources have been provided.

And 10C was the one that was deferred the last time we spoke. ICANN should develop and implement a more structured process for monitoring compliance issues and investigations.

A more structured process for monitoring compliance and issues and investigations does exist. The processes have evolved over time. They have become more structured than they were previously. Whether that's efficient, again, is a matter of opinion. But given that the recommendation was that a more structured process should exist, I mark that one as complete.

BRIAN CUTE:

Issues? Moving on.

DAVID CONRAD:

Let's see. Number 11, ICANN should finalize and implement measures of success for new gTLDs and IDN fast track that expressly relate to SSR-related program objectives including measurements of effectiveness of mechanisms to mitigate domain name abuse.

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This one is not yet implemented. Some preliminary efforts have been undertaken within the Security team to identify mechanisms to mitigate domain name abuse. As far as I was able to determine, there are no measures for success, per se, at least in the context of SSR. The Security team folks had indicated that they intend on doing that. It's just they have not had time.

BRIAN CUTE: Question. Are there any dependencies within the new gTLD process that are holding this effort up?

DAVID CONRAD: Not that I'm aware of. I thought you were going to ask the opposite question. The other case where the New gTLD Program is being held up because the metrics aren't defined yet, that has not occurred. I know there is some – within the community at least, there is some unhappiness about that. But the New gTLD Program is moving on full-ish steam ahead.

BRIAN CUTE: Thanks. Issues? Okay, thanks.

DAVID CONRAD: Okay. Let's see. Number 12, ICANN shall work with the community to identify SSR-related best practices and support implementation as practices through contracts, agreements – I'm going to use another stuff like that there.

Broke this into two bits. Should work with the community to identify SSR-related best practices. Some preliminary efforts have been done in this space within the Security team. Just going through and trying to identify the various best practices primarily as they associate it with

domain name related stuff. Not complete yet. That's actually one of those things that will never be complete. It's a continual process, as more best practices are identified.

The second part, support the implementation of those practices through contracts, etc., I marked this as complete because at least one agreement does incorporate support for best practices. That's the 2013 RAA as such. It is complete to some value, that variable. It's not in all of the contracts, but that wasn't part of the recommendation.

BRIAN CUTE:

Question. You observed that this is continuing work or should be continuing work into the future, identifying best practices. Was this based on your assessment the first time a set of best practices had been developed or was this the second, third version of that?

DAVID CONRAD:

So the best practices have obviously been developed for the history of time. The incorporation of them into agreements, I'm unaware of something explicit within a legal document. There were, I believe in – what were they called? The documents that some of the ccTLDs signed—

UNIDENTIFIED FEMALE:

Accountability frameworks.

DAVID CONRAD:

Yeah. The accountability frameworks. There was a reference to implementing best practices, but they weren't explicitly stated within the context of those documents. They were sort of call-outs that everyone agrees that best practices should be followed. But within the

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context of the 2013 RAA, there are explicit best practices that are incorporated into the document.

BRIAN CUTE: Thank you. Any issues with this assessment? Nothing online. Okay. Please continue.

DAVID CONRAD: Okay. Let's see. Number 13, ICANN should encourage all supporting organizations to develop and publish SSR-related best practices for their members. So staff said they're in early stages of recommendation and implementation is still underway, and I sort of agreed.

LARRY STRICKLING: Are you suggesting that each group should develop its own set of practices?

DAVID CONRAD: It should reference a set of best practices. A supporting organization should. So the recommendation said "should encourage all supporting organizations to develop and publish SSR-related best practices."

LARRY STRICKLING: [inaudible] been there that causes me to think that we're getting a different one for each one.

DAVID CONRAD: Right. I also had a hiccup on that. However, in the discussions that I had with some of the folks in supporting organizations, they're not actually developing their own best practices. They're referencing existing best practices.

LARRY STRICKLING: Would this hit the target a little more cleanly if you take out the word "develop" and leave it open as to where they get those best practices

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from, either from a common source or if they want to develop their own or whatever?

DAVID CONRAD: I would think so, but that would be rewriting the recommendation of the SSR Review Team.

BRIAN CUTE: Denise?

DENISE MICHEL: Just to clarify, staff understood the intention of the SSR Review Team to be – and when they use the term “develop” to mean identify best practices within their community for which there was broad agreement, that they should be adhered to broadly. So it was more of identifying and agreeing on existing best practices rather than developing them themselves.

BRIAN CUTE: Just a quick question. Was that squared with the review team? Because the word “develop” is in there. I’m not trying to split hairs here, but the word develop is in there, so I want to make sure nothing is lost in the translation there.

DENISE MICHEL: Yeah. So we have documentation of the discussion that we had with the review team and their clarification of what their intention was.

BRIAN CUTE: Cool.

DAVID CONRAD: Okay. Moving right along. Number 14, ICANN should ensure its SSR-related outreach activities continuously evolve to remain relevant, timely, and appropriate. Feedback from the community should provide a mechanism to review and increase this relevance.

So the Security team has actually gone to a ridiculous number of meetings, has spoken in a variety of places, has been invited to speak in a variety of places. Although I would note that it's primarily in the context of DNS. Very little elsewhere. So from that perspective, I do believe they met the recommendation. The recommendation has been completed. This is another one where I'm struggling not to make a recommendation myself, but I will tell my successor many things.

BRIAN CUTE:

For purposes of the report, I'm going to have to ask you to holster your firearm.

DAVID CONRAD:

Number 15, ICANN should act as facilitator in the responsible disclosure and dissemination of DNS security threats and mitigation techniques. This is complete. ICANN actually published a set of guidelines for a coordinated disclosure, which has actually been received reasonably well within even the Security community, and those guys are just crazy. Any questions, comments, suggestion? No. Moving right along.

16, ICANN should continue its outreach efforts to expand community participation and input into the SSR framework development process and should set up systematic input from other ecosystem participants.

Broke that into two bits. Continue its outreach efforts, clearly it has done that outreach. I think I mentioned back in L.A. one of the concerns here is there was a direct outreach by the security team on, particularly the FY14 framework document. There needs to be some care in doing that, because it may buy us the input that's received into the document. Basically if you are of evil intent, you could ask your friends to provide



input only and not your enemies. That sort of [inaudible] the input you receive in a certain light. However, I do commend the Security team for really trying hard to get people to comment. So from that perspective, I would say it's complete.

The second half of this – ICANN should establish process for obtaining more systematic input from other ecosystem participants – this is incomplete. They have not established a process at this point. Everything is done in an ad hoc fashion. They indicated that they were intending to. It's just not high on their priority list.

BRIAN CUTE:

Question. Other ecosystem participants, do these participants sit outside of the DNS? Or should I say that they operate other parts of the infrastructure, non-DNS parts of infrastructure? I'm getting back to your prior thought of do you think it's important from a security perspective that the SSR team be addressing issues beyond the DNS? Is this one avenue to accomplish that?

DAVID CONRAD:

Yes, it is. The interpretation that I understood from staff on this particular aspect of 16 was that the use of the term ecosystem – the Internet ecosystem, not just infrastructure but people like ISOC and people like NANOGs, and basically anyone who has some role within the context of the Internet as whatever the Internet is. I've had discussions with Security team members who have actually gone to places like ISOC to talk to folks there about this particular topic. It's just not formalized in any way. It's not systematic. There's no mechanism where someone sends in an e-mail and it responds with a ticket or something like that.

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BRIAN CUTE: Any issues with the assessment?

DAVID CONRAD: Number 17, ICANN should establish a more structured internal process for showing how activities and initiatives related to specific strategic goals, objectives, and priorities in the SSR framework. It should also establish metrics and milestones for implementation.

Staff associated that with the next strategic plan and have undertaken initial implementation even though the strategic plan isn't out yet through the At-Task system. I marked it as incomplete. As a general note, the established metrics and milestones from implementation I believe should actually be applied to all of the incomplete items, but I'm not sure how to actually [couch] that in terms of input into staff. Perhaps in the next iteration of the SSRT, we recommend you have metrics and milestones just as a common text that's appended to every recommendation or something silly like that.

BRIAN CUTE: Issues? Nope. Thank you.

DAVID CONRAD: Number 18, ICANN should conduct an annual operational view of its progress in implementing SSR framework and include this assessment as a component of the following year's framework. Staff did this, and included it in the FY14 framework, so that was marked as complete.

BRIAN CUTE: Issues? Thank you.

DAVID CONRAD: Number 19, ICANN should establish a process that allows the community to track the implementation of the SSR framework. The dashboard process used to track implementation of the ATRT serves as

a good model. Steve annoyance factor there. It will be updated with FY14 activities. That has, as far as I'm aware, not been done yet. Just a prioritization problem. There's a lot of things going on and the staff to do that is actually limited.

BRIAN CUTE: Issues? Okay, thank you.

DAVID CONRAD: Number 20, ICANN should increase the transparency of information about organization and budget-related implementing SSR framework. Information should be provided with enough clarity that the community can actually understand what it's doing while not impeding ICANN's ability to operate effectively. This was associated with the FY14 budget. I actually admit that I have not reviewed the FY14 budget to track this. Denise or Larisa, if anyone has any additional information there.

DENISE MICHEL: Why don't we pull it out and send it to you?

DAVID CONRAD: Okay. Thank you. They're also going to be implementing this in the At-Task dashboard stuff, and that's not yet done. So either way, it's marked as incomplete.

BRIAN CUTE: Issues? Keep moving.

DAVID CONRAD: 21, ICANN should establish a more structured internal process for showing how organizations and budget decisions relate to the SSR framework including the underlying cost-benefit analysis. Again, this is with the FY14 budget and implemented via At-Task. It's currently marked as incomplete. As I mentioned, I have not reviewed the FY14 budget to see if this has been addressed directly in that document.

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BRIAN CUTE: Any issues with the assessment? Thank you.

DAVID CONRAD: Number 22, ICANN should publish, monitor, and update documentation on the organization and budget resources needed to manage SSR issues in conjunction with introduction to new gTLDs. Yet another FY14 budget thing implemented in At-Task. Same answer as the previous one.

BRIAN CUTE: Issues? Thank you.

DAVID CONRAD: Number 23, ICANN must provide appropriate resources for SSR-related working groups and advisory committees consistent with the demands. ICANN also must ensure decisions reached by working groups and advisory committees are reached in an objective manner and free from external or internal pressure.

Staff's view on this is the implementation is still in progress. So my view was on the providing appropriate resources. It's arguable appropriate is sort of a fuzzy word. Resources were provided, so I marked that as complete.

23B, that decisions are free from external or internal pressure. I increasingly do not believe that is actually possible. It is incomplete regardless.

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you, Brian. With regards to appropriate resources, I think the only way that this can be found out is if there is a metric associated with the allocation of resources. Just for the record, the operating plan allocates

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\$2.7 million for the Security, Stability, and Resiliency. So it's quite clear how much is being allocated. Whether it's appropriate or not, that's an unknown.

BRIAN CUTE: Thank you.

DAVID CONRAD: Yeah. What he said.

BRIAN CUTE: In assessing whether or not the working groups and advisory committee's decisions are reached in an objective manner that we're free from external and internal pressure, was there anything on the record that allowed you to assess [inaudible] those points?

DAVID CONRAD: I focus more on the advisory committees. For example, SSAC has statements of interest that tries to document the potential external pressures that might be brought to bear on particular decisions made by SSAC. I believe the working groups have similar conflict of interest or some mechanism that documents the potential external reference that may cause a particular decision to be pursued.

I'm unaware of – at least in RSSAC – whether or not that exists. I haven't seen any – RSSAC doesn't publish many documents. The problem is it's difficult for me to imagine a scenario where there isn't internal or external pressure on a particular decision.

For example, the GAC is an advisory committee. The GAC has near infinite external pressures. It also has internal pressures. Any decision it makes will not be free of either the internal or external pressures. So it's

not clear to me that that recommendation in and of itself actually makes any sense.

BRIAN CUTE:

Yeah. That's kind of what I want to get to. The way the recommendation is written, which is an issue. But this topic obviously is going to resonate with the community strongly in other contexts whether it's the Board, this group or any group in terms of managing conflicts of interest and making sure that the basis for decisions is transparent. This will resonate. So easy enough for us to say, nearly impossible to measure. But do we want to get more precise and say, perhaps, the recommendation as worded makes it difficult? Where do we want to go with this?

DAVID CONRAD:

What my intent was in the analysis portion of the template was to say – obviously there is going to be internal and external pressure. The interpretation of ATRT-2, whether or not there is undue pressure, whether or not the pressure is documented in that context. Some of the advisory committees have undertaken efforts to ensure that any potential sources of pressure are documented. Whether or not they are, it's difficult to say. But as such, this particular recommendation is incomplete.

BRIAN CUTE:

I might add, too, I assume the relevant advisory committees have their own mechanisms internally and their own rules of procedure to try to manage pressures. What they perceive to be undue pressures. From what I can tell, the people I know seem to be fairly responsible when it comes to security. Maybe making some references to mechanisms they

have in place might be worthwhile. Food for thought. Any other issues with this assessment? Fiona?

FIONA ALEXANDER:

I actually just have one question about this and the other one, which is how does it turn into an actual report or part of the report in terms of the drafting of it? It has the recommendation in sort of a one or two line assessment, but it doesn't have any of the analysis that would go with the assessment or any of the comments that could have come in from the community on it. Same thing with the WHOIS one as well.

DAVID CONRAD:

So the templates that Brian or whoever came up with do have areas in which you provide information – the analysis, community input, summaries of input from the community from staff. There was one other and I've forgotten.

Within the appendix that includes the templates there is Phase 2, provide a significant amount of detail. My assumption – and Brian can correct me if I'm wrong – is those templates are what are fed into the main portion of the text and specific areas of concern or interest are the ones that are focused on within the text. This might be an area that might be worth calling out, specifically because, as Brian mentions, this will attract the interest of a number of folks who are interested in conflict of interest related issues, if that answers your question.

BRIAN CUTE:

So we're going to talk about the shape of the report in the last hour and a half today, and we have a straw man outline. I think you're talking about the text of the report itself, not the templates. Is that where you're focused?

[FIONA ALEXANDER]: Yeah. Also, I think David just said, there has to be an assessment of each recommendation, not just the ones like this last one that we think has issues or whatever. There has to be a written explanation other than one line that says why something is complete.

DAVID CONRAD: Yes.

BRIAN CUTE: Denise?

DENISE MICHEL: And I believed we discussed this when we first initially came across this recommendation. Staff alerted the SSR Review Team as they were contemplating this recommendation that it, as worded, would be difficult to quantify I guess and implement in a way that we could measure. In the interest of time, they wanted to satisfy – one SSR Review Team member who thought it was important to include this recommendation but just wasn't able to provide more specificity as to what to include in here. So I think it would be useful for ATRT-2 to note that a more specific and quantifiable recommendation in the future would be useful in this area.

BRIAN CUTE: Thank you. Any other issues with this assessment? Okay.

DAVID CONRAD: Moving on to 24, ICANN must clearly define the charter roles and responsibilities that achieved security officer team – the recommendation actually did not have the “R” there, so it was a little confusing. The chief security office or the chief security officer team. Anyhow, conceptually, the folks who do the security stuff in ICANN.



Staff viewed this as complete. We had some discussion with Patrick on the Security team about this one particular issue. In the case of SSAC, or I believe even RSSAC, there is a single document that clearly says, "This is SSAC's charter. These are the roles, responsibilities, that sort of thing." That document does not exist for the Security team. What does exist is within the FY14 SSR framework document, there is a description reasonably clear about the roles, the responsibilities of the Security team.

I initially was sort of saying just have a single document. After a long discussion, I was convinced that the intent is what's important here, not the formalisms of actually having the documents. And in the case of the security team, their scope of work varies relatively frequently just based on the circumstances of the security environment which ICANN is operating. And as such, they felt it would be inappropriate to memorialize the charter in a separate document, that it should actually be relatively dynamic set of roles and responsibilities that are provided to the community and the draft framework documents allow for community input so it can be revised as situations warrant.

My interpretation of this – and I am happy to listen to alternative views – is that they did meet the intent of this particular recommendation. Someone looks at the framework documents. They will understand what the charter, the roles, the responsibilities of the Security team are. It's not in a form that I had initially anticipated.

BRIAN CUTE:

Thank you. Issues? Steve?

STEVE CROCKER: The focus is on what the team should be doing, and I'm wondering if it would be better to phrase this in terms of the functions that need to be carried out and leave the implementation, whether it's a team or whether it's a set of activities distributed through the organization or whatever as within the purview of management.

DAVID CONRAD: I tend to agree that the functions are the things that should sort of be specified. However, the recommendation did specifically say "the team" and meeting the recommendation, they did sort of document "the team", the people who were there, the roles and responsibilities. I think perhaps the next iteration of this particular recommendation would refocus on functionality as opposed to the team membership. But that's probably something for the SSRT 2 to undertake.

BRIAN CUTE: Okay. Thanks.

DAVID CONRAD: Number 25, ICANN should put in place mechanisms for identifying both near and longer-term risks and strategic factors and the risk management framework. This gets into the risk management framework discussions 25 and 26, I believe, and 27.

This is one in which there's going to be probably the most text in the community input section because of the unhappiness associated with DSSA versus the DNS risk management stuff.

Let's see. The staff indicated the draft framework was going to be presented in Beijing and published in Durban. And in this, they are specifically referencing the DNS risk management framework. Efforts.

My evaluation of this was that efforts were underway to create that framework. There are a whole set of mechanisms that have been created, regular reporting to the Board Risk Committee, reporting to Fadi and the executive team on risks as they arrive or are identified, building the strategic plan to identify strengths, weaknesses, and risks. They hired a risk management specialist – [Jack] I believe is the guy that's doing this. They did internal enterprise risk assessments in 2009 and 2011, and they are doing a reassessment now. So it's on an every two-year clock.

However, this is in the context of the DNS risk management framework, not the DSSA related risk management stuff. So this is in an area of ongoing contention and will probably require a bit of explanatory text within the template that I am working on.

BRIAN CUTE:

Issues?

DAVID CONRAD:

The second half of this is ICANN should publish information about risks. Some information has been published. One example is the name collisions documents that were published. An overview has not been published at this point, so marked as incomplete.

BRIAN CUTE:

Olivier?

OLIVIER CRÉPIN-LEBLOND:

Thank you, Brian. In the wider context of the risk management framework, I'm not sure how the name collision actually fits in. This is really a new gTLD issue. The issue of the risk management framework is looking at all of the risks affecting the DNS as a follow-up to the SSR RT

and the consultant's report which was published in Durban falls way short of actually looking at the risk to the DNS, especially looking at political risks.

Only yesterday did the president of Brazil say they were going to start building another Internet and they might be building another DNS system. And that's just not addressed at all. This kind of risk is not addressed at all by the DNS risk management framework as proposed by the consultants. So there certainly is a concern on this that we're not even at the 50% mark. We might be even less than that.

DAVID CONRAD:

Right. I would agree with that assessment. Although since I'm sitting next to Steve, I'm not going to put a number there. With regards to the name collisions thing, the specific relevance to the risk stuff is the risks – there's been a large amount of discussion with regards to the implication of new gTLD programs to the DNS as a risk evaluation, risk mitigation issue.

There's one example, but it clearly is not in any way a comprehensive examination of the risks. The interpretation that I believe staff had taken is that risks should be identified as they occur.

So in addition to an over-arching framework, specific instances of particular risks – for example, name collisions – would be called out in specific documents. But regardless, the framework isn't complete and not all risks have been identified, so it's marked as incomplete.

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- BRIAN CUTE: Does that satisfy your question, Olivier, as to the inclusion of name collision in the assessment?
- OLIVIER CRÉPIN-LEBLOND: Yes, absolutely. Although the detection of the name collision was actually just performed by SSAC and not as part of the overall risk evaluation that ICANN performs.
- BRIAN CUTE: Something worth noting?
- DAVID CONRAD: SSAC was tasked with investigating name collision risk after it was identified. SSAC didn't say, "Hey, there's this risk here."
- OLIVIER CRÉPIN-LEBLOND: I do apologize, because I'm not part of SSAC, so I'm not quite sure how it was identified, but I did think from anecdotal evidence that it was within SSAC that some of their members did find some potential for name collisions, and that was in 2012. The report was filed. Statement was filed. Then the rest is history.
- DENISE MICHEL: And then staff, of course, had also been working on it. Yeah.
- BRIAN CUTE: Any other points on this? Okay, move on, please.
- DAVID CONRAD: Number 27, ICANN's risk management framework should be comprehensive within the scope of its SSR remit and limited mission. Oops, there's actually a mistake. Apologies. This actually should not be marked as complete because the risk management framework that is currently being undertaken, the DNS risk management framework is specifically focused on DNS. It is not comprehensive within the scope of the entirety of ICANN's SSR remit. So apologies. This is an older version

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of a document that I made a mistake and included. But this is incomplete. The point being regardless of the question about DSSA or DNS risk management framework, the efforts undertaken currently by ICANN have been focused almost exclusively on DNS and there are other things in the context of ICANN's SSR remit.

BRIAN CUTE: Thank you. Any issues with the assessment? Okay, thanks.

DAVID CONRAD: And the last one. ICANN should continue to actively engage in threat detection mitigation and participate in efforts to distribute threat and incident information. Staff believes that this was essentially complete, although it is an ever-ongoing task. The evaluation of that is [inaudible]. They actually are engaged in threat detection mitigation and are involved in efforts to distribute threatened incident information.

BRIAN CUTE: Thank you. Any issues with the assessment? No. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Brian. This recommendation really depends on whether the best practice has been pursued or whether we want to engrain it in ICANN's DNA. Whether a DNS cert or some kind of official channels by which ICANN could disseminate this information over to its partners, etc. and the wider DNS community and so on, if there's no such – at the moment, this looks to me as though it's done informally. I would say yes it is complete, strictly speaking, because ICANN does do that. But it does do that because I guess the personnel today dealing with this are doing this as a matter of where they do on a daily basis, if there was a change in personnel in the future, I am not sure that this would be engrained in ICANN's DNA.

BRIAN CUTE: Thanks. David?

DAVID CONRAD: Actually, this is a large component of the Security Team's tasking – at least some portions of the Security Team's tasking. So I don't think it would be associated with particular individuals within the team if those individuals were to leave and they would be replaced. There are actually ongoing efforts to bring in more people who have that level of expertise in their relationships with folks like MAAWG, AFWG, APWG and all those folks.

So, yeah, I would agree that it probably should be more explicit within the context of ICANN's activities that there are efforts at threat detection mitigation and disclosure, but I think it's safe to say that at least in the current structure of the security office which basically acts like the DNS-CERT – at least it seems to in large part – that that recommendation was actually addressed.

BRIAN CUTE: Steve?

STEVE CROCKER: So far as I know, there is nothing in the structure of ICANN that gives it the authority or even responsibility for this activity. And as we know from the prior experience, it's a delicate area and if ICANN puts itself forward and says, "Don't worry, we're here, we're in charge," the reaction is pretty severe.

So the activity that David has been referring to has been one that the Security Team has been very conscious of trying to be of service and helpful without looking like they're heavy-handed or, in fact, being

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heavy-handed. I wonder to what extent the way these recommendations are cast they implicitly take the position that ICANN has a formal responsibility and a formal role here and then we're evaluating how well we're doing that. And so there is a certain boot strapping process that is coming in through this process.

BRIAN CUTE: That might be a good clarification question for the members of Review Team. Anything else on this? Okay, David, is that it?

DAVID CONRAD: Yep.

BRIAN CUTE: Okay. So thank you for bearing through the Groundhog Day experience for you of walking through this one more time, but I think we captured some good inputs and questions. And we'll get back to Fiona's question about how do you iterate next, so we can develop some text for the report in addition to the templates a little bit later in the day. But thank you very much for the work.

We're going to spend the next two working hours on ATRT-1. Olivier's going to lead us through a similar exercise. What I recommend is we go – we're just about back on schedule as I hoped we would be on the agenda – take the next 45 minutes to the coffee break to start ATRT-1 and then carry on for an hour and 15. We have more time allotted for ATRT-1 tomorrow morning because it is a bigger one but, Olivier, why don't you get set up and take it away.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Brian. With Larisa we had a little discussion earlier as to how to conduct this part of our discussion, and so we are



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going to be relying on two different types of documents. First, the original template, the large template which we had, which I understand is not entirely up to date, but also with one of the Wiki pages which has got all of the templates connected over to it.

It's the Wiki page that's called Templates for Assessment of Implementation and for New Recommendations. That template is completely updated and as a result we will be able to then look at the notes and the responses, etc. and the different templates that will have been supplied by all members of this committee. So going into the main document, and I guess I have to open it as well if I can find it.

LARISA GURNICK: Olivier, what's being projected on the screen is actually a more updated version that hasn't been circulated yet that's in draft form, so it may be best if you just follow along with this one.

OLIVIER CRÉPIN-LEBLOND: Ah, okay. You can zoom in slightly because I can put it on full screen on mine, which will save me from actually twisting my neck too much.

LARISA GURNICK: I'll e-mail it to you in a sec.

OLIVIER CRÉPIN-LEBLOND: So we'll have to move over to Work Stream 1, please, because we're in WS 4 at the moment. Sorry, just trying to find the right document at the moment.

LARISA GURNICK: I'm sorry, Stephen. Yeah.

OLIVIER CRÉPIN-LEBLOND: Okay, we're now there. I'm not quite sure how you are going to be able to put this on the screen. Larissa has just sent the email to the ATRT-2

mailing list to the document in there, and so we'll start with Number 1. I must say I am discovering the document as we speak, so that doesn't help. It is this one. It is called ATRT-2 Inventory of Observations and Potential Recommendations, Update 19th of September. They seem to be, yes. That's my boss.

UNIDENTIFIED FEMALE: That's the other meeting.

OLIVIER CRÉPIN-LEBLOND: Larisa, please help me out with this because I am slightly lost discovering the new document.

LARISA GURNICK: So the format of the document is the same as it has been all along. It has just been updated to include more information on the action items column. So the thought was that what appears in column G summarizes draft observations as they were discussed last time in the LA meeting, and what appears in column A which is the number references what we are calling the inventory items.

So that provides a bit of context as to what the nature of the recommendation or the item was all about, that kind of high level observations or recommendations. And then when you look at the Wiki, which was the first view that we started with, that actually includes links to templates as well as staff responses as well as any follow up comments or questions or information that was provided by the ATRT-2 members. So that is why we thought we would use both documents.

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This is really a quick overview of what the observations were, but in terms of the depth of the analysis and the work, it's the other view that provides links to that information.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you very much, Larisa.

AVRI DORIA: If I can add, on the ones that I worked up, for example, I mostly just did cut-and-paste from this into the template very often, and then as I was going along I tried to start doing the back research on filling in some of the other wording.

I also apologize to anybody who works from paper because I've been changing them since they were in a Wiki and easy to change every time an issue came up somewhere else that said, "Oh, I better touch it up. I went and touched it up." So anybody that printed it, it doesn't resemble anything that I did before. Sorry. And I had one, two, and three, so that's why I decided I would speak up early.

OLIVIER CRÉPIN-LEBLOND: Thank you, Avri. Brian? No. Larisa?

LARISA GURNICK: So if I may make a recommendation and perhaps we switch to the other view and actually open up the link documents, if that would be helpful, where the substance is. This is just meant to be as a high-level overview to remind everybody what the topic is about.

OLIVIER CRÉPIN-LEBLOND: Yeah, thank you very much, Larissa. So the way we'll do it, I guess, is to go on each of these lines and then we'll swap over to the Wiki online and see where we are. So the first one was to do with the NomCom, and there were a number of recommendations which were made.

Observations where that document methodology used to identify and choose similar corporate and other governance structures. Document benchmarks used. Improve NomCom outreach and PR, and expand the skill survey and benchmarking to include the NomCom selections in GNSO, ccNSO, and ALAC. As we know at the moment, selections for the Board are subjected already to the skillset.

So we've got all of the different responses to the additional information that we required. In a prior iteration of this document, I felt that all of the recommendations had been carried through. Looking at the Wiki, do we have any templates for this recommendation?

LARISA GURNICK:

Yes. So under the template column where it says draft, if you click on that, that will take you to another Wiki page, which is actually what Avri was referencing. That is the template that she has been working with.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Larisa. Avri, do you wish to say a few words on this, please?

AVRI DORIA:

I'm not sure if I wish to, but I will. So on that template, I took it. What I tried to do on the template is also fold in the comments that we started getting from staff, and it really was just a cut-and-paste. I haven't had a chance to cut-and-paste yet community input on implementation and that stuff. And then in terms of the analysis, etc. I did copy just what was there.

The only thing I added was then the word "complete," "not complete" etc. For this one I put "nearly complete." And at first I was going back

and forth between complete and incomplete, and it looked, except for the 1b with the document benchmarks used while there was some documentation given for this report, I didn't actually think that documentation had been done in a general outward-facing way. So that's why I called it "nearly complete." And I know that isn't one of our categories, but as I explained I really have trouble filling in boxes. It's just a personality defect, and I apologize.

So I see a box and I want to redesign the box, not fill it in. So what I got to is I think that one is nearly complete. I think there is just some documentation that's not out. It came into us, but it's not released documentation. So I don't know if that's the right categorization for it, but that's what I thought so that's what I put there. I don't know what others think of that. And I've got it open, so I can edit it as we speak if I need to.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Avri. Do you think we need then a new recommendation based on this?

AVRI DORIA: I didn't. I don't know if others do.

OLIVIER CRÉPIN-LEBLOND: I don't see anyone contradicting you so, okay, no recommendation on this. But these are just comments. Effectively, they will be [going]. All right. I think we can go to the next one. It takes a while to swap between one and the other.

Okay. The next one is clarify distinction between PDP and executive function issues. The draft recommendation – oh, I've jumped haven't I?

Here we go. All right, regularly reinforce and review training and skills building. Draft observation metrics should be defined by which effectiveness of Board training programs can be measured. Board training materials should be made public. Avri?

AVRI DORIA: Same comments as before, cut-and-paste. This one I marked as incomplete in that I was not aware either of the metrics and couldn't find trace of it while I was doing this. The metrics defined by which effectiveness of Board training could be measured, I didn't see that work done. And the Board training materials should be made public, I didn't find that either nor evidence of it. So I've got that one marked as incomplete.

LARISA GURNICK: Avri, I'll send to you some links that were included in the staff response that talked about the status of the metrics as well as the documents.

AVRI DORIA: I copied that, but I didn't go digging into it.

LARISA GURNICK: So that will probably answer most of your questions.

AVRI DORIA: So you would think that this one is actually in that same nearly incomplete status? Once I go back and confirm, I'd probably say that?

LARISA GURNICK: As far as the metrics are concerned, probably less so. As far as the response to the training materials, it talks about the nature of materials being used for Board training. The fact that, in a nut shell, ICANN-specific knowledge, all the training materials that are used for that are all the public documents that are readily available in other places. And then in terms of training for Board fiduciary responsibilities and other

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things that are non-ICANN-specific, third party materials are used for that, so ICANN doesn't have control of those documents and a lot of them are training done through online sources.

OLIVIER CRÉPIN-LEBLOND: Thank you, Larisa.

UNIDENTIFIED MALE: I take it that you haven't had a chance to kind of incorporate this stuff from the [staff].

AVRI DORIA: No, I actually did. And in fact, I've cut-and-pasted those comments into the templates. Yeah. What I didn't do is go very deeply in any URL references that they made on them. So basically did more cutting and pasting of their comments but not deep inspection on any references that they had.

Also on this one, knowing that I'm part of the whole academy curriculum development process and knowing that that is still an ongoing activity, I figured I was safe in saying it was incomplete, but I will go deeper and fill in more details. From what I've just heard, I think "in progress," "incomplete" would still be the correct labeling. It's being worked on certainly, so from even what I've just heard, I would say it's still an "incomplete," "in progress."

LARRY STRICKLING: I guess I've got a problem with the process here, which is the whole reason we had to get together this time was because at our last session we really didn't have laid out in front of us all the community input, the evidence on which we were making judgments. And I am troubled that I'm sitting here still and I'm reading the Board piece, I don't see any of

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the community input because it hasn't been put into it. And I am being told that it's incomplete, but I've got no facts on which to be agreeing or disagreeing with your judgments.

And I guess I'm trying to understand out what my role is here today because none of us can know all of the record. We have to depend on each of us to provide some of this, and I guess what are we trying to accomplish this afternoon? If it was to get agreement that a particular recommendation had or had not been implemented, I'm not hearing the case being made. I'm hearing conclusions without any evidence, and I'm having a problem I guess just going along with all of this.

OLIVIER CRÉPIN-LEBLOND: Brian?

BRIAN CUTE: Yeah, if I may, Olivier. Thanks, Larry. It's clear that some templates have been developed and some have not. So let's just start with that fact in terms of where we are in the work. I think it's appropriate for us to go through templates that have been fully or more fully developed, just as we have in the assessment of the Work Stream 2 and Work Stream 3, so that we can come to a consensus where we don't have a full template.

And I think it is important for us to note that, not try to reach consensus, and have those templates further developed. And we may have to do that on e-mail or on a call next week because you're quite right that without the full record in front of us, it's risky for the group to try to reach a consensus position.

LARRY STRICKLING: I would take a presentation of the evidence, but I'm not even getting.



AVRI DORIA:

First of all, certainly I apologize for basically only having had a certain amount of writing time that I devoted to this while trying to do the things I do to make a living. So my sincerest apologies for not having written something complete enough for you to print out in time and have the case totally presented.

I think in the discussion we just had now, there was an indication of the staff indicating what work had been completed and a discussion of what work was not yet to be completed. And so that's why I was thinking that it was with that presentation of information that indeed it was safe to say "in progress" and "incomplete." But yes, you're right. The spaces in the template need to be filled in further and, you know, I apologize. I had to work on some other stuff that paid me in the meantime.

OLIVIER CRÉPIN-LEBLOND:

Thank you, Avri. Just as a matter of process here. I am trying to concentrate more on the actual recommendations when we are going to have recommendations. Here this is just a draft observation. So perhaps when there is a draft observation, if it's incomplete at the moment we can relegate it if you want to next week but concentrate more whilst we have our face-to-face time on the actual draft recommendation side of things, if that's okay with you. Fiona?

FIONA ALEXANDER:

That's actually what I was going to say. From the draft observation, this group has to assess previous recommendations and implementation and then propose new ones based on gaps or new issues. So it's not observing whether something is done or not. So it's just seems to keep getting lost in the exercise. You keep wanting to focus on new recommendations. This group has to actually assess what's happened.

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OLIVIER CRÉPIN-LEBLOND: You're right, absolutely. I stand corrected on this. Brian?

BRIAN CUTE: So if I can make a suggestion that we do a stock taking of what's complete on the list which we should review. We have to at a minimum assess and come to a consensus on the assessment of the draft. If there is a new recommendation arising out of that particular piece of work, we discuss that and come to a consensus as well. Where templates are incomplete, they are noted and the work continues for later distribution and discussion perhaps on a call next week.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Brian. Larisa, I will have to rely on you to mark whether the template is incomplete, whether we have a recommendation, or whether we have an observation. We already know here observation, recommendation, but the completeness of the template is an important factor as well to be able to hone in on it next week.

LARISA GURNICK: Just to clarify, so in terms of the outcome of the discussion that is happening here now is what you mean?

OLIVIER CRÉPIN-LEBLOND: In terms of the outcome of the current discussion, there has been no case made for the observation for Number 2, which I therefore believe needs to be just completed. And Number 1, Larry, you were happy with Number 1? Mechanisms for identifying collective Board skillsets, benchmarking, etc?

LARRY STRICKLING: I guess I am not in a position to agree or disagree. That's my problem. My problem is all we do as a group is keep kicking the can down the

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road and scheduling more meetings, and I am getting frustrated by this because everybody around this table is busy.

Yes, I can bring more resources to bear on my piece of it than maybe others of you can because I've got Fiona and I've got her team behind us, but at some point we've got get to where as a group we are coming to a consensus view that this is what has been said that has been done, this is the evaluation of it informed by community input, and this is what we as a group say.

I thought that's what we were going to do today and tomorrow, but instead all I hear is we're kicking the can down the road to another phone call later on. And this group has no demonstrated ability to get anything done on the telephone, so I question how we kick the can down the road to another phone call. This was the two days where we really had to come to grips with this. We have to get a report out in a couple of weeks.

When I look at where we're at – and I am sorry to be so intemperate about this – but we are nowhere near ready to put a report on the street, and I have no clue how we're going to get there. I just don't know. I'm sorry.

OLIVIER CRÉPIN-LEBLOND: All right, thank you, Larry. Brian?

BRIAN CUTE: If I may suggest, why don't we walk through the list and identify for a given item is the template complete for discussion, is it not, and we'll discuss the ones that are complete and identify the ones that are not.

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- OLIVIER CRÉPIN-LEBLOND: Okay, thank you very much, Brian. So let's move on down to Number 3.
- AVRI DORIA: Incomplete.
- OLIVIER CRÉPIN-LEBLOND: Draft recommendation translate NomCom materials to improve international understanding of NomCom processes and outcomes. Was that, Avri?
- AVRI DORIA: I'm positive the work is complete, but the template is incomplete.
- OLIVIER CRÉPIN-LEBLOND: Okay, so we can move to the next one. Next one, continue to enhance Board performance and work practices. There's a draft recommendation for this. Metrics should be established to measure Board performance and gauge changes in work practices. I'm going to call on Brian for this one.
- BRIAN CUTE: Yeah, this is in a state for discussion, I believe. And you've just quoted metrics. I've got the quote. The recommendation Number 4 is building on the work of the Board Governance Committee. The Board should continue to enhance Board performance and work practices.
- OLIVIER CRÉPIN-LEBLOND: You want to treat the two together then?
- BRIAN CUTE: Sure. The assessment is that based on the record, there have been a number of activities taken by the Board to enhance performance and work practices. The analysis that I came to is that while they have clearly taken a number of steps that are evidenced on the record and some related tasks have been completed, that the nature of the implementation is ongoing and that progress is difficult to measure. And
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the difficulty in measuring progress goes to the establishment of benchmarks at the outset.

Important on that front, Steve did note in our last face-to-face that the Board is on the cusp of change in terms of adding a secretariat support function and that the secretariat support function should be instrumental in helping to further clarify these practices, processes, and establishing benchmarks. Did I capture that correctly, Steve?

STEVE CROCKER:

Yeah, so if I might, two points. We do now have a Director of Board Support. Karine Perset joined us a couple of weeks ago, and already things are beginning to tick along at a faster rate and I am expecting much more along that line, including regularization of processes, documentation of processes, various other elements.

I find myself a little confused as to how we measure Board performance and Board members performance, even from a common sense point of view as I think about it as chair. And roughly speaking, my role as chair is continuous assessment of Board performance. The job is watching everybody and trying to get them all organized and working.

And I don't know exactly what I would choose as the way of doing that measurement. There's an enormous amount of anecdotal information, obviously. One can look at workloads in particular roles. There are chairs of committees and there are various other assignments, but I don't know of a uniform or fair or repeatable mechanism for measuring – except in very broad crude terms, do they show up for meetings or

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things like that – but I'm not sure that that's strong enough. I'm open to inputs actually.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Steve. Would the peer review that the Board is doing on a yearly basis qualify as metrics?

STEVE CROCKER: Yeah. We do a 360 review. I believe it is focused primarily on the ones whose terms are coming to an end, so that would mean that everybody gets reviewed once in their three-year term. And one of the details that we're trying to iron out is to get that done well enough in advance so that, if they want to seek an additional term, that input is available to the appointing body, whether it's a NomCom or an SO. So that's helpful. It's not everything.

OLIVIER CRÉPIN-LEBLOND: Thank you, Steve. Brian, the ball is in your court for the metrics.

BRIAN CUTE: I mean, speaking for myself, I think that Steve's right. Some of these things are difficult to measure, but there are peer evaluations that are being done. I think the difficulty there is that sharing those things publicly is a sensitive topic.

The directors have gone through some training sessions. That much is clear. That's documented. I think a suggestion is that those training materials should be made publicly available. That came out of our last session. I think that it's right for us to capture that in our assessment, but that's just transparency. It doesn't tell you the effect of, has someone gotten better or smarter in their role as a director? And I

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honestly don't have any immediate suggestions, as the metrics to apply to that, it is a bit of a difficult area.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Brian. Any suggestions?

OLIVIER CRÉPIN-LEBLOND: Yes, Denise?

DENISE MICHEL: So let me say there was additional information provided by Board Support, right, and Amy and Sam on this topic, right? You may want to refresh people's memory as to where it is.

A couple of things, though. Grant Thornton as a consultant provided some recommended benchmarks for Board skillsets that is being factored into the evolving sort of training and skillset edification that the Board is doing. It'll also be touched on in the work that One World Trust is doing, so you'll see some more proposed metrics coming out of that.

And the actual training that the Board does, we use third-party material, sort of international standards and best practices that are provided by other organizations. So we don't have control over that material and don't have the authorization to share it publicly, so I think that's an issue.

And as Brian pointed out, the self-evaluations that the Board annually does are not something that is shared with the public. So I think we have some challenge in what and how we can provide more public visibility in this area.

OLIVIER CRÉPIN-LEBLOND: Thank you, Denise. Brian?

**BRIAN CUTE:** So if I were to try to shorthand, in terms of the recommendation, it seems as though the Board did implement the recommendations. There is some difficulty in measuring the effect that's being noted, and that as a matter of transparency there is a clear suggestion that at least the training materials and perhaps other things should be made visible to the community so at least the community sees the training that's being done. The metrics and measuring the effect is still a more difficult nut to crack would be my summary.

**DENISE MICHEL:** Yeah, and if I can follow up, may I suggest that we consider instead perhaps an annual report on training. As I said, it's not our own training material. We don't have authority. We don't have control over it and don't have the ability to share it publicly. So we cannot share training materials specifically with the public, but we can provide reports to the public that we generate ourselves on the training that has been conducted at the Board level. And Larisa, did you have something else?

**OLIVIER CRÉPIN-LEBLOND:** Larisa?

**LARISA GURNICK:** Yes, and just to build on that point, the content of the training, of the Board training, is actually included and available publicly in the draft Board procedures. That is one of the links that Avri referenced that was included in the information that staff provided.

So, it might be helpful to take a look at that because you'll see that the specific documents that are included in training that are ICANN documents that are already publicly available are referenced. And then it talks about the other documents that are not ICANN related.



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OLIVIER CRÉPIN-LEBLOND: Thank you, Larisa. So Brian, as the owner of this metric, your set on?

BRIAN CUTE: That's my assessment. No suggestion of a new recommendation arising out of this particular piece. So I guess the question is, does anybody on the Review Team have any significant concerns with the assessment?

OLIVIER CRÉPIN-LEBLOND: Lise?

LISE FUHR: Well, if it hasn't been done, I don't know if we shouldn't push on a recommendation to have the metrics implemented as fast as possible. I know it's planned but, in my opinion, it's a plan and if we don't do the recommendation and it's not done.

OLIVIER CRÉPIN-LEBLOND: Brian?

BRIAN CUTE: Yeah, point taken. I think that we may be making a new recommendation on metrics writ large, and we can either make a metrics recommendation for each area we think or a writ large that would cover applying metrics to this area. Suggestion?

OLIVIER CRÉPIN-LEBLOND: Yes, thank you, Brian. I think we've mentioned that in LA already. For this, I guess, there will just be a follow-up saying that this has been for the most part implemented.

BRIAN CUTE: That's my assessment.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you. The next one, implement compensation scheme for voting Board directors. This has been done. There is a text which was drafted on this, which is Number 5. Was that Brian or Avri?

BRIAN CUTE: That's me.

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OLIVIER CRÉPIN-LEBLOND: Go ahead, Brian.

BRIAN CUTE: So, the assessment is that this recommendation was implemented, and the record bears that out. There is now compensation for directors.

There was analysis, a scheme – I should say plan; bad word – a plan and analysis to implement this. What my assessment of the effectiveness was at the bottom was that gauging the effectiveness of this recommendation is challenging but not impossible.

And one assumption or one rationale of the recommendation from ATRT-1 was that compensation could ensure the interest of qualified candidates given the responsibilities and workload of ICANN directors. Looking backward in time, before ATRT-1 ICANN directors were not compensated. This is a change. So in terms of measuring the effectiveness, what I thought might be useful is that, while we're unaware of any qualitative or quantitative studies of the Board candidate pools over time or any feedback from candidates, that perhaps some analysis of the pools of candidates for director positions or feedback as to whether compensation has had an effect on getting good candidates, on attracting good candidates. Just a suggestion that that type of analysis might be done.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Brian. Wouldn't that be part of the metrics that we just spoke about before? Any other thoughts? So are you suggesting a new recommendation on this?

BRIAN CUTE: I think we should, either for this specifically or as part of the broader metrics recommendation.

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OLIVIER CRÉPIN-LEBLOND: May I suggest that this be brought as a broader metric thing, since it probably is going to be part of the overall metrics in measuring the Board performance.

BRIAN CUTE: I'd agree with that.

OLIVIER CRÉPIN-LEBLOND: Steve?

STEVE CROCKER: Let me raise a point. My recollection is that that recommendation was that the Board members be paid. The motivation included the possibility that it would improve or increase the pool. Where is the line between what the desire was versus the implementation of the recommendation?

I think this particular case we have a very easy full score. People are being paid. We did it. And so, at that level, it's an easy check mark. If the recommendation was that that cause a change in the applicant pool, that's a different matter somewhat, and that's an intended effect but how do you say that was implemented? What was implemented was what was called for. And if it doesn't have the effect that was the desired by the people making the recommendation, then perhaps it's necessary to come back and make some different recommendation or to re-examine that. But the explicit recommendation was fully implemented. And I thank you.

BRIAN CUTE: Yeah, and I didn't mean to be calling, I wasn't calling into question implementation because there was an open question about effect if that's where you're going? That wasn't the intent. Just that the effect is of interest for a number of reasons.

OLIVIER CRÉPIN-LEBLOND: Okay. Thank you very much, Brian. Let's move on. I realize that time is ticking, and I think we have consensus on this.

So the next one is clarify distinction between PDP and executive function issues. Potential for draft recommendation here to be developed after inputs from staff. Clearer criteria should be established distinguishing between policy and implementation. There is a template on this, which was put together by, is it Avri? Oh, Brian. Brian?

BRIAN CUTE: So, I have an assessment with respect to the template, which you can look at. I have not captured and put into the template the community input on this. I can walk you through what I have as my assessment and make a determination whether we move forward on this or more work is to be done.

Recommendation 6 was that the Board should clarify as soon as possible, no later than June 2011, the distinction between issues that are properly subject to ICANN's policy development processes and matters that are properly within the executive functions performed by the ICANN staff and board – basically, the policy versus implementation issue. Have we got the right one up?

OLIVIER CRÉPIN-LEBLOND: We're on 6. We're not on 5.

BRIAN CUTE: So the facts in front of us provided by staff show that and staff's reports state that ICANN addressed all portions of this recommendation and implementation, specifically that work is underway, that there was a paper released on recommendation 6 to the community looking for input, and that there were sessions held in Toronto and Beijing, and that

there is there was a paper put out for public comment that itself provides a definitional framework, if you will, for the community to work off of in distinguishing between policy and implementation, but that there is also a sentiment, reflected through staff input, that the task of distinguishing between policy and implementation is quite difficult and some questions from the community as to whether or not that actually is achievable.

That's the record in front of us. So there is clearly implementation work. There has been the papers put out for community input. There has been iteration of a document that has developed a framework to distinguish between policy and implementation, but that work is ongoing as of today. Is that up on the screen yet?

UNIDENTIFIED MALE: No. Sort of. It's stuck.

OLIVIER CRÉPIN-LEBLOND: That's a very good-looking recommendation. Thank you. Is that the history of what was watched on this screen, or for those people following remotely you can probably see it with a camera. The display acting up at the moment. So this one is yet to be completed?

BRIAN CUTE: Let me walk through my analysis. Okay, good, it's up on the wall. If you could go down to the analysis portion.

So this analysis and assessment of the effectiveness of the recommendation. So assessing the implementation as incomplete and work ongoing. The view that this is still a critical in providing clarity to the community, particularly in the multi-stakeholder environment. A continuing lack of clarity between policy and implementation or

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executive function has caused uncertainty at best and distrust at worst about whether ICANN staff is acting within the scope of its proper function. Acting top-down as opposed to bottom-up.

So my assessment is that, while this may be a difficult task, that that is still an important issue and that it would be worth the effort to try to define a distinction between policy and implementation for the community, even if clear lines can't be drawn. And so the assessment would be incomplete, important ongoing work that must continue to some completion for clarity in the community and eliminating unnecessary misconception.

OLIVIER CRÉPIN-LEBLOND: Brian, there's ongoing work going on in the community, isn't there? There's a working group, a GNSO a working group?

BRIAN CUTE: Yes.

OLIVIER CRÉPIN-LEBLOND: Alan?

ALAN GREENBERG: Yeah, I was going to mention that, and then we probably should make reference to it because it means there are things going on, and maybe we don't need to take action ourselves.

The other part that has come out of that and discussions would precede it is it is now clear that what we have been calling implementation and was called implementation in ATRT-1 is, in fact, two or possibly more distinct phases with different characteristics. And the simple fact that we now realize that and it was never mentioned before changes the

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discussion significantly, and I think that the reference should be made to that.

There are some parts of what we have been calling implementation which are clearly, if they don't involve capital P policy, then they involve lower P policy. They involve decisions which will impact the community. And there are parts of implementation which are truly implementation.

BRIAN CUTE: What was the phrase Jeff Neuman came up with? I think you quoted him?

UNIDENTIFIED MALE: Execution was the word.

ALAN GREENBERG: Execution, I think.

BRIAN CUTE: You're alluding to that?

ALAN GREENBERG: Yes, that's correct.

BRIAN CUTE: There's not just policy and implementation, but there's perhaps another?

ALAN GREENBERG: And there may be an iteration within that process, and simply lumping under the single name implementation was bound to have caused problems if we had had the insight to realize that.

OLIVIER CRÉPIN-LEBLOND: Thank you, Brian.

STEVE CROCKER: Related to Alan's observation, I'd like to suggest something of a reframing of this issue too in terms of the analysis. Which is that what hit home for me in the meetings in South Africa, which should have

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been obvious I guess, but it took me a while to realize it is that at the front end of this when the PDPs are organized, those folks can set the scope of the PDP however they want to.

In other words, this question of what's policy and what's implementation isn't pertinent at that point in time because the organizers of the PDP can put all of this into play at that point, as I understand it. Although Avri's telling me I'm wrong, so I'll give her a chance to explain that.

But if my assumption were correct, that they could. Because I wasn't aware staff or anybody tells them, "You can't think about that because that's for us to do in implementation." So if, in fact, they have the ability to set the scope of this, then it seems like this really is a second order issue in terms of as the PDP finishes out and as a consensus policy. At that point, as people then try to figure out how to actually execute on it, other issues arise that perhaps the original group didn't think of.

And then you get into this question of, "Okay, so should that go back for bottom-up policy making, or is that one you can just leave to the staff to figure out?" And if that's right – and I realize I may be in error in terms of that assumption – it seems like our problem is not as big a problem as the ATRT made it seem to be three years ago.

But let me – maybe I should just stop because Avri's questioning my assumption, so if those are wrong then none of this matters.

OLIVIER CRÉPIN-LEBLOND: Let me just turn to Larisa first, and then come back to this in a moment.  
Larisa?



LARISA GURNICK: Yeah, just a point of clarification. On the screen right here, you see the response that touches on some of these items. And it talks about the work that's currently under way as well as provides links to the documents that demonstrate the nature of the discussions and what the GNSO working group is looking at and also staff's perspective on what the original recommendation was about, focused on the executive function versus the broader definition of implementation that's being explored right now starting with the meetings in Toronto. So I would just invite you to take a look at that documentation and the links as it might answer some of your questions.

OLIVIER CRÉPIN-LEBLOND: Thank you, Larisa. And I'd like to try and keep out of a discussion of policy versus implementation. We've got a working group in the GNSO that has been working for months and is not able to find a solution on this at the moment. So we don't want to start down that lane. But, Avri, please?

AVRI DORIA: Yeah, the point I wanted to make was related to the working group being able to determine for itself what its scope was or the GNSO being able to develop, and that's really not the case.

First of all, you have to start with the issues report, and the issues report really does constrain the issue. The issues report defines what's in scope for GNSO, what's out of scope for GNSO. True, the GNSO can decide to try and go for something that's out of scope. Then that gets cast into a charter, at which point the working group is really no longer free to make those determinations. So there is a certain amount of casting.

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And, in fact, we see with a lot of them where they make policy recommendations and they make suggestions for implementation and such. So it isn't as free as it may seem. There are constraints. It's a fuzzy border, but there are constraints.

UNIDENTIFIED MALE: Who writes the issues report?

AVRI DORIA: Staff. Staff writes the issue. Now, the new PDP process did get a draft issues report stage put in, so we then get to comment on it before staff completes it. But issues reports with the constraints of what is in scope for GNSO and what is out of scope for GNSO is a staff activity, not a GNSO activity.

STEVE Crocker: And implementation is out of scope?

AVRI DORIA: Implementation has to this date been, yes, seen as out of scope. Now, the GNSO is making the claim that, no, the bottom-up process [relates] to everything, but it was indeed that policy came from one place and then implementation was something that we could give advice on and give guidelines on.

It's like, if you look at the new gTLD PDP, you see there's a set of principles, a set of recommendations, and then there are a number of guidelines which were felt to be not properly within scope of the GNSO as understood at the time but suggestions that we wanted to give.

OLIVIER CRÉPIN-LEBLOND: Larry?

LARRY STRICKLING: What would be the problems or complexities of changing that so that the GNSO could control what was in the issues report, in the issues

document, the front end as a way to eliminate this is a matter controversy? Does that create more problems than it solves?

AVRI DORIA:

I don't know, and in fact, I think that now having the pause in the middle where there is a draft issues report, the GNSO gets to comment, and then there's a final issues report, actually opens the door to that kind of treatment. There's nothing that specifies what we do with those comments but, you know, that was just put in in the new PDP that we're just starting to deal with now.

OLIVIER CRÉPIN-LEBLOND:

Brian, Alan, Denise? I don't know who started. I think Brian had his hand up and then others.

BRIAN CUTE:

Thank you. I just want to kind of summarize. My assessment is implementation incomplete and ongoing work. And, I guess what I'm offering would be a potential observation from the Review Team that this is a critical issue that really requires prioritization and drive it to completion. And what's driving that observation for me is having heard from some in the community as we interact with them say, "This is too difficult. We might not ever get to a distinction," and the sense that work could stall.

So that's the observation that I'm offering to the team as a potential team observation. If the team doesn't agree with that observation, that's fine. But the basic assessment is incomplete but ongoing work. That much is clear. There's significant ongoing work.

OLIVIER CRÉPIN-LEBLOND:

Thank you, Brian. Larry?

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LARRY STRICKLING: I'm sorry. I'm fine with that, but I also do think that this is an opportunity again to reaffirm the importance of the multi-stakeholder approach. In other words, I'm nervous about spending another two years to agree upon a definition that then somebody somewhere – whether it's in ICANN or somewhere else – will then purport to interpret that definition and say something's in or out.

At the end of the day, you have to ask why if the stakeholders feel something should be referred to them, why shouldn't that control regardless of a definition? In other words, instead of fighting about making the definition clearer so that somebody somewhere can interpret it and make rulings, why don't we find a way to defer to the multi-stakeholders and in effect say, “When they think it ought to come back, it ought to come back”? And reaffirm that as a key, underlying principle for ICANN.

That way, it doesn't matter what the definition says. It can be there for guidance, but if the community feels strongly that they want to have the input on this, what's the harm in basically reaffirming that's the rule of decision?

OLIVIER CRÉPIN-LEBLOND: I can see people are putting two fingers up and two different hands.

BRIAN CUTE: Sorry. Since it's a direct response. That may be one way to go. I think I can observe that very recently, in the last year and a half or so on the new TLD issues, that there has been debate about whether this is an implementation issue or not with the stakeholders and divergence of views across the stakeholders and a lack of clarity.

So taking it from a structural standpoint and let the stakeholders get together mechanistically in the process is one approach. I don't think the track record, the short track record, has bared out that the dynamic of having all the stakeholders decide amongst themselves has produced clarity.

LARRY STRICKLING: But has it not produced clarity because people are trying to interpret a definition? Because, if the standard simply is, "If the community wants it, they get it," we don't need the definition anymore. And then it simply comes down to is there a consensus viewpoint in the community that this comes back for bottom-up decision making?

And then we get around all these other problems that have been created by people trying to define a word and then apply that definition to different contexts.

OLIVIER CRÉPIN-LEBLOND: Alan? And then Denise?

ALAN GREENBERG: Alice has been waving at you, but you're not looking.

OLIVIER CRÉPIN-LEBLOND: Sorry.

ALAN GREENBERG: I think something Larry just said is the key. The question is does it need bottom-up decision making, not whether it policy. We're still using the term implementation as it was months and years ago. When we finally get a better distinction between the different phases, we may be able to have a salient conversation where we're not talking at odds. We're not quite there yet.

I don't see in the community the feeling that this is a bottomless hole, a morass. I think we're actually starting to see some light to it. There remains to be discussed how we make bottom-up decisions when we're not in the policy phase anymore. It's going to be a real challenging question. In days of yore, we did see people telling PDPs, "You can't do it. It's implementation," but there are other PDPs that have chosen to go far enough to delve into the implementation so they make sure that no one can misunderstand what they're doing. Others have set things at a higher level and sometimes learned to rue that. Certainly, the new gTLD one, the decision was made consciously not to try to go down to too much level, and we understand the results of that. And by the way, from my perspective, what the working group can do is based on the charter which may rubber stamp what was in the issue report or may not. I don't think it is restricted to that, but I'm not sure on that. Certainly, the [nuance] is the charter has a fair amount of flexibility.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. Denise next?

DENISE MICHEL: A couple points related to the specific proposed language about implementation of the first ATRT recommendations. So the first ATRT recommendation was to have the Board clarify the distinction between, right, between PDP issues and executive function issues. Right.

And so staff proposed an implementation plan and then executed that plan. And so there is a published, "Here are three paths that we use. Here's how we distinguish between these two areas. And we incorporate this distinction in every Board resolution."

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So I think that was the implementation that was committed to and completed. So I think it would be useful to note that but the number of issues that this raised as additional sort of ongoing issues, broader issues about what falls in policy, what falls broadly in implementation. And it relates, of course, not only to the GNSO, but to the ASO and the ccNSO as well. I think it bears addressing.

And then I think part of the challenge with the ongoing work is, first of all, although it's an open working group, it's just the GNSO and it's just looking at gTLD policy. They don't have a specific work plan with a deadline. It's not clear where that work goes and how it comes to conclusion, which I think is part of the concern I'm hearing in this room. It also might be something you want to address.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Denise. Brian?

BRIAN CUTE: So was Larry's suggestion a new recommendation out of this or is it an assessment?

FIONA ALEXANDER: I think maybe what Larry is trying to get to is that maybe the recommendations kind of missed the mark. So I think maybe we should go back to what the first ATRT was trying to look at, which was the issue with the time was when do you make a decision, who makes the decision, and what's the construct for shared decision making at some level, right? Because there were concerns about the Board doing things. What was that one issue?

UNIDENTIFIED FEMALE: [inaudible] in the context of the new gTLD work?

FIONA ALEXANDER:

No. In particular, when Peter changed the benchmark and changed and tried to manipulate the process, and didn't work [inaudible] issue. Right. So vertical integration, yeah, that was one of the main things. So you have to look at what you're trying to solve now. So I think ATRT-1 was trying to solve that [construct] of an issue and propose this, and the staff tried to implement that. And maybe you're proposing the wrong solution to the problem.

So maybe the assessment is the Board – and the ATRT asked the Board to do it, not the Board working with the community. Maybe that was a mistake as well. So maybe the assessment is the Board took the action, the staff did best efforts to implement, X,Y and Z happened, but in assessing it we still have the same problem. And maybe the issue really is something else. Maybe it really is what Larry is describing as opposed to what we tried to do last time.

And I would also wonder if the outside consultant on the PDP, if their report might actually have some information that might be helpful as well. Because, if what you're looking at is the PDP process and defining the issues report and doing it differently, that actually may help.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Fiona. Part of the problem I think is part of the fact that this is a Pandora's box when you open it. The issue of policy versus implementation has been a bit of a battlefield because several things that have happened historically and the struggle of policy having been designed in a certain way, implementation having been done in a different way, which some people accuse as being a changing policy,



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etc. So that this is why it's a bit of a tricky arena. Brian, do you have enough material for your work on this?

FIONA ALEXANDER: I think that's exactly the crux of the issue, which is people are using these words to fight their battles. So I don't like the outcome of a decision, so I'm going to say you stepped over the policy line and did it incorrectly. And all we're doing by doing what we're doing is feeding that beast.

OLIVIER CRÉPIN-LEBLOND: Well, and this is why really I question whether recommendations should be required in this. I mean there is a policy versus implementation working group going on in the GNSO at the moment. Do we need to make an additional recommendation on this and drive this even further? Larry?

LARRY STRICKLING: So I'm hesitating to call it a recommendation, but I do wonder whether we could advance the debate by basically saying maybe you're focusing on the wrong thing. And to the point I made and I think that Alan reaffirmed, that the idea is, when do you need to engage the community and when do you need a bottom-up view on the issue? And the artificial distinction between policy and implementation really is turning into something of a side show or distraction, or as Fiona says, the excuse to which people have these battles about who has the turf on a particular issue. But if you basically reaffirm the commitment to bottom-up and say the default is the bottom-up wins, then we don't have to worry about this.

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And I do think, yeah, in some respects, I certainly am confessing here from three years ago – I can't speak for Brian or Mr. Zhang – but, yeah, I do think we got this wrong three years ago. But now I think with the reflection of seeing how this has played out over three years, I'm prepared to say maybe there's another way to approach this issue that's more consistent with the multi-stakeholder model.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Larry. So, Brian, this can be integrated in the template. And may I suggest that since, at the moment, we still aren't quite sure whether it's a recommendation or whether it's an observation, we just leave it as.

LARRY STRICKLING: It's not a recommendations group as it is. That's for sure. That we can agree on.

BRIAN CUTE: I'll offer it as observations, and we can finalize that.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you very much. Let's move on to the next one. The next one is promptly publish all appropriate Board material related to decision making processes. And, Lise, has asked me when we're going to go for a coffee break, but we did start a bit late.

BRIAN CUTE: You're the chair.

OLIVIER CRÉPIN-LEBLOND: Well, we did start a bit late. I wanted to sort of get through a few more before we take it to the GAC, okay. Yeah, take it up to the GAC. Well, while everyone goes on to coffee break you'll be able to go through the GAC recommendations. Good.

Promptly publish all appropriate board materials related to decision making processes, at the moment it's marked as to be decided. Avri and Brian, you have this. So Brian?

BRIAN CUTE:

Yeah, I think this one will be shorter than the last one. So the points that I hit on in terms of the record is that staff reports this has become standard operating procedure, to post all Board materials with approved minutes and timely post translated resolutions and preliminary reports. We did see in Los Angeles that the redaction policy had been implemented. And in looking at the comments, there are comments from the community saying there's improvement in this area, that we're getting access to materials.

Specifically, there still are comments to the contrary, but there are specific comments that are supporting this and those are noted. The analysis for me is that the implementations recommendation appears largely successful. There is standard operating procedure in place. There may not be perfect, or timely in some instances, posting of all board materials, but there seems to be significant improvement here from how it was prior to ATRT-1.

There was a question that we raised in Los Angeles about the scope of redactions and whether that practice is respecting the minimal approach in the recommendation. And as we noted in Los Angeles, that's a difficult question to determine because of the nature of redactions, and we heard from Amy on that. I'm not sure that we'll be able to resolve that much further in time for this report. So the

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assessment is largely successful implementation of this recommendation.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Brian. Just a question to Denise actually. There was a time in the beginning of this year when change of personnel happened that, well, there was a time when the Board was a little bit late on submitting all of that or publishing all of that material in advance. And I understand someone else has now taken over. Is there something in ICANN DNA that makes sure that it doesn't get dropped?

DENISE MICHEL: The Board rationales?

OLIVIER CRÉPIN-LEBLOND: In the early part of this year, there were three months when [suddenly] nothing was published for some reason, and it just was a little bit.

DENISE MICHEL: Yeah, I think it was just the schedule of actual Board meetings and, of course, the Board has to formally approve minutes that can then be translated and published. So I don't know that it was a change in personnel necessarily but just a change in schedule. But they've been very regular. Do you want some specific dates on posting? I mean, it's part of the Board process. It's a documented standard operating procedure. But what do you need?

OLIVIER CRÉPIN-LEBLOND: No. It's just during the first part of the year, I remember having to send an e-mail to Steve and say, "What's going on? It has been four months. Nothing has been published." And it appeared to be – and this is just anecdotal of course – and it appeared to be that someone had left and

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then was not replaced, and so the schedule was just not pursued. Alan, maybe you remember?

DENISE MICHEL: We can look into that and get you some information on it.

OLIVIER CRÉPIN-LEBLOND: It's no big deal. It is the past. It's just to make sure that this implementation of this continues smoothly and there's always a function that follows on that.

ALAN GREENBERG: It wasn't just minutes. It was also all the Board briefings and stuff, all the briefing papers and such that were not being posted at one point.

OLIVIER CRÉPIN-LEBLOND: Okay, let's move on. Any other comments on this, Alan?

ALAN GREENBERG: I had one, which I've now forgotten. No, I remember now. Is there a tickler system on redactions to see whether they can be unredacted or a timing? As far as I've seen, the only things that are unredacted is when someone raises an issue later and someone says, "Oh yeah, I guess we can tell you now," but other than that it doesn't happen. Perhaps it's warranted, certainly on ones which you know a while later it doesn't need to be unredacted.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you. Let's move to the next one, 7.2, publish rationale for Board decisions and for accepting or rejecting public input and community input. The recommendation or observations are decisions based on input received from SOs and ACs to the Board prior to the implementation of ATRT-1 recommendation 7.2 should be reviewed, and in those cases where questions exist as to the status of the

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implementation of the recommendation, rationales should be provided.  
Was that Brian again?

BRIAN CUTE: So the record was developed to a large degree by NTIA staff's very thorough review of decisions taken by the Board, which I relied on in this assessment. Also, I noted that we receive very little comment, if any, about the actual rationales offered by the Board.

So I think that maybe an indicator, not conclusive but based largely on a reading event NTIA's assessment, implementations recommendation appears successful. It reflects an improving trend over a three-year period, the analysis. And while there remain examples that demonstrate room for improvement, implementation recommendation 7.2 indicates significant qualitative improvement since 2011.

OLIVIER CRÉPIN-LEBLOND: Yes, Fiona?

FIONA ALEXANDER: I think just to say that I don't have a problem with this, but in the final report – and if you want to attach the work we did in the annex – you don't have to say it's NTIA. It can be the work of the group, but it doesn't still need to say that's us.

BRIAN CUTE: Sure.

OLIVIER CRÉPIN-LEBLOND: Thank you. Brian, you're set with this? Okay, let's move on to the next one then, please. The next one is publish redaction conditions. And we already just touched on this.

**BRIAN CUTE:** Yeah, I don't have that. I'll endeavor to put that, but as a standalone I don't have that. We touched on it in LA. It will be a very quick one that I can put together and get posted. I think it's fairly straightforward. We saw in LA that the procedure was adopted, implemented. The outstanding question was, is the redaction staying within the minimalist approach? But I'll pull that template together in full and get it posted post haste.

**OLIVIER CRÉPIN-LEBLOND:** Thanks very much, Brian. Next one is publish translated Board material within 21 days, draft observation, and a link to the new recommendation on multilingualism. I'm taking it out of the.... I sense the energy next to me. She's getting increasingly restless, jumping around. Some biscuits, I would pass them onto her in the meantime. How many more do we have? Yeah, we can go through these pretty quick. Yeah, many of these are same as recommendation 9, and many of these are multilingualism, and that is moved on to tomorrow, Work Stream 4, as the network died on us as well.

So this one is just draft observation link to recommendation on multilingualism, and assessment of whether this is the appropriate material for translations, and to what extent these translations are accessed would be useful in guiding potential future improvements. I would say bring this on as a new recommendation and not do, I mean, this is something that's ongoing. And we've spoken to the translation and interpretation department, and it looks as though they're improving. But what is there to say about this at the moment, the current assessment on it?

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UNIDENTIFIED FEMALE: There is no assessment.

OLIVIER CRÉPIN-LEBLOND: Well, there isn't? Yeah, no, but is there an assessment to make? What assessment can be made about at the moment apart from saying it's ongoing, it's improving, they're doing something. Lise, and then Alan?

LISE FUHR: Well, actually, the one that Fiona and I did was a mix of an assessment of what has been done and the new recommendation. And I think I just didn't get that Brian and Avri were going to do the assessment, so we tried to do it all. And so we've been looking and talking to people how it was implemented. So, in my opinion, if we kind of polish that a bit, we will cover both.

OLIVIER CRÉPIN-LEBLOND: Well, the document is not there yet, but we'll have the document that we'll look at tomorrow for Work Stream 4. And Lise has just told us that part of that document can actually, I mean, would you cut paste then into a document specifically targeted at this, or would we just refer to the new document? I would say let's not cut-and-paste. Let's just refer everything to that one document dealing with translation and the interpretation.

LISE FUHR: Well, I actually put it in the template.

BRIAN CUTE: You could put in a link. It's in the template format already.

LISE FUHR: Yeah, and I didn't really distinguish between the assessment and the new recommendation. So that might be confusing but I just kind of converged it all into one.



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OLIVIER CRÉPIN-LEBLOND: So the question is do we split it, do we keep it one? We can open it. Yeah, that's no problem. Larisa.

UNIDENTIFIED FEMALE: The secret document.

OLIVIER CRÉPIN-LEBLOND: Yes, Brian, go ahead.

BRIAN CUTE: I think for purposes of our discussion here, it's good that all the issues are in one document, and let's have the discussion, come to a consensus. I think for purposes of the report since the community is going to be looking at our assessment on a recommendation-by-recommendation basis, we may want to break out separate templates to put in the appendix. That would be my suggestion.

OLIVIER CRÉPIN-LEBLOND: Alan, and then Avri.

ALAN GREENBERG: In terms of assessment, I heard statements – and particularly the Board assessment – I heard statements that how much translation they do and how quickly is a matter of funding. So that's part number one. We also heard comments from both Spanish and Russian speakers that the quality was not sufficient – and that goes to this very day – and so that needs to be mentioned somewhere.

LISE FUHR: It is.

ALAN GREENBERG: Okay.

OLIVIER CRÉPIN-LEBLOND: Avri?

AVRI DORIA: Yeah. Just to complicate things, there was one other, the issues 3 that I deemed insufficiently complete for discussion in this room at this time also dealt with translation and international understanding of NomCom processes. So that included a language element too where I made a similar recommendation that we didn't discuss because it was insufficiently complete for that. So that's one that has to be dealt with as part of the same linguistic batch because that was yet another one that had language in it.

OLIVIER CRÉPIN-LEBLOND: Thank you, Avri. Any other? Larisa?

LARISA GURNICK: And on the NomCom translations, there is also a staff response. And essentially what we talked about there is that the fundamental documents that NomCom operates under, by-laws and procedures have been translated. And then there are some thoughts and ideas expressed in the staff response as to some tools, maybe the automated translation tools that could be used to facilitate dialogue in multiple languages that may not necessarily require formal translations. So that topic at least has been already raised in those documents from staff.

OLIVIER CRÉPIN-LEBLOND: Thank you, Larisa. Avri?

AVRI DORIA: Yeah. Just to quickly add in the insufficiently complete template that I had, I did include that and basically marked it as "complete but remains in progress" because of the whole issue of there being a desire to translate it into more languages and such. So I gave it a complete but in process, but as I say that template was insufficiently complete.

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OLIVIER CRÉPIN-LEBLOND: Thank you, Avri. So for the sake of being clear on this, we're incorporating everything into one template, I understand?

BRIAN CUTE: My suggestion for the report is because I think – and I'm happy to be convinced otherwise – but I think that the community is going to look at the recommendations numerically from ATRT-1, SSR, and WHOIS, and that for their ease having templates as an appendix that map to the sequence might be easier. I think for purposes of discussion here, having all the issues in one template is fine to reach consensus.

OLIVIER CRÉPIN-LEBLOND: The question is whether the pointers to the appendix will point to that one section of the appendix or whether we will have the same text in several different parts of the appendix.

BRIAN CUTE: Not a question I think we need to settle here is my view. I think here we need to go to the substance to see if there's a consensus on the assessment, if there's a new recommendation, and then we'll pick up the pen and start drafting the report and the templates. Is it critical that we answer that?

LARRY STRICKLING: I don't think so, but I would just say that what we wrote up for the GAC I assumed was going to be the text, the body of the report which has the recommendations, the analysis, the recommendations and new recommendations all tied to that subject in one place and that would be the body of the report. I wasn't thinking of it as an appendix because if it's the appendix.

OLIVIER CRÉPIN-LEBLOND: Yeah, we move it.

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BRIAN CUTE: You have no templates on GAC stuff, right?

LARRY STRICKLING: Huh?

BRIAN CUTE: You have no templates on GAC stuff.

LARRY STRICKLING: What do you mean no templates? You call it a template. I call it a draft to the report.

BRIAN CUTE: Okay, I got you.

OLIVIER CRÉPIN-LEBLOND: That will come into the form of the report, and I think we'll have that battle tomorrow because we're trying to make a short report that's going to be, what, 20 pages in length and then have everything else in the appendix. But it looks as though we might have a big report with a short appendix. We'll see tomorrow. Can we do that tomorrow?

BRIAN CUTE: Just end of today. We'll talk about [inaudible].

OLIVIER CRÉPIN-LEBLOND: Or end of today? Yeah, okay. Good. All right, let's move on then because Lise is getting increasingly tired and thirsty. So the next one, moving further down, ensure and certify the inputs and policy making processes are considered by the Board. At the moment, no observations or recommendation. Is there now on the other one?

AVRI DORIA: I thought there was, but maybe there's not.

OLIVIER CRÉPIN-LEBLOND: I haven't seen it. I can't see it in the...

AVRI DORIA: Is this issue 12?

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OLIVIER CRÉPIN-LEBLOND: Yes. That is issue 12. Oh, there is a draft here now. Okay.

AVRI DORIA: Yeah. I'm sure insufficiently complete.

OLIVIER CRÉPIN-LEBLOND: That's just – come on, Avri.

AVRI DORIA: But it's less insufficiently complete than some of the others.

OLIVIER CRÉPIN-LEBLOND: Please, take us through your insufficiently complete draft.

AVRI DORIA: Lesser. Okay, so this was because we had had quite a bit of discussion on it. So there was the discussion on the community input on that, which is basically, "Well, you know, the Board and the GAC have certainly developed a good set of both procedures, and there's a by-law, and we talked about it here."

But whether it's SSAC advice on risk to gTLD program or ALAC advice on public policy related to user community, whether that advice is considered, that is reviewed, considered, discussed with decisions explained is currently an ad hoc decision based on disposition of the Board at that time.

The summary of other relevant information remains blank. So the analysis for the recommendation was that it's ongoing but incomplete. And then there starts to be a draft recommendation, which we had started to sketch out last time that.

And this we have not discussed in any length is that, A, the by-laws should be amended so that there's a statement similar to the GAC statement for all advisory committees, obviously, and here's actually a

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suggestion of a stub for that. And then the processes should be defined consistent with the structure of the specific advisory committee for process.

So we had talked about that quite a bit. There's certainly been community input on it. I don't remember seeing any staff input on that one, but I may have missed it. And so that's a quick recap. So there's basically the analysis is ongoing and incomplete.

And I'm not sure that I didn't abuse the template by then immediately going into draft recommendation as opposed to starting with hypothesis. I used the ATRT assessment of recommendations and effectiveness as in the hypothesis form and then went into the draft recommendation that by-laws should be amended to include a similar process to the GAC's for all advisory committees.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Avri. So before you continue expanding on that incomplete recommendation at the moment.

AVRI DORIA: Insufficiently complete.

OLIVIER CRÉPIN-LEBLOND: Insufficiently complete, sorry, or sufficiently incomplete, the recommendation itself which I guess we have discussed last time, can we just try and get consensus on this and see whether we all agree with that recommendation? Larry?

LARRY STRICKLING: I can't support it. I think it undermines the multi-stakeholder process. The whole idea of the multi-stakeholder process is to get consensus before the Board acts, and this is assuming that people who end up not

being, if they don't think their views have been adequately considered at the consensus now have the right of appeal.

The GAC situation is it what it is historically. I think it reflects a particular biased toward the idea that governments have a say on public policy and that they haven't been able to be engaged early enough in the process. I don't mind re-examining that assumption, but I think the idea of taking that approach and now giving it to every advisory committee is going the wrong direction, so I can't support that.

OLIVIER CRÉPIN-LEBLOND: Thank you, Larry. Avri, your thing is still on.

AVRI DORIA: Well, yeah. I mean first of all I guess, my hand first went up when it was giving it to everybody and giving them a second opinion, and at that I would say no. This was really only directed towards the other advisory committees. And we've been making the judgment that the GAC needs to get involved earlier, but that in no way took away their right to give advice and have that advice considered discussed, reviewed, and covered.

So I don't understand why it undermines the bottom-up process to say, yes, SSAC should be involved all the way through the process, but as an Advisory Committee they get to advise the Board as well as anyone gets to advice the Board and that there has to be a process for bringing in their advice, considering it, accepting or rejecting and giving a reason. Same thing with ALAC.

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At the moment, I mean, it's a little better than it used to be. As it used to be with the ALAC is they would send in their advice and then six months later they'd ask, "What's happening with it?" And they say, "Did you put an RSVP at the bottom?" And we talked last time about having a similar set of processes that says, at the end of the day the whole thing has gone through. Yes, everybody is supposed to participate. Yes, we're going to facilitate that cross community participation. But at the end of the day, Advisory Committees are all equal in the sense of giving advice. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Avri. I see a lot of people. Denise Michel, Stephen Conroy, Heather, Alan. So, Heather – sorry, Fiona. Sorry, no, Heather is not here. I'm getting overwhelmed here. Denise, please?

DENISE MICHEL: Thank you. There is staff input on this and there is – perhaps you could get it and circulate it to staff again – on the processes and procedures that are currently used to document that the Board has received and considered input from the SOs and ACs. So there are specific processes in place on to document that.

And I guess in line with what Larry has said, those documents, I mean, that process is very much keyed towards acknowledging the bottom up sort of multi-stakeholder process in documenting the activities and acknowledging the activities that have occurred in the SOs and ACs as issues make their way up to the Board. It includes an acknowledgment of consideration and public comments as well.

OLIVIER CRÉPIN-LEBLOND: Thank you, Denise. Stephen Conroy?



STEPHEN CONROY: Sorry. Yeah, thanks. I'd also have trouble supporting the thrust of what I think Avri's trying to do there. I'd agree it actually would genuinely undermine rather than enhance the stakeholder participation. So I'd probably be happy to keep talking about it and see if we could find different words. But I'm not as worried about the way that the committees interact at the moment, and I think the information that's coming will demonstrate that there is a process that gives everybody a chance to have their say. But to formalize it in the way that's been suggested, I think, would just be an unhelpful step.

OLIVIER CRÉPIN-LEBLOND: Thank you, Stephen. Fiona?

FIONA ALEXANDER: Yeah, I was actually just going to point out I think what Denise was saying. I thought that Sam at one of the LA meetings actually, maybe the first one, went through this template that they had and what they used in terms of stuff going forward, and it's probably not reflected in here. Yeah, and that sort of gets to the heart of what I think the group was getting at last time, which is just to make sure that before something comes to the Board, it's been considered by everyone.

To Larry's point that the Board shouldn't be deciding things, they should be to decide lower down. And I thought that was the crux of what the staff tried to do and what Sam had presented.

OLIVIER CRÉPIN-LEBLOND: Thank you, Fiona. We have Alan next.

ALAN GREENBERG: Yeah, with regards to the template, my recollection is that is only for one particular thing, PDP recommendations or something like that. It is

not for most of the decisions that the Board makes. So, I mean, I think that template has only been used once because the Board only approved one PDP.

I could certainly live without the last sentence, that is, they have to negotiate in good faith. But the rest of it, if I remember the lineage of this, Steve was saying that from his point of view this should be done with everyone. If you get something, you should respond to it and at least say why you're accepting it or why not.

And I think the words that some of us said, well, that's fine as long as Steve is there. How about the next Board with a chair who has a more cavalier attitude? And we said perhaps we should institute it. And I think that was the lineage of it. As I said, I can certainly live without the negotiation part, but the rest of it is simply good practice and polite also.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. Anyone else? Denise? Oh, Steve first.

STEVE CROCKER: So I'm in the process of adjusting the rules so that I can stay around forever. We are in fact – right – where do you think they got the idea? We are institutionalizing the process. We're putting together a Board procedure with a tracking system that is a lighter weight version of the GAC Register process and everything.

And I hope to have this in place and populated with enough substance so that people can see it in motion prior to or by the time of Buenos

Aires, so we're moving rapidly on that. I have draft screen shots I can show you. I mean, it's getting attention internally.

The other thing is that, Larry, you gave us a very stern lecture once in Cartagena, if I recall correctly, about the rationales, and I've taken it very much to heart. So I want our rationales to actually be explanatory to the uninformed or to the person who can't read code words and so forth.

And I've pushed back somewhat internally on versions of rationales. This doesn't do it. And one of the criteria is, does it account for all of the inputs during the public comment process, and so forth? I'm sure we have some distance to go there and some improvement, but we've set a course to get there. And my earlier remark notwithstanding, in the short time that I have available, whatever it is, I'm going to push hard to get that stuff stable and institutionalized and not just me pushing on it.

With respect to advice coming in, as I said, we're putting a lightweight tracking system, and it will be a visible one so that the SOs and ACs that provide advice will be able to see that it got in to verify that that's what they mean. And we will be crisp about what we did with it, even if we crisply say "no" or "go away" or whatever, but at least we will reach closure on it. And to the most part, the Board will not be in the position of taking stray advice about something and making a fresh decision when there's been a lot of work. We will be very respectful of the formal processes that have been set up.

OLIVIER CRÉPIN-LEBLOND: Denise, and then Larry.

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DENISE MICHEL: Yeah, I think Steve covered most of what I was going to. We'll just remind the group what the current processes are, so you have that as background.

OLIVIER CRÉPIN-LEBLOND: Larry Strickling.

LARRY STRICKLING: Well, I'll put Steve on the spot. Steve, are you saying you accept this language? Because I'd think answering mail is different than creating a right of appeal, and I think this language creates, in effect, a right of appeal. And I'm not sure you on the Board really want to be doing that.

STEVE CROCKER: Well, let me pay very close attention to what the [inaudible]. I make a sharp distinction between somebody having the right to talk to us versus setting an expectation that because they talk to us they get first class consideration that we're going to act on what they say.

LARRY STRICKLING: Doesn't that create that expectation?

STEVE CROCKER: It just says they can talk us and we'll respond. But we can say, I think, within that language, we can say, "Thank you very much. This has been considered, and we're not doing anything with it other than what we did before."

LARRY STRICKLING: So in a sense you're going to negotiate to a mutually acceptable solution.

ALAN GREENBERG: The last sentence is a bit stronger than that.

OLIVIER CRÉPIN-LEBLOND: Lise is next. Yeah, I think something has to be crafted on this, or can be crafted on this. Yeah, question?

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STEVE CROCKER: So I think there's only two choices. You either take it out now, or when it comes to us we will say, "No, we don't accept that."

LARRY STRICKLING: So I could probably accept language that says ICANN will answer its mail, if that's what we're saying. I don't think so, because it's still, the sentence before talks about if the Board determines to take an action that is not consistent with the advice, it shall so inform the committee and state the reasons why it decided not to follow that advice. That seems to create an expectation that the Board will follow Advisory Committee advice.

ALAN GREENBERG: It's going to be in the rationale anyway if they do what Steve says.

LARRY STRICKLING: The negotiation is too strong, and if that language – and I apologize for being half asleep with this – if that language shows up in this report when it comes to the Board, the Board response, because I will write it personally, is, "This exceeds the authority of advisory committees and is unacceptable in the operation of ICANN. Thank you very much for your advice, but here's why we're rejecting your advice, ATRT-2."

OLIVIER CRÉPIN-LEBLOND: I'm not quite – everyone's putting their hands up at the moment. I'd like one person to speak at a time. First, Lise because she has not spoken, and then everyone else.

LISE FUHR: Well...

ALAN GREENBERG: I have a question. I wasn't going to make a statement.

UNIDENTIFIED MALE: Lise first.

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LISE FUHR: Okay, well, I think what you're saying, Steve, is you're really working on implementing something like this, and I find this very good. Well, of course, the wording is very important, but it's very important that you implement that you'll give an answer and you'll give a reason. And I don't the negotiation part, so I would be very happy to have a version like that incorporated in the by-laws.

OLIVIER CRÉPIN-LEBLOND: Alan?

ALAN GREENBERG: Yeah, what I'm hearing Steve say is the first two sentences are okay, but not the third, the one saying negotiate. What I'm hearing Larry say is even the first two are not acceptable to him. I'm trying. I'm hearing different things.

OLIVIER CRÉPIN-LEBLOND: Larry?

LARRY STRICKLING: I have no problem with the Board explaining its decisions. I have no problem with the Board in explaining its decisions, making sure it is comprehensively responding to input it got. What I'm concerned about is the idea that might be created by this, which is absolutely the current state of affairs with the GAC, that they in effect can go directly to the Board and say, "We don't like what's going on with what's coming out of a process, and we want the Board to listen to us," and the by-law provision kicks in and the Board has to respond accordingly.

I think that the goal here should be to be driving everybody into the actual bottom-up process so that what comes to the Board is a full consensus view. We are not there today with the GAC, and I don't know that we can get there in this ATRT to change that approach.

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But I think the idea of now giving other groups the opportunity to, if they don't like the outcome of what comes out of the process, to feel that they've got an ability to go directly to the Board and say, "Wait a second. Before you decide this, you need to hear our view on this. We didn't win in the PDP, but we want you to tell us why we're wrong." I just think that that undermines the process. And I think that's what is created by the first two sentences of the proposed recommendation.

OLIVIER CRÉPIN-LEBLOND: Thank you, Larry. We have Heather Dryden who's joining us remotely. Heather?

HEATHER DRYDEN: Thank you. So I agree with others that have expressed reservations about this, because we have yet to come to grips with what we need to do with policy development or PDP in capital. This would be really adopting a measure without fully understanding what the problems are now that we have with the PDP and making that community consensus process really work well.

And we know we have a situation where the greater the incidence of the GAC not being able to influence the development of policy across the organization, then it forces or increases the likelihood – if in fact it does not simply force the GAC then – to press upon the Board.

And so, it seems to me that if you are going to afford really the precisely same mechanism – and we can play with the words all we want – but I agree with Larry and with Stephen as well, that the thrust is wrong.

But if we take the essential elements of this draft recommendation and apply it to the other advisory committees, I think it's quite possible that

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we have taken ourselves further away from getting to what it is that we need to do to make that consensus process really work better, so that there is less this observation or criticism even of the government coming in late and, as I say, needing to come at the Board in order to get more satisfaction in having influence over outcomes. So I would urge caution about that. So thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Heather. Next we have Alan?

ALAN GREENBERG: Okay, two comments. First of all, I'll point out that Advisory Committees can say things to the Board that are not about PDPs and policy. That's number one. We have a far wider scope, including the GAC. Second of all, without the third sentence – and I think we've all agreed we'll drop the third sentence since Steve says he's going to veto it anyway – but regardless of that, all that's saying is “please be polite” in somewhat bureaucratic language. I'm not sure why there's so much vehemence against it.

STEPHEN CONROY: Can I just take up upon that point? Because I think we're possibly all trying to get at the same place but just having two sets of words, or one set of words with two different interpretations. I'd agree with Larry's interpretation of how it could be perceived. Alan's point which I think Steve has responded to and it says, “We accept. We've got to improve our processes.”

I agree if Alan is saying, “Look, we just want to be able to get an answer to the questions about why things haven't gone forward, why you've rejected our advice.” And I think that's completely legitimate. I've heard



that complaint consistently over the last six months, “We never find out why something’s gone wrong.” But the problem in putting it into the text in the way you’ve put in there is it looks like it’s going further. I don’t think you’re, from what Alan’s saying and what possibly even Avri’s saying, that’s where you’re trying to go to.

So again, I think there’s a form of words that can be found that, to use Larry’s phrase, “gets them to answer their mail.” But I think it’s a bit more serious than “gets them to answer the mail” is what Alan and Avri are trying to argue for. So I think there’s possibly a form of words if we can iterate this one a little bit further that reaches a consensus that everyone is trying to get to. But I would agree that I think those words can be interpreted in a way that possibly is not intended, and that’s why it’s causing the reaction.

OLIVIER CRÉPIN-LEBLOND: Thank you, Stephen Conroy. Steve Crocker?

STEVE CROCKER: Yeah, Alan put his finger on exactly the point that I wanted to make, and I wanted to come back to that, Larry, with you. I read those words not in the context solely of a PDP but from a general perspective. And we get advice from SSAC, we get advice from ALAC, and to a certain extent, we get advice from others. And when I think of it in that context, I don’t have a problem with the getting a second bite at the apple. It’s the first bite of the apple.

They’re coming to us and saying, “We think the following is so and we recommend the following.” And when I think, I’ll just focus on SSAC where I’ve got a lot of experience, that is their function, to generate

advice and to send it to the Board, and then we process it. And if it is related to something else that has already had a lot of activity and decision and so forth, then we could say, “Look, you're coming in again and saying what you said before, or what's already been covered.”

But that's not the most common case. The most common case is they'll tell us something that they've been thinking about that is not tied to a PDP or something like that, which is why I'm comfortable with those first two sentences. I can understand, Larry, if your focus is that the primary use of this will appear to be getting a second bite at the apple. And I don't know how to reconcile those two scenarios in cleanly. But I can tell you as a practical matter that if people are going to come at us and use this as a second bite, we're going to say, “You're taking a second bite. That's why we're rejecting you. Bye.”

OLIVIER CRÉPIN-LEBLOND: Larry?

LARRY STRICKLING: So in terms of the context of this, first off, the recommendation that we're talking about deals with policymaking processes. So that's the frame under which we're even having this discussion.

Number two, the language is obviously, and Avri has said, she simply took the language related to the GAC, where again you're clearly talking about policy processes. So I think the natural implication anybody would make from this language is you're intending it to apply to policy processes.

Again, if you want to write a sentence that says you'll – and I mean this – if you want to say you will respond to requests you get from these

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advisory committees, I have no problem with that. If you want to take on the burden of answering all these letters, I think that's great. Fine, do it. But I don't like the idea of doing it. I think it's going to be misinterpreted. Certainly, if I'm on that side and want to act strategically, I'd certainly argue that.

And the question then is, why do you want to buy yourself that trouble and that confusion? If you simply want to say the Board will make a commitment to literally answer advice it gets from anybody, I don't have a problem with that. But the frame here, I think, still the idea is that it puts you under a burden to answer if you take an action that is inconsistent with the advisory committee advice. That, to me, creates an absolute presumption that you're expected to follow advisory committee advice.

UNIDENTIFIED MALE: No, no. That I think is what the third sentence is.

LARRY STRICKLING: That's the second sentence.

STEVE CROCKER: How do you read the second sentence to have that force?

OLIVIER CRÉPIN-LEBLOND: In the event that...

LARRY STRICKLING: It says, "In the event of..."

AVRI DORIA: It starts out by saying they disagree with it.

OLIVIER CRÉPIN-LEBLOND: "In the event that the ICANN Board determines to take action that is not consistent with the..."

LARRY STRICKLING: "You shall inform the committee."

OLIVIER CRÉPIN-LEBLOND: "...Advisory committee advice, it should also inform the committee..."

LARRY STRICKLING: But that's the third sentence.

STEVE CROCKER: It starts at the second sentence.

OLIVIER CRÉPIN-LEBLOND: "...and state the reasons by which it decided not to follow the advice."

STEVE CROCKER: I don't read that to mean that we then have to argue about it. We just say this is why we did it.

LARRY STRICKLING: But why set the standard? If you simply want to have something that says, "If you get advice from the advisory committee, you'll send them a letter answering it," write that and I'll agree to it. But that's not what that says.

STEVE CROCKER: We're at a role reversal here.

OLIVIER CRÉPIN-LEBLOND: I'd like to slot myself in the queue as well, at some point, because I also have views, but Heather is in the queue as well. Okay, let's have Heather, and then Fiona, and we have Avri, and Alan. I should really count the people who don't want to speak. It'd probably be shorter at the moment. Heather, you have the floor.

HEATHER DRYDEN: Thank you. So, I think we're going to need to look at text that accomplishes primarily the thing that we're agreeing on, and that is that advice should be responded to and inputs responded to and so on and tracked appropriately. And otherwise, if you are using the formulation that is in the by-laws for the GAC, then I don't believe you can manage expectations very easily.

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I think it will, at best, be misunderstood. And as Larry points out, if you wanted to argue the point about an input or advice coming from one of the advisory committees, you would use the fact that it's existing by-laws text to try and strengthen your case. And it's complicating perhaps unnecessarily what, as I say, appears to be there's good convergence around what Steve is offering to do and what others want to see really handled better.

And I think it would be welcomed if we could come up with more neutral wording in light of the heavy baggage that comes along with existing by-laws text. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Heather. Next we have Fiona?

FIONA ALEXANDER: So I'm going to be a little less diplomatic than Heather just was, just so there can't be any confusion I think on this. Although notwithstanding all the points Larry and Stephen Conroy have made on this, but I don't understand what the purpose of this is. So just based on the write up, has the RSAC or the SSAC or the ALAC asked for this? That would be my first question. And if they have, why is it and based on what?

So you all have been focused, rightly so, since we've started this process about the legitimacy of ICANN and the concern of governments. And under the by-laws, governments have a privileged role with respect to public policy. That may be uncomfortable for many people in the ICANN community, but it's the fact of this construct.

And it is so theoretically based on the fact that governments or the GAC represents duly elected government officials that are accountable to

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someone. So if you're going to give the RSAC, the SSAC, and the ALAC that same right, who are they accountable to? Where, when, and why? And what gives them this extra right in this model? Because that's how it's going to be perceived.

OLIVIER CRÉPIN-LEBLOND: What right? The right to have an answer.

FIONA ALEXANDER: No, that's not what the text says. What you've put on paper is a by-law consultation to say if the Board doesn't accept my advice, they're going to have to sit down with me and have the same by-law consultation you have with – that's what the text says.

OLIVIER CRÉPIN-LEBLOND: No, I think that's being dropped. We're down to two sentences now.

UNIDENTIFIED MALE: Erase it from your paper.

FIONA ALEXANDER: No, it doesn't matter. You can drop one step. The first two steps are the same. The optics of this are really bad for this broader legitimacy of ICANN and this question of the role of governments. This is a really bad issue and a really bad way to deal with this issue.

OLIVIER CRÉPIN-LEBLOND: Okay, Alan, then Avri, then David Conrad. And I'm giving up after that.

ALAN GREENBERG: Okay, Fiona asked a reasonable question. Fiona asked a reasonable question. Let me try to answer, let me try to answer that from the point of view of the ALAC, in any case. And I think Olivier is the chair, but I've been there longer.

The methodology used to be the ALAC sent something to the Board. We didn't even get an acknowledgement the e-mail was received, and we

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would find out at times that although we sent it to the Board, it never got distributed to the Board members. Then we went to the stage where we got an [AC] on the e-mail. Now we know what gets distributed to the Board members, and the current Board gets back to us. It's working. We have less faith that it will continue working forever. That's the rationale.

OLIVIER CRÉPIN-LEBLOND: Thank you. Avri?

AVRI DORIA: Thank you. First of all, I did start from the basis that I thought all Advisor Committees were equal. And in fact, when one looks at the legitimacy of ICANN and if one looks at the legitimacy of ICANN in groupings beyond just governments, one finds that equal treatment of the various stakeholder groups within ICANN is one of the essentials for the acceptability and the legitimacy of ICANN.

So to say that all ACs are equal but some are more equal than others and that GAC is somehow separate and special beyond the security and stability of the network or beyond the user communities of the world that have as much representativeness as some of the governments do, to presume that all the governments are equally representative of all their people, is once again is something we will posit, but it is no more the case than it is that all RALOs and all At-Large Structures are as equally representative.

So this is a notion that for ICANN to have full legitimacy, indeed it has to have the multi-equal-stakeholder notion and not the one stakeholder has special privilege. So, indeed, what this does is actually add to the

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legitimacy of ICANN not decrease it. I am fine with removing the last line, which is the separate negotiations. I do not see the interpretation that says this presumes an agreement. This presumes consideration and response. In no way does it presume.

The only way it presumes agreement is because the GAC has decided that its words mean presume agreement, but the words in the GAC don't mean that either. Within the by-laws, it doesn't say that the GAC is presumed to be agreed upon, except in. It just says it will be considered, it will be discussed, it will be disposed of properly.

And so, basically, to be unwilling to put this in actually hurts ICANN's legitimacy in terms of the user community, in terms of the technical community. To say that security and stability do not have the same weight as government viewpoints in terms of giving advice to the Board is as problematic as saying governments done have a legitimacy in giving advice. So I really do see a problem with actually refusing to put something like this in because that decreases the legitimacy of ICANN in the lights of the rest of the community.

OLIVIER CRÉPIN-LEBLOND:

Larry?

LARRY STRICKLING:

What I understood the goal was was to make sure that the Board responds to advisory committee letters.

AVRI DORIA:

No, to advisory committee advice.

LARRY STRICKLING:

Advisory committee advice, whatever.

AVRI DORIA:

Not just any old letter.



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LARRY STRICKLING:

Whatever advice means in that context, and I don't know if you mean to define it. But I suggested that you write language that says that. Why can't you do that as opposed to tracking the GAC language, which I do think is going to be problematic?

I'm willing to help you all achieve, agree to the goal that you have, which is to put an obligation on the Board that they will answer advice they receive from advisory committees. But why can't we just write a sentence that says that? It would seem to me that's the compromise that gets everybody across the line here. Is there a reason why it has to track the GAC advice, the GAC language?

AVRI DORIA:

I think multi-equal stakeholder calls for using the same language, because then otherwise you find yourself in a position of saying, "What does this add, and what does this delete?" And then we get into basically comparing, again, the legitimacy. So I think the easiest and most direct way to fulfill the goals of multi-equal-stakeholder participation and then the taking of advice equally from all advisory committees is to either say.

I'm more than willing to lose and negotiate other language. I just think that our best solution is, indeed, to use the same language. Drop the third sentence if that's necessary. I would personally like to see it stay but I realize that one's lost. But, basically, to use the same language and it basically shows that we are actually working towards that multi-stakeholder goal as opposed to the problem is that some advice is worth more than other advice. And that's what's become quite problematic.

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STEPHEN CONROY:

Sorry, Larry. I have as I said before on a number of occasions, the least amount of experience long-term with the organization, but ICANN has a number of challenges to its legitimacy, both from broader questions of government as well as the participation of all the people that have pulled it together and brought it together in the way that you describe.

I don't think we need to rock the boat by going down this path in trying to demand that everybody is equal on a piece of paper. I think this would be an unhelpful clause to try and insert here. I think Fiona has made the point no one's asked for it. And while I've certainly heard plenty of people say, "Oh, yeah. Bloody GAC. They seem to be able to get everything they want nowadays," which seems to be a relatively recent thought because people are expressing suddenly, that sounds like what's happening.

I don't think it's wise for this committee to rock this boat when ICANN has different challenges now than it had a few years ago. And one of the greatest challenges it had is the view that government don't think it's a legitimate organization around the world. And we're striving to include government from all around the world, so I take a view that this is not something that has been identified as a problem. If the problem is that they've not responded to letters, they've not provided clearly the information that has led to a lot of frustration, then we should solve that.

But this is not something that anyone has suggested was a problem or should be changed. Well, I mean, I appreciate that you think it's a problem, but you're mounting a philosophical argument that you think

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multi-stakeholders means equal stakeholders, and that's a philosophical argument we can debate all day. I disagree. I disagree with you in some of the things you're putting forward, but they're philosophical arguments, not the more practical, how do we get the Board to actually answer with courtesy I think Alan said at one point?

So I would say we should find words that we can all agree on rather than deciding we're going to have a philosophical argument about what is the general definition of equal multi-stakeholder-ness.

OLIVIER CRÉPIN-LEBLOND: Thank you. David Conrad?

DAVID CONRAD: Stephen, just to be clear, I believe Alan pointed out that ALAC had seen that there was a problem in this space and SSAC, from my experience, has also expressed concerns that recommendations that SSAC have made have, at least in the view of some, have been seen to be ignored by the Board. And I believe the text here is an attempt to have the same treatment that GAC advice has applied to the other advisory councils.

STEPHEN CONROY: Not to want to be unkind to my namesake. I'm not here to defend any bad lack of actions by the Board either in the future or particularly in the past. It's not an argument about have they responded to advice or not. Where this recommendation goes is to change the balance of "multi-stakeholder-ness" – if I can make up a word – that I don't believe people have been asking for. People seem to be asking, "We want a response from the Board. We want to know why they have said no." This is not an attempt to do that. This is an attempt to do something else.

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OLIVIER CRÉPIN-LEBLOND: Let me just stop this now because we're losing Lise, and I'm very concerned we've lost her already. There you go. Time is passing and we'll soon have no coffee break and no dinner if it continues this way.

I have a suggestion for text here – to replace the text that's on there at the moment. The first sentence "The advice of Advisory Committee on subject matter shall be duly taken into account" is something which I think we all agree with. Fiona?

FIONA ALEXANDER: So this is all very much in the abstract. What goes in for each Advisory Committee you have to put that on the table as well. So the advice on stability and security – what goes in for RSAC, what goes in for SSAC, and what goes in for ALAC, you'll have to come in. This is also describing you're into a generic concept about identifying what the specific words are. The GAC advice is very specific to public policy because of the role governments have on public policy. So if you're going to throw the language out, you should fill it out.

OLIVIER CRÉPIN-LEBLOND: It's going to be hard with the ALAC because it can comment on virtually everything and anything. If the ALAC wants to say that the sun is red, then they'll...

UNIDENTIFIED MALE: [inaudible]

OLIVIER CRÉPIN-LEBLOND: Well, yeah, but the sun does work with—

FIONA ALEXANDER: But I can argue that's also the role of [governments] since I'm supposed to represent the constituents that I work for theoretically. So this gets back to what's the role of GAC versus ALAC. This is why this language

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and following the GAC language so directly is going to be so problematic for governments external to this meeting.

OLIVIER CRÉPIN-LEBLOND: But the advice of an advisory committee – okay, so we can say the advice of ICANN Advisory Committees, except the GAC because that's already dealt with in a separate paper, shall be duly taken into account. I would've thought that's a clear thing. Then the ICANN Board will respond to advice from all advisory committees explaining its rationale for accepting or refusing their advice. That doesn't weight in, in one direction or the other. All it asks is for an answer from the Board to say, "Yes, we agree. No, we don't. Yes, we agree because...No we don't because..."

And I guess when that when the Board makes a decision it publishes its rationale anyway. And I would have thought that takes us out of the language which is there but also then establishes that advisory committees in ICANN have a special position because the advice from advisory committees has to be taken on by the Board in a different level than the advice from every Tom, Dick, and Harry that sends an advice over or a letter over to the public comment process. Otherwise, why would ICANN have advisory committees? We might as well scrap them.

STEPHEN CONROY: I'm just guessing that where it says one bylaw should be...

OLIVIER CRÉPIN-LEBLOND: We take this whole text out and just replace it with these two sentences. Steve, then Alan.

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STEVE CROCKER: So a couple of points. The Board doesn't only accept or reject advice. There are plenty of things in between and more complex than that, and so language which would have the effect of saying you only can check one box or the other, I think would be a bit restrictive.

UNIDENTIFIED MALE: [inaudible].

STEVE CROCKER: Yeah, exactly. And the other thing is the language that you used Olivier about describing – I forget exactly what it was – but it reminded me of the criteria that we use for the rationale in formal Board resolutions in accepting advice or not accepting advice or in processing it, it may not – I'm just trying to think through ,whether we would always do that with a formal resolution or whether we would do it with a less formal sort of correspondence. I guess we could always do it with a rationale.

OLIVIER CRÉPIN-LEBLOND: Instead of using rationale would you prefer reason?

STEVE CROCKER: No, no. I guess, let me back away from that. Happy to do it. Happy to use the same criteria. We'll write a formal resolution. We'll write a rationale that goes with it and we will be as clear and as straightforward about it as we would be for anything else.

UNIDENTIFIED MALE: [inaudible]

STEVE CROCKER: They're not letters. They are reports. They're documents. They are in the order of a high number I think is a dozen from SSAC, although ALAC has now become prolific. I noticed that. But we'll keep up with you.

UNIDENTIFIED MALE: [inaudible]

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OLIVIER CRÉPIN-LEBLOND: The concern, Steve, is you keep up at the moment because you're there but...

STEVE CROCKER: No, no, no.

OLIVIER CRÉPIN-LEBLOND: Your predecessor did not even answer. [ I sent] an e-mail.

STEVE CROCKER: No, I understand that. I understand that. And we've fallen behind with [inaudible] SSAC which is why they were complaining but this has to do with the Board's support function and that's what's being beefed up. It's necessary for us to keep up.

If we get overwhelmed with too much low-level stuff that comes in and says, "We suggest you do this, suggest you do that," and you're not keeping up with us, we're going to say – we're going to have a little come to Jesus meeting – say, "Quit ragging us, focus on serious stuff, and if your necessary we'll put that in a formal resolution and say our rationale for ignoring you is because you're giving us too much shit." But I don't think we'll get there.

OLIVIER CRÉPIN-LEBLOND: With regard to the SSAC, there are two examples. There was the SSAC advice on dotless domains and the SSAC advice on name clashing – collision – and that was over a year and a half ago or something and we end up with ICANN being in the embarrassing position today of having to backtrack on things and suddenly divide the – I mean, it's a highly embarrassing position. I would be embarrassed.

And had that advice been taken into account at the time – and it was not taken into account at the time – and had the Board responded and

says, "Yes we agree," or "No, we disagree because," or done something about it, then we wouldn't be in the position we're in today.

So certainly ICANN's accountability here has suffered from the lack of response to the SSAC. Alan and then Brian. Oh, and Alice as well. Oh, Heather as well. Ladies first. Heather, then Alan. Well no you're not a lady Alan. So Heather first, then Alan, then Brian. Sorry, I need to smile a bit. Go ahead, Heather.

HEATHER DRYDEN:

Thank you. All right, thank you. I don't know how helpful I can be here but this is like a thread that you think you can just pull a bit and then it just keeps coming and coming and coming. The more that we discuss this [and I see] all the additional elements that goes into each person's way of looking at what this recommendation would achieve, whatever the text is and what they think it implies for process and so on, the more uncomfortable I'm becoming and the more sure I am that we already do not have the kind of agreement that seemed to be apparent when we began discussing this.

And that was simply to ensure, quite rightly, that inputs going into the Board, however they're defined – and I don't know in detail what is an input versus a comment versus advice versus other kinds of things that are generated by the other advisory committees. And I'm not sure that we're making that progress that I thought we were. There I am. Sorry to not be more helpful. Thanks.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much, Heather. All advice from advisory committees is tagged as advice, so SSAC has got numbers on it. ALAC one has also got



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numbers on it and is marked as a statement. I don't know about any advice from RSSAC or others. They never provide anything but there's more correspondence going on, but certainly the advice itself is tagged as such and there's not that much of it. Alan, and then Brian.

ALAN GREENBERG: Yeah. Steve already sort of mentioned what I was going to say, that from my perspective the Board can decide not to follow advice and not have a formal resolution. That doesn't preclude giving a rationale for making the decision even if it's not a formal resolution. If Steve wants to have a formal resolution act that's fine but I don't even think that's necessary. It comes back to, I think, what I was saying originally of we're looking for a polite business relationship, not special privileges.

OLIVIER CRÉPIN-LEBLOND: Brian?

BRIAN CUTE: Lord knows I don't want to slow down the wheels of progress, but may I suggest that unless we are on the verge of alternative language that can be discussed and decided in relatively short order, we do have tomorrow. We do have more time budgeted for ATRT-1. If the folks who are proposing this language feel it would be helpful to take advantage of the evening hours to put something together, alternative language, that could be discussed tomorrow and perhaps decided. Just a suggestion. If we're just about there, then let's push on and forestall the coffee break.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Brian. There is text on the Board at the moment. Perhaps we can ask everyone here to consider it and then we can take up this conversation tomorrow. I think we've done enough for the day. Larry?

LARRY STRICKLING:

I'm not saying this isn't workable but I've got some questions. One is again the GAC advice triggers an obligation to respond and negotiate only within their area of competency. This doesn't provide any limits around what advice committees give, and I don't know if you intend to go back and put that in or not. In other words if one of these advisory committees wants to give advice that really is within the competency of another advisory committee, does that still trigger an obligation of the Board to respond to it. So that's one question.

Secondly I have no idea what "duly taken into account" means. So that's got to be worked on. And then third is the point Steve made which is they may neither accept it or refuse it so do you really want to be limiting the trigger to response to when they only do one of those two things as opposed to just creating a general obligation to respond to advice.

Those are three immediate things that come to me looking at the language today that would, I think, have to be dealt with, and with time to reflect we may have more.

OLIVIER CRÉPIN-LEBLOND:

Yes, thank you, Larry. Actually I should've put a capital A for Advice as is capital Advice is actually bound by the bylaws by which each one of the advisory committees operates. The ALAC will issue advice per its bylaws on anything that's related to Internet users. The SSAC will deal with etc., etc. That might give the bounds to what official advice that might be. With regards to explaining its rationale for accepting or refusing their advice, I thought it would focus more on whether it was accepting or refusing it. If you have an alternative...

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UNIDENTIFIED FEMALE: For its action?

OLIVIER CRÉPIN-LEBLOND: For its action I'm sure that would probably be workable. Let's keep this and we'll come back to it tomorrow but we've got that as a starting text and if we can come back maybe we can discuss this later on and so on. Shall we move on to the next thing or shall we take a coffee break?

AVRI DORIA: I captured the language and put it in as an alternate listing in the file that's on the Wiki. That's the nice thing about Wikis. They're easy to continually update. So it's there in the wiki copy of the draft for twelve.

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND Yes Brian, go ahead.

BRIAN CUTE: Do we have a quick stock taking of how many we've gone through and how many are left to go through?

UNIDENTIFIED MALE: We've got, I don't even know at the moment, Larisa?

LARISA GURNICK: 17 are left.

OLIVIER CRÉPIN-LEBLOND: 17 are left. We've done 13, haven't We? No, less than that. 12 we've done and there's 17 left. But this one did take more than an hour and I'm hoping we're not going to take more than an hour on all of them. Brian, Mr. Chairman, do you think we can...?

BRIAN CUTE: Thank you, Olivier. On the agenda we have an hour left. We also should talk about the shape of the report in my opinion. That would be good that we have the discussion. We may come back to that with modified

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views tomorrow, so I think it's important that we touch on that today. That's going to take at least 15 minutes to a half an hour. We're almost up on time on ATRT-1 items as of today.

OLIVIER CRÉPIN-LEBLOND: I'm very surprised.

BRIAN CUTE: So we can plow forward.

OLIVIER CRÉPIN-LEBLOND: Very surprised. I was going to advocate a five minute break maybe for everyone to relieve...

UNIDENTIFIED MALE: You're the Chair.

OLIVIER CRÉPIN-LEBLOND: Yeah.

UNIDENTIFIED MALE: I'm leaving anyway.

OLIVIER CRÉPIN-LEBLOND: Five minute break?

UNIDENTIFIED FEMALE: I'm all set.

OLIVIER CRÉPIN-LEBLOND: Okay, welcome back everyone. We'll start the session again please. We've got a little bit more time. We theoretically only have half an hour until the end of the day but we'll probably add another half an hour to it to make it take us up to 6:00pm. Brian and I just had a chat. We'll continue in what we're doing at the moment for another half an hour and then we'll take the last half hour of the day to look at the actual shape of the report itself.

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Going into this, the other suggestion was that we'll try and go through all of the sections that we can actually push through and which are non-controversial as soon as we come up something which might take us another hour to discuss. Specifically, we'll take it to the side and we'll punt it to tomorrow. Then we can mull over the discussion until tomorrow on this, or even discuss this at dinner if we wish to.

The next thing we have here – and I don't know, I'm getting feedback. That's a bit strange. Yeah, our tech has left. The next thing is the input from the Committee of Independent Experts on Restructuring Review Mechanisms. At the moment on the main page, it's set to be decided. However, there is a template which has been developed.

UNIDENTIFIED FEMALE: There's no template.

OLIVIER CRÉPIN-LEBLOND: Get input from Committee of Independent Experts on Restructuring Review Mechanisms. No there's no template but it's allocated to Fiona and Lise. I don't know which Fiona.

LISE FUHR: That's Fiona Asonga.

OLIVIER CRÉPIN-LEBLOND: Go ahead Lise.

LISE FUHR: Yeah, sorry. Hi. Actually I thought this was together with 25. It has been together with 25, but we haven't done it and we'll do it. I've been doing the reading and it doesn't seem that there needs to be any further recommendations after reading because what I see is that the Board has – this committee and then there was this report that got accepted

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by the Board. But I'm a bit unsure if this is going to be a recurring thing with the Review Team.

UNIDENTIFIED MALE: What was the question? Sorry.

LISE FUHR: Is the report, the Independent Experts on Restructuring Review Mechanisms is this a once in a...?

OLIVIER CRÉPIN-LEBLOND: Fiona?

FIONA ALEXANDER: I think it's just worded in a confusing manner. So that column is actually a synopsis of what the ATRT-1 recommendation is. So recommendations 23, 24, and 25 were a compilation about ICANN review mechanisms. One was the Ombudsman, one was the Standard for Reconsideration, and the other was ICANN was going to have an expert, and they've already done that.

UNIDENTIFIED FEMALE: [inaudible]

FIONA ALEXANDER: Right. There's no template though for any of those. I thought Carlos was writing that.

OLIVIER CRÉPIN-LEBLOND: There is a template for 25. It doesn't appear on this page but on the other document there appears to be a template. See linked template? I don't know Larisa whether you've seen that.

LARISA GURNICK: Possibly. It's the original template, which if we scroll down to the section that was covered in LA, you'll find it linked there. A lot of these templates were developed originally for LA and discussed in LA so if

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there hasn't been any refinement or additions to them, they will still appear linked in that section.

OLIVIER CRÉPIN-LEBLOND: Thank you. I see Carlos is on the line at the moment. Yeah, he's back. He's just back. I wonder whether we can ask him. Should he take us through this template or is it the fact that the template is not reflected in the overall table, the fact that we're not going to have a recommendation on this?

LARISA GURNICK: I don't know.

OLIVIER CRÉPIN-LEBLOND: Carlos, are you able to – no mic, okay. Can you type as quickly as you can speak? We'll let you type away. In the meantime maybe we can continue then with the – so we've got 23, 24, and 25. Now 24 has a draft recommendation or observation. 24 is the “assess ombudsman’s relationship and confirm framework is Consistent with international standards”. On there we had Avri and Carlos. I'm not sure who drafted this. Avri?

AVRI DORIA: I'm sure it's my fault because Carlos did try and ping me on it, but we haven't managed to get it done yet. It's something that's pending. We've talked about it, but we...

CARLOS RAUL GUTIERREZ: Hello.

OLIVIER CRÉPIN-LEBLOND: Ah, Carlos please. Yes you've found a mic. Go ahead. Which would you like to speak to us about first, 25 or 24?

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CARLOS RAUL GUTIERREZ: I'm sorry, I got lost. I was on 14-15. But let me see, 24 and 25? If I look at the spreadsheet, we were talking 14-15.

OLIVIER CRÉPIN-LEBLOND: It's the same, 14-15 is the same. We're just looking at the original recommendation numbers, but yeah on the draft it's 14 and 15.

CARLOS RAUL GUTIERREZ: Ah, okay.

OLIVIER CRÉPIN-LEBLOND: So let's start with 14, "clarify standard for reconsideration requests." Go ahead, Carlos.

CARLOS RAUL GUTIERREZ: Yes. I prepared a very rough draft based on the template. I revised the reconsideration cases, and afterwards there came this very interesting product from the trainee from Larry's office and I submitted that to the group just before the last LA meeting. I didn't work on the following one on the ombudsman since I have missed the second meeting with the ombudsman in Durban as I was in a GAC meeting.

I was expecting to cross – exchange those two templates, Reconsideration and Ombudsman, with Avri. But the Reconciliation, the moment Avri takes a look I think we can very fast have something readable for the rest of the group. Thank you very much, Olivier.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Carlos, and I've heard from Avri that she'll take a look at it tonight. So let's punt this over to the side and move on to the next one swiftly. That was for 24, which was number 13. Twenty-five, which is number 14, "clarify standard for reconsideration request," there is a draft template on this as well. I have a feeling this is a complex one because we already spent a long time discussing it.



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- CARLOS RAUL GUTIERREZ: That's the one I meant. The Reconsideration one.
- OLIVIER CRÉPIN-LEBLOND: So 25, yeah, “clarify standard for reconsideration request.” Tthere we go. No that's the report.
- CARLOS RAUL GUTIERREZ: I can look for it and I will resend it to Alice and Charla. It's just I'm not on my main computer right now, but you will have it in one hour.
- OLIVIER CRÉPIN-LEBLOND: Okay. Thank you very much, Carlos. I suggest that then we move on to line number 16, Prior Review Team Recommendation Reference 26, adopt standard timeline inform – What am I doing? Sorry. Apologies. Number 17, clarify where it constitutes GAC public policy advice under the bylaws. And I believe we're moving on to the GAC. So I hand the floor over to Larry.
- LARRY STRICKLING: The new template? We talked a lot about this in Los Angeles. I only want to go through and flag for people what we did with the document after we got the feedback from everybody in Los Angeles. So if we could scroll down to page four, in the box.
- Based on the info we received from everybody, we changed number ten. Before, we had shown it as complete, but based on the discussion we have now shown it as incomplete, distinguishing between the two different pieces of the recommendation in recognizing now that the second part of it, which was how the Board goes about seeking GAC input at the outset really hadn't been completed. So that's now reflected there.

Scrolling onto the next page, number 13 is new. We're now showing that as complete. Before we had lumped that in with number 12. So those are the only changes in terms of the assessment of the six recommendations based on the discussion we had in Los Angeles. Any comments, questions, issues?

Okay. Then if we can track down the pages, page nine, I guess – bottom of nine top of ten. So at the bottom of nine, we start with the new recommendations and I just again want to flag how we've modified those based on the discussion. We lost it. In the first set – so we've added a new recommendation four and new recommendation five further down the page (page ten) to pick up the information and the discussion in Los Angeles.

So number four again picks up that incomplete part of Recommendation 10 that we talked about. That's now captured in the recommendation that they develop and document a formal process for notifying and requesting GAC advice. That's the carry on. And then number five is also new based on the discussion we had in Los Angeles about actually getting an approval of the documented process. And the staff has actually responded to some of these and I'll come back and talk about that in a second.

Moving on, six, seven, and eight are pretty much the same substance as we talked about. And then Jorgen had had a standalone recommendation that we said we would try to pull into this document. That's now captured in new Recommendation 9 about instruction to the Global Stakeholder Engagement Group, picking up a lot of the threads

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that Jorgen had had in his proposal. So that's a new one, number nine, if people want to take a look at that.

While people are looking at that, let me say that we got I think some tremendously helpful staff input, and I thank Larisa for shepherding that to us. There are a lot of additional factual information that we will take and incorporate into this report. And then there were two issues raised, I think by their comments that I want to put to the group to get a discussion going.

But first, before I jump to that, any questions or comments on number nine? Again there's a lot of new words there and if people hadn't had a chance to read it before today you may want to ponder this one and maybe we can't get a consensus view on this today but that is the new recommendation in here. Any comments today? Okay.

BRIAN CUTE:

On nine only?

LARRY STRICKLING:

Yeah. I mean, I flagged four and five but if people want to comment on those too. They're the new ones – four, five, and nine. And of course we'll take line edits or word edits on any part of the document at any time, but I just wanted to flag the new stuff.

This one in particular is an area where there's already been I think a fairly significant amount of staff work already done and we'll need to reflect that in the document. You're in charge. You could recognize yourself.

OLIVIER CRÉPIN-LEBLOND: I'm in charge, but I did hand the mic over to you, Larry. I noticed in Number 9, develop for each region of the world an operational plan on how to develop and improve the local domain name business to ensure that local enterprises and entrepreneurs fully and on equal terms can make use of ICANN services including new gTLDs. I'm a bit surprised that ICANN would develop an operational plan to improve the domain name business in some parts of the world which it might not know anything about. How would ICANN know about the status of the domain name business in Country X in Africa?

I support the fact that ICANN should do something to try and promote the domain name business or registrars, registries, etc. in some parts of the world, but how can it develop an operational plan to help out with this? I don't know. I'm a bit confused. It's an open question though. Alan, then Lise. Or Lise and then Alan. Lise?

LISE FUHR: I just had a comment to that because I agree it's very operational. I think you should add in support because that's what I think ICANN should do. Well, that was just – put in support, development, and improvement of the local. Because I think that's what ICANN should be. Instead of being very active in the operation, they should support the development.

OLIVIER CRÉPIN-LEBLOND: Thank you, Lise. Although you do have to be careful about the gaming possibility of this, as you will have seen. Many of the new gTLD applicants have originated from tax havens and there could be absolutely no reason why they wouldn't actually put themselves in a country which seemingly is in the developing world but have their

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operations running from somewhere else, the virtual office. But anyway, I might be going to deep into this. Alan?

ALAN GREENBERG:

Yeah. I think you're reading too much into support. I didn't read support as financial support. I read provide speakers, course material on how to set up a registrar, that kind of stuff, which we're already doing to some extent. We should not in my mind be starting the businesses but helping those who show an interest in those areas. I note Steve has his hand up.

But what I put my hand originally was on the first three points. And I look at those and what immediately came to mind is various people who gave us comments on ATRT-1 and they can be summarized as make work exercises. And these sound like a lot of work and I wonder to what extent they will really end up being used other than for us sending letters to governments when we want answers to surveys. I has a tone of not a lot of [make work].

LARRY STRICKLING:

Then you need to take that up with Jorgen because I think if there was one thing on here he would probably feel the strongest about, it was that. And the example he gave was our inability to send that administrative letter out earlier this year because ICANN didn't have the list of names and addresses to which to send it.

ALAN GREENBERG:

I'm reminded of an excerpt from a book I read many years ago that was somewhat tongue-in-cheek but not quite, that a policy is something that's developed to address a one-time event that is not mentioned in the policy. And I worry about setting up a huge structure to make sure that we don't have that problem again and to what extent is this

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something that would be used on a regular basis to warrant the amount of work. And if Jorgen was here, I'd say it to him.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. Steve?

STEVE CROCKER: Thank you. I was trying to imagine what the ICANN staff or ICANN management would say in response to this business about supporting activity around the world in a variety of countries. I would have to believe that the focus in the answer would be look at the enormous amount of attention that we've put into the Global Stakeholder Engagement process and the substantial number of people at multiple levels – regional, vice presidents, and more local, and a variety of people – and expansions still underway, directly aimed at increasing participation in all forms, not just domain name registrations, but in all forms, with local communities all over the place.

So it seemed to me that that would be the likely response one would get to these words that said, "This is what we've been doing and it's been very extensive." The breaking of the headquarters into three parts is a piece of the globalization but I think that it's the Global Stakeholder Engagement that really speaks directly to the more local engagement that is being addressed here.

OLIVIER CRÉPIN-LEBLOND: Thank you Steve. Brian?

BRIAN CUTE: Thank you very much, Olivier, and I accept everything Steve just framed out, but I want to echo the concern you raised about the phrase "develop and improve the local domain name business." It does strike

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me as that phrase taking ICANN outside its specific area of expertise and its role.

I think what we're trying to really get at is the second half of that which is ensuring that local enterprises and entrepreneurs have full and equal access to ICANN's services, if I'm not misreading this, I believe that's the real central objective here. And speaking from someone from a registry and who used to be at a registrar so clearly with that hat on, ICANN developing and improving the domain name business raises a bit of a red flag for me.

[ALAN GREENBERG]: So would you propose to just drop that first phrase? We could say "develop" and I would propose adding "and execute for each region of the world a plan to ensure that."

BRIAN CUTE: That's a construction I'm much more comfortable with. Happy to hear from others.

LARRY STRICKLING: Others? Going once? I mean, I think this might have been Jorgen's language originally but we can certainly run it by him and make sure he doesn't have an issue with that.

OLIVIER CRÉPIN-LEBLOND: Alan?

ALAN GREENBERG: I may be wrong, but my recollection is ICANN has done this a number of times, of set up meetings in various parts of the world to try to educate people in what's involved and encourage them to do it. My recollection is there was activity like this in Africa already. So we may just have to find the words they used.

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OLIVIER CRÉPIN-LEBLOND: Thanks Alan. Lise?

LISE FUHR: Well, I know there are projects doing this but I think that what we heard today from the PDP Review is that we still need to enhance, that you need to understand this business and ICANN needs to reach out and help it.

OLIVIER CRÉPIN-LEBLOND: Thank you, Lise. Brian?

HEATHER DRYDEN: Olivier? This is Heather.

OLIVIER CRÉPIN-LEBLOND: And Heather as well, okay.

HEATHER DRYDEN: Thank you.

OLIVIER CRÉPIN-LEBLOND: So Brian first, and then Heather.

BRIAN CUTE: Just a quick thought. There's a difference between educate, outreach, and developing domain business and I think it's tilt toward educate and outreach, if you will.

OLIVIER CRÉPIN-LEBLOND: Thanks Brian. Heather?

HEATHER DRYDEN: Thanks. So I like the suggested refinements for this. I see no difficulty with it. I do think it's important to include a reference to this point. This is one of the things that came as a highlighted recommendation for the ATRT to process coming out of the high level meetings that the GAC did with the Canadian government last year.



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And so even though it is reflected in the regional strategies and I think there is a good understanding about the importance of this, I do like including this and I think just refining things so that it is appropriate to ICANN's role and things that are reasonable to ask ICANN to do. Anyway, I think we are on the right track. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you, Heather. Anyone else? Back to you Larry.

LARRY STRICKLING: Okay. So the two issues that jumped out at me from the staff response that I wanted to raise with the group were, number one, these recommendations are written in terms of asking the Board to do things including having the Board request that the GAC take action. One of the suggestions from the staff was, "Should the ATRT actually direct the recommendations to the GAC as opposed to the Board?" I think we ought to discuss that.

My own view of looking at the Affirmation of Commitments is that the obligations that we are asked or that the recommendations that we're asked to create are supposed to go to the Board, and it's the Board that has an obligation to respond to them. So I guess I would decline the suggestion from the staff to do that but I think it's worth having a discussion about it to see if others feel differently.

HEATHER DRYDEN: This is Heather, if I can chime in again.

OLIVIER CRÉPIN-LEBLOND: Go ahead, Heather.

HEATHER DRYDEN: I think it depends a bit on the actual recommendation and the precise wording chosen. So if, for example, you're saying the Board should

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request the GAC or find the appropriate verb, then that may be okay in many or most instances. We get into difficulty if the Board is tasking the GAC in some way, I think.

In the case of things like the high level meeting suggestion for continuing outreach to governments and strengthening their awareness of ICANN and the GAC, in that case, I think it might be a bit problematic to ask the Board to [convene] such meetings. And so I did want to propose maybe some adjustments to the text along those lines. I can submit those to the list. But I don't think it will take us in another direction on anything that's contained here. It would rather be just to refine on that kind of point.

OLIVIER CRÉPIN-LEBLOND: Thank you, Heather.

LARRY STRICKLING: That sounds fine to me. The second issue was the high level meetings, so maybe we should come and talk about that – but oh wait. Comment, hold on.

[LARISA GURNICK]: I wanted to mention that Carlos had a point of view on this and he actually would like to speak.

OLIVIER CRÉPIN-LEBLOND: Go ahead, Carlos.

CARLOS RAUL GUTIERREZ: Thank you. Larry, I went through the excellent template and I also made the comment that I think we should address it differently. I know that the Affirmation of Commitments talks about the [Relation Board GAC]. It doesn't say it has to go all through the Board. We also have to recognize that there have been efforts to improve things both revising

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the Operating Principles, which didn't make any progress, but then there is a second initiative based on a paper by the Spanish government Food for Thoughts and that group is being formed there.

There are also some cross-community efforts popping up and I think we should recognize that and we should find a better wording than just asking the Board. I think we should try to engage with GAC. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Carlos. Back to you, Larry.

LARRY STRICKLING: Well, I mean we've heard from two GAC members that they'd like to have the recommendations sent to them, so I don't feel strongly about this one way or the other. It is the fact that the only party under the Affirmation that has a responsibility to respond to recommendations is the Board.

So if we do change this and now direct some recommendations to the GAC, there's no guarantee about when and if we would hear back, other than the good faith of Heather and Carlos and the other members of the GAC, which I think we can take seriously. But people just need to understand that. That is an implication of directing a recommendation to somebody other than the Board is that it's not really envisioned in the Affirmation. And I'm not saying that's a barrier to doing it that way, but people just need to understand that.

OLIVIER CRÉPIN-LEBLOND: Yeah. Thank you, Larry. Brian?

BRIAN CUTE: If that's the route we went, would that open up a complication or challenge for the next Review Team in terms of measuring

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implementation of that recommendation and having a basis to do so, number one. And is there any downside to the Review Team in its report speaking directly to the GAC in its report, not in the form of a recommendation but perhaps speaking directly to the GAC and offering some ideas, guidance, suggestions, not recommendation formalistically.

HEATHER DRYDEN: Brian...Olivier?

LARRY STRICKLING: Heather, if I could just speak for a second.

HEATHER DRYDEN: Of course.

LARRY STRICKLING: The answer is, yeah, I think it does have an implication. But again all that's written here is that the obligation on the Board is to request that the GAC do something. Even the assessment of the Board's...

UNIDENTIFIED MALE: Is "Did you ask?"

LARRY STRICKLING: It would be did they ask. So I don't know that as a practical matter it makes that big a difference. Heather?

HEATHER DRYDEN: I just wonder whether it's a matter of drafting. I don't think there's a fundamental problem here and I don't think there's an issue with making recommendations to both the Board and the GAC if that's a formulation. What I would suggest is that maybe I'll have a look at this. If others are also interested, then perhaps we can deal with this offline, but I think we have a sense of what we need to accomplish at this point with that. I think we can work it out.

OLIVIER CRÉPIN-LEBLOND: Thank you, Heather. Alan?

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ALAN GREENBERG: Yeah. I was just thinking that perhaps in parallel we can ask the Board to track it so the Board has the responsibility of reporting back to us, but not necessarily actually implementing.

OLIVIER CRÉPIN-LEBLOND: Thanks, Alan. Carlos, you still have your hand up in the room. I don't know if you still wish to speak.

CARLOS RAUL GUTIERREZ: Yes, I wanted to react to Larry's second comment. Larry, I agree with you if you look strictly at the Affirmation of Commitments, but there are other ways to look at the discussion in a holistic way. We have discussed just this morning about the necessity of GAC and being involved earlier in the PDP process. So who is going to address that, the GNSO or the Board? We also have the open question of outreach. I mean, staff is engaging with government so we could also argue, okay staff should go in the outreach efforts and tell governments to participate earlier, or things like that.

So if we devise our report in 40 recommendations, then I agree with you. But I think that there is a common line, particularly in this second review team which has chosen to focus on a longitudinal issue which is the PDP process and it's going to increase. It's going to become more important. We have to involve the GAC earlier.

So it goes all together. And I would expect that at least core of the report or the introduction of the report takes a more holistic view. That we have chosen to look at this – somebody said this morning or this afternoon, we have chosen the core of ICANN, which is the policy development process and so on and the GAC plays in every step.

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So I think it would be very good if the GAC is involved in whole approach and not only under B of 9.1 and through the Board. I would expect that there is a very good feeling right now with the high level meeting, with the ATRT meeting with the GAC and so on there. So I feel very positive about not making such strict separation of the GAC issues. Thank you very much.

OLIVIER CRÉPIN-LEBLOND: Thanks, Carlos. Fiona Alexander?

FIONA ALEXANDER: Yeah. So I appreciate the spirit of which the comments are being made and the openness of the GAC to actually want to take recommendations and the GAC in Beijing or Durban, wherever it was, saying they welcomed the recommendations. But I'm concerned about changing the construct and the precedent. It's not just for future Review Teams and being able to manage it and score it and whether it was implementable or how things happened, but the Review Teams are not supposed to substitute or be a new ICANN process.

These Review Teams –ATRT, all the Review Teams – are assessing ICANN collectively implementation and that advice goes to the Board for the Board to take action. And what we're talking about doing would fundamentally change the structure of the Review Team process. And then it opens up the door with what do you do with the other Review Teams going forward, with WHOIS and SSRT and the new gTLD one as well.

I appreciate the spirit and the need and the willingness of the GAC to take this on, and it may just be in this case. In some of the cases

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recommendations are directed at the GAC but asks ICANN to provide resources. But I'm really concerned about this approach and how it changes what this model is supposed to be.

Because, again, this Review Team can't substitute itself for other ICANN processes and if it actually gave advice and recommendations directly to the different constituencies, you would start do that. You would start substituting yourself for the ICANN Board. This goes to the Board. The Board puts it out for comment. The community provides comment. If it goes to the GAC, if it goes to everyone else, you lose that construct.

OLIVIER CRÉPIN-LEBLOND: Thank you Fiona. Heather, did you wish to speak?

HEATHER DRYDEN: No. Sorry, I still had my hand up.

OLIVIER CRÉPIN-LEBLOND: All right, thank you. Back to you, Larry. I guess no one else wishes to comment.

LARRY STRICKLING: So let's do this. I guess Heather wanted to take her hand at crafting something, so why don't we give her a chance to do that and see if maybe she can find a way to accommodate all of these issues, and if not we'll come back and have to have a further discussion about it.

The second issue was the one Heather touched on which was the question of the high level meeting, where again the suggestion from the staff evaluation of the draft was, "Should this really be left with the GAC to decide?" And I think Heather's kind of previewed her view that maybe it should.

Let me just give you possibly the counterargument to that is that it has been an issue getting a meeting scheduled and it really does depend on the willingness of a host country for an ICANN meeting to take this on. And we were very fortunate that Heather and her colleagues in Canada were willing to do this last year and the signs, at least in the recent past, have been good that the U.K. may be willing to do this next year for the meeting they host.

We felt, though, that one way to institutionalize this to make sure it happened on at least an every other year basis was to bring this into the criteria for the selection of sites for meetings, which then clearly engages ICANN and ICANN staff in part of that process. So again, I think this is worth talking about. But we had a very difficult time until we got lucky and had Canada step up getting this meeting scheduled. Because again this was a recommendation back in 2010 and it took two years to actually get a meeting to happen, and that was after other countries like the Czech Republic in particular and I think some others along the way declined to take on the effort of organizing this.

So if it became a criteria in site selection at least you'd have some better assurance that, in fact, the meeting would take place on an every other year basis. But again if this is really important to the GAC and is something they want to continue to maintain dominion over, I guess it's not something I would fight to the death on, but I do think those are some of the considerations that need to be taken into account.

HEATHER DRYDEN:

Olivier, this is Heather.



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OLIVIER CRÉPIN-LEBLOND: Go ahead, Heather.

HEATHER DRYDEN: I think that's really useful to hear an additional perspective as you've provided, Larry. As I read that recommendation the word that really stands out for me is the word convenes. I would have some hesitation about the Board or staff being in a position of convening meetings of government. Again this is why I think maybe we look just a little bit at the drafting, maybe some of the things that stand out a bit for me just need a little bit of work but your points are perfectly valid.

And I think we want to achieve the same thing and in making it clear who is supposed to do what as far as carrying forward this idea, the greater the clarity there is on that, the more likely it's going to happen and ICANN will in fact be able to facilitate such meetings being held in the future. So thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you Heather. Next is Avri, and then Alan. Avri Doria first.

AVRI DORIA: Thank you. Yeah. The more I actually listen to this one the more uncomfortable I am with the suggestion of the Board and staff having any responsibility for creating yet another layer of government participation. I think it's fine if the GAC and its members want to set up high level meetings and can do that but for that to become an ICANN function of somehow creating that extra structure of high level government officials coming and coming to an ICANN meeting and creating perhaps policy in some form or other or policy mandates or such as that actually makes me very uncomfortable. It's something that I would have trouble sort of agreeing to, in terms of giving GAC that

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extra bit of authority within the ICANN system. So the more I listen to it, the more – I think it's fine for GAC or for any of the other ACs or SOs to sort of set up special meetings among their communities and even to perhaps ask ICANN to provide some assistance.

But to actually have the Board and ICANN staff determine where we do meetings based upon where they can have a high level meeting would strike me as going in the wrong direction in terms of turning us into more and more of a government-led organization and that would very much worry me.

OLIVIER CRÉPIN-LEBLOND: Thank you, Avri. Next is Alan.

ALAN GREENBERG: Yeah, I can see using wording like "asking the Board to facilitate such meetings." I wouldn't want to make it any stronger than that, and I wouldn't want to set anything close to an absolute target of once every second year.

As we move more towards hub cities and/or fewer meetings per year, there's a lot of competing constraints for where we can hold a meeting and I wouldn't want this to be one of the overriding constraints. It may be an important one, but it's one of the many constraints. So a meeting such as this every second year may be a good target, but I would not want to make it a lot stronger than that. There are just too many competing issues related to holding meetings. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. Next is Larisa.

LARISA GURNICK: To echo what Alan was saying from staff's perspective, the Meeting Team has articulated very similar points in that there is a lot of criteria and a lot of changes potentially coming in towards planning ICANN meetings. So there was a concern about adding this requirement onto a list of many other requirements for selection for ICANN meetings. So echoing Alan's point.

OLIVIER CRÉPIN-LEBLOND: Thank you, Larisa. Back to you Larry, on this. I'm not sure where you want to take this. And the other thing is I note we have passed the half hour and the deal was we would stop at this point. Maybe we'll let you reflect on it and pick it up tomorrow. Okay. Well, thanks very much for this. Let's go back to Brian then for the structure of the report.

BRIAN CUTE: Thanks very much, Olivier. Larisa, Alice, do you have that document? Yeah, if you could throw that up on the screen. I guess just kind of a stock-taking moment before we go to this, though. Tomorrow we'll have probably at least an hour or two to go through the rest of the full ATRT-1 templates. Clearly there are some outstanding templates that are not yet posted. We'll have to take stock tomorrow of what's outstanding and when those are going to be delivered and how we factor that into our work. Olivier?

OLIVIER CREPIN-LEBLOND: Thank you, Brian. I was going to ask Larry on his evaluation of how long it would take to go through the GAC recommendations for Work Stream 1. I don't know how much time it will for the rest of our recommendations, but I think we are looking at about four or five, so it's not that many really, except if we get into circular arguments. Larry,

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how long do you evaluate the time it would take to go through the full list of recommendations?

LARRY STRICKLING:

We'll come back and wrap up those two issues. I think we'll wait for Heather. On the open issues we had, we'll wait for Heather to come back to us on the overall question of who do these recommendations go to. And then the second one I think we'll just, as you asked us to, reflect overnight on the issue of the high-level meetings and come back on that one, but I think we've certainly heard there's no consensus here yet on the language that is in the current draft.

OLIVIER CRÉPIN-LEBLOND:

Thank you, Larry. I think you mentioned a couple of hours that will probably work well. So back to you, Brian.

BRIAN CUTE:

Great, thanks. We'll modify tomorrow morning's agenda to have the first two hours for ATRT-1 and then we have Work Stream 4 tomorrow and I think I allocated four hours total there, but an awful lot to get through tomorrow. That being said, I put out this outline – very light draft, if you will – of the report with the structure and want to have a discussion on the shape of the report. Taking some points of discussion already, clearly we need to have an upfront executive summary that states the recommendations that we're making, that seems to make sense in terms of structure.

My thinking – and I'm completely open to being influenced otherwise, though – is what's driving my thoughts are I think the desire to have a shorter report and use the appendices for the deeper template-based data for those who want to take the deep dive into a particular issue.

But keep the report itself shorter in length, whatever that turns out to be.

I think also try to use the report as a bit of a communications tool. I think the ATRT-1 report presented itself much more as an academic in research, in tone and structure type of document and I think there's an opportunity for this review team to communicate in kind of a classic communications-sense of that word.

Those are two things driving my thinking right now. If we have that up on the wall and I'm not looking for – don't pay any attention to the word. We can edit and wordsmith the words. But just the structure and the approach, let's see if we have consensus on how to do this. You can scroll down. This is just obviously the "who we are and what our mandate is" but keep scrolling. So stop here.

This is just an attempt, and again we don't have to wrestle this to the ground, all of this is up for editing. But an attempt to make this more of a communications-oriented report as opposed to an academic research report.

What's the objective? What's the current environment? Where does ICANN need to go? Little bit of a forward look, some headings I came up with. I'd encourage you to read through what I've got there to see – directionally what I think is one way we can go. Keep scrolling down. Clearly we're going to have right up front after that brief introduction who we are, what our mandate is, why we're doing this and where we

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think things need to go. Here's the recommendations we've made and these are new recommendations.

And then following that logically would be what are the reasons we made these recommendations? So I put in assessment of ICANN's implementation of prior Review Team recommendations and assessment of AOC review processes.

I think it's here where we need to come to some consensus of: what do we want in the report here? Do we want to take Larry's draft and plunk it in there in full or do we want to draft a high level narrative of what the recommendations in that part are hitting on and put the dense part of that report in the back in appendices? That's a basic question for me. Alan?

ALAN GREENBERG:

First, a question. When you have ATRT-2 recommendations one, two, three, is that just the recommendations or a bit of rationale along with each?

BRIAN CUTE:

The last time we did it, it was just the recommendations in big bold print, so I want to read what the recommendations—

DENISE MICHEL:

That was just the executive summary.

BRIAN CUTE:

Executive summary. That's what I had in mind so didn't put executive summary up there.

ALAN GREENBERG: The executive summary is something that normally comes at the beginning summarizing everything, a very short intro of the recommendations.

BRIAN CUTE: Yes. What I had in mind is just a straight listing of the recommendations because that's where most people go.

ALAN GREENBERG: You're saying to duplicate that in the executive summary and in there?

BRIAN CUTE: No. Suggestions.

ALAN GREENBERG: Now that I understand what you want, I disagree. I think the recommendations and a very short intro need to be in the executive summary, which is physically at the front and separately publishable. That's number one. This section I think should include not a lot but a little bit of background and understanding for why we're doing it or what we're trying to fix or what we're trying to accomplish. Not the kind of stuff we're going to have in the templates, but just so people can understand it a bit more.

BRIAN CUTE: Avri?

AVRI DORIA: I am actually more comfortable I think than Alan with this. I think if this first report is short enough, then if it's kept to the under 20 pages with the recommendations, I don't think they need to be repeated in an executive summary. I also think when I look at these, I think we're going to be able to come to agreement on wording of the recommendations and some of the other wording around.

I think as we start to look at what goes into the wider templates that people have been writing, I don't actually think we can arrive at consensus for all those words. So I actually tend to look at it as we have a 20-page set of recommendations that we agree on with some rationales and that we have to have a consensus on.

I think the rest of all this – the templates and all that – go in a background document that accompanies it that is agreed to overall. But we're not getting in to saying that, "Yes, I sign off on everything that so-and-so said" or that "everyone else signs off on the bits I've written."

I tend to think of us having a short report that gives the state of affairs and the recommendations going forward, and then a background document that goes with it that has all this multiplicity and multitude of the comments, of the templates, of the long expressions, of the whys and wherefores that we're probably not going to be able to get a full consensus on everything that everyone has written. Thanks.

BRIAN CUTE:

Fiona?

FIONA ALEXANDER:

I just have a question. If we can't get agreement on the templates, which is a fact-based analysis, then how can we get agreement on the recommendations? That's what the templates are. It's supposed to be fact-based analysis. If we can't agree on those words then we can't agree on recommendations.

AVRI DORIA:

The fact that we're calling it "all-facts" – I mean very few of peoples' facts are full, hard, objective facts like physical science. They are



statements, they are juxtaposed. I may agree with the statement but not the way it's written, etc. I think though when you have the wording of recommendations, people can agree on what the recommendation actually says.

They may even have different views of the so-called "facts." We use the word fact as it was an objective truth, notion. A fact is not an objective truth in any of our discussions here. It is our understanding of a situation as stated by a person that we're willing to call a fact and say "We'll use it to build upon." But if I have to attest to every fact that is written and say, "I agree that that's a fact," I'm not going to be able to. I'm going to be able to agree that it's a coherent story, that it makes a probable narrative, that it's fact-related and fact-based. But if I have to accept the facticity of every statement, I can't do that.

BRIAN CUTE:

Olivier?

OLIVIER CRÉPIN-LEBLOND:

Before we go into that before we go into the discussions of whether ceci n'est pas une pipe or whether it is – some who will have seen that picture will know what I'm talking about – I think we need to look at the practicality of reading this document and I'm looking at on a practical level. If we have an abstract with the recommendations and then the main body of the document with the same recommendation but a little bit more expanded and then an appendix with the full recommendation, I'm a little confused as to, one, the size of the report; two, the repeating ourselves; and three the confusion. Because people will think "Hang on, what's the difference between the abstract, the middle part and the end part?" I don't know. It just seems to be a bit long-winded.

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My personal view would be to have the recommendations in the main part of the report and not in the appendix. There are obviously other views and I don't purport to be holding the answer to the fountain of youth, but who knows?

BRIAN CUTE:

Thanks. I think the recommendations being in the main report in an executive summary even is arguably the best place for them, not the appendix to be clear. Let me ask a specific question on the templates themselves. So we've been using these templates, we've been filling them in, they provide a basis for recommendations. We could put templates in appendix A, and with all the links to the documents they provide a great researcher's source to look underneath our recommendation analysis. Do we have templates for all of them?

LARRY STRICKLING:

No, of course we don't.

BRIAN CUTE:

We don't. That's the problem.

LARRY STRICKLING:

We've pointed that out today. Here's our problem. Our problem is we've been working three months to get documents that I think will have to form the backbone of this report. I do not accept the idea that people can't read this and say "Yes, when we say several comments from the ATRT discussions while noting the need to incorporate the GAC early on also focused on the need for better cross-community communication in general."

If people can't agree to that as a statement, then we have a fundamental problem with the way this committee has been operating.

But all I know is that we've been working on these for three months. Now I'm hearing that people are saying "I can't take the time to read and edit these things. Now I want somebody else to write a 20-page report that I will read and agree to, but where's the fact-based analysis on which all this has to ride?"

Plus again, we don't even have the full templates for all of these recommendations even today as we sit here after having been working on them for two or three months. I think this is Fantasy Land, people, because we really need to focus on what we've got in front of us and get these to the point where these can be put out.

I don't care if you call it part one or part two or whatever you call the report, but the template is the analysis. You can't just say "That's what Fiona Alexander or Larry Strickling think." It's got to be "This what the committee thinks, is the analysis." You all have to buy in to these analyses or there's no committee left here.

BRIAN CUTE:

Thank you. With respect to the shape of the report, I can take – yes, Olivier?

OLIVIER CRÉPIN-LEBLOND:

I have a question. The significance of the templates being in the main body of the report or in the appendix, legally speaking or as far as the actual recommendations of the report are concerned, does that make any difference whether they're in one or the other? Or do the appendices just stay this is sort of basic information which not everyone subscribes to which is there? But if it's the main body of the report everybody subscribes to. I didn't quite understand this part.

BRIAN CUTE: I don't think we want to go down the road of we subscribe to one part but we don't subscribe to the other. I'm a firm believer that we—

OLIVIER CRÉPIN-LEBLOND: I'm not advocating this for the record, by the way.

BRIAN CUTE: I think that we as a Review Team need to come to a consensus on the entire report, and if we can't do that, then we have a serious issue. There is always other ways of addressing points of divergence. One is to write a minority view.

I'm not advocating that that's more to the task that we have in front of us than we presently do but there are ways to reflect divergence of view. If we can't come to a consensus then we have a fundamental problem so I don't personally view one piece of the report consensus, one not as acceptable.

And on the shape of the report all I am focused on is the shape. I'm not trying to influence where the weight is, where the consensus it is or is not. It's just a simple stylistically what makes the most sense here folks with what we've been working with and what do we think it should look like and how it should communicate to the folks who read in the community. That's all. And we won't finish that today. With respect to the templates that are not yet drafted, it's September 18th?

UNIDENTIFIED MALE: 19th.

BRIAN CUTE: Even better. We have 11 days left in this month and effectively about 25 days or so days until mid-October. Lise?

LISE FUHR: Regarding the missing templates, some that are easy that are those that don't have any further recommendations that just have [inaudible]. But how many do we have that we'll have another recommendation as outcome? Do we know that? Because I think that picture is the most interesting one because that's where we disagree usually.

BRIAN CUTE: We'll go over that to a larger reach tomorrow when we go through Work Stream 4 and the proposed new recommendations. I know you're speaking also about recommendations coming out of former review teams so the both, we will go over it tomorrow in earnest. But the fact of the matter is we need to have – it's important that we as a team come to a consensus on what we are putting out in terms of product and that means each template.

We have to go through that process in my view before we put out a report. As tedious as it may have been for David Conrad today to go through what he's gone through before and where we were all kind of nodding our heads on 90% of it, it's important.

We need to walk out of here with an understanding of what's left to develop, who's delivering them, when they're delivering them, when are we going to be able as a team do what exactly what we're doing today and tomorrow? And that is talk about, can we agree on this and come to some form of consensus and when are going to do that and how that feeds into getting out the report by mid-October or not, and what that means. Alan?

ALAN GREENBERG:

I think we have two different issues. If we have a potential recommendation where no one has completed a template on it, then it's easy. We drop the recommendation. If the people aren't willing to do the work then there's no way we can go forward assuming we're trying to make some deadline.

We have a more difficult problem if there are people around the table who say "This template on an assessment of an early recommendation of a previous review team isn't up to par," we can't pretend the recommendation didn't happen and ignore it.

That's a bit more problematic in terms of how we go forward with what is a very hard deadline at this point assuming we're still going to make the 31<sup>st</sup> of December. We must make the mid October deadline and there's not many weeks between now and then. And people occasionally get sick and other things happen. So we have a real hard problem here, especially for the assessment of the previous reviews.

OLIVIER CRÉPIN-LEBLOND:

Thank you, Brian. Since time is ticking and I think we're currently just thinking and imagining whether we will be able to finish or not or how many recommendations we'll have or not. Work Stream 4 is going to provide the bulk of the recommendations I believe to the ATRT to this report.

And until we go through Work Stream 4 and see all of the recommendations there and how complete that is, we won't really know what we are up against.

What we have at the moment with Work Stream 1, we know there roughly maybe four or five templates. Some need to be brushed up, some need to be completed, some need to be drafted, they're still waiting. But I don't think this is a mountain of work. Work Stream 4 might be a mountain or it might just be a small mole hill. We'll find out tomorrow.

Can we just perhaps look back at the structure of this report and see where we go? Bearing in mind we'll probably have between 20 and 30 recommendations maybe? How do we structure this?

BRIAN CUTE:

I'll get to that one point, though. We are obligated under the AOC to assess implementation of recommendation of prior review teams. That's an obligation. Templates for each recommendation need to be completed and we did come to some form of agreement and assess those and put that in the report full stop. New recommendations are something we have the latitude to offer.

We have to offer recommendations with respect to the review process itself. Again, that's required. Anything beyond that – Larry, correct me if I'm wrong – that's our latitude and if we have new stuff to offer, great, and if we don't, we don't. If we run out of time to develop something we run out of time to develop a new recommendation. Is that a fair assessment?

LARRY STRICKLING:

Not sure I understand what you mean. It's our job to assess the accountability and transparency of the ICANN board and staff and make recommendations to improve it if we don't think it's adequate. There's

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nothing in there that says you stop working because it's October the 15<sup>th</sup> and you didn't get to it. So I'm not sure what you mean by that.

I do think that if we're talking about totally new recommendations – and to Alan's point, if people haven't developed the fact-based argument as to why we need it, we dump it. That's a different question.

BRIAN CUTE: That's what I intended. Alan?

ALAN GREENBERG: One thing that Larry just said I'm not quite sure of, I want to make sure I understand it. You said, "We don't stop working because it's October 15<sup>th</sup>." I have a real problem if we put out a preliminary draft report and then add in the final report things out of the blue that people haven't seen before.

LARRY STRICKLING: I'm saying we get our butts in gear and get it done.

ALAN GREENBERG: That's somewhat different than what I heard.

BRIAN CUTE: Larisa?

LARISA GURNICK: I just want to remind you that we need to allot about two weeks' time for the translation of the draft report.

BRIAN CUTE: What we need and Larisa and Alice, can you help us with this? A stocktaking right now of templates at this moment but going into tomorrow; templates for assessment of prior review teams that have not been completed and who the owners are.



And we will have a firm deadline in a very short period of time – in days, not weeks – to get those done, to give the team an opportunity to review them and weigh in and come to some form of agreement full stop.

Tomorrow we will go through the proposed new recommendations coming out of Work Stream 4 and see what we have and what we can come to agreement on and what we can't, then make a determination tomorrow of whether the issues in process should be further developed or dropped.

LARRY STRICKLING:

This may be just a terminology question, but what you have up there I think looks fine as an executive summary. But it does seem to me that so much work has gone into the templates or should have gone into the templates. I think “template” is the wrong word because it does leave people to think it's a cut-and-paste exercise. It's really supposed to be the heart of the analysis. It's supposed to be where somebody – or hopefully the group – have arrived at a conclusion based on an assessment of the evidence.

And the problem has been that not all of us can assess all the evidence so we've delegated it to different people to kind of do that assessment and present it to us so that we're now in a position to accept it or reject it. That I think is – and I railed about this several hours ago. That's I think what we haven't been able to do as successfully today as I would have hoped we could have done.

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But until and unless you get that, you don't have a report here. So the idea of now putting in another 15 or 20 pages in front of all this strikes me as not a useful expenditure of time. Because who's going to write it, how do you even do it if you haven't got the back-end to a point where you're comfortable with the analysis there?

It seems to me the focus really needs to be on the analysis that gets us to where we can make judgments. Then if somebody wants to try to summarize those judgments in a couple of pages in an executive summary I think that's fine. But I don't see how you – it goes to Olivier's point. You can't have some middle document that's attempting to bridge the executive summary to the more detailed write-ups.

BRIAN CUTE:

That's the format that I had in mind. With that let's get a stocktaking of what remains to be done. Let's go through Work Stream 4 tomorrow, see what we've got left after that. We will make short term assignments, deadlines, and we'll plan for how we review what remains. Larisa?

LARISA GURNICK:

Brian, I know you said two hours tomorrow for Work Stream 1. If Fiona Asonga is going to be joining us to discuss Work Stream 4, I'm not sure if Lise knows what time she's joining. I just wanted to flag that for you that we may need some flexibility.

BRIAN CUTE:

We'll juggle around her schedule. Thank you. Olivier?

OLIVIER CRÉPIN-LEBLOND:

Thank you, Brian. Just looking at the format here, do we have any numbering system that will be implemented with this? Because to me, a

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document doesn't make sense until it's got a numbering system. So at the moment I don't know if the format works together or not and the hierarchy and all of that sort of stuff.

BRIAN CUTE: I wasn't that far down the road.

OLIVIER CRÉPIN-LEBLOND: The way I start drafting documents, I think of a numbering system and then I've got part one, part two, part three. Then 1.1, 1.2, 1.3, etc.

ALAN GREENBERG: I think we found an author.

OLIVIER CRÉPIN-LEBLOND: And that comes in to a table and then it's very easy to know where you are up and down the document. At the moment I see one, two, three and then one, two, three further down. I don't know.

BRIAN CUTE: This was conceptual illustrative only. Thank you.

OLIVIER CRÉPIN-LEBLOND: Maybe we need to have the conception ready because we're starting—

BRIAN CUTE: Sounds like a volunteer! Folks, anything else before we break? Any other business? When are we starting in the morning? 8:30. Folks, tomorrow morning; 08:30.

ALAN GREENBERG: Dinner plans?

UNIDENTIFIED FEMALE: A coffee break?

BRIAN CUTE: Yeah, we will.

ALAN GREENBERG: Dinner plans?

BRIAN CUTE: I don't know, I'm not in the loop.

ALAN GREENBERG: I'm saying once we stop the recording, we should have the discussion.

BRIAN CUTE: Thank you, all. We'll be ending the session now.

[ END OF TRANSCRIPTION ]