ICANN

Moderator: Maryam Bakoshi
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10:00 am CT

Maryam Bakoshi: Good morning/good afternoon/good evening. This is the NCSG Webinar on the CCWG Accountability Report and (unintelligible) December 2014.

On the call today we have Tapani Tarvainen, Robin Gross, Joan Kerr, Bram Fudzulani, Brett Schaefer, (Ramina Florenza Cabrera), Ed Morris, Akinremi Peter Taiwo, Merrily Wolf, Jyoti Panday, Arun Sukumarr, Rafik Dammak, Avri Doria, Johan Helsingius, David Post, Niels ten Oever, Farzaneh Badii, Chris Dillon, Tatiana Tropina, Aarti Bhavana, Patrick Lenihan, Matthew Shears. And from Staff, we have myself Maryam Bakoshi.

I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much.

Over to you Robin.

Robin Gross: Thank you very much. Hi everyone, this is Robin Gross. And as you may know, I'm the NCSG representative on the CCWG Accountability Working Group.

And the third report was published December 1 -- just a few days ago. And so we thought we'd have a Webinar to go over what's in it and start preparing for our public comment which will be due in just a couple of weeks -- by the 21st of December.

So let me just quickly go over the agenda -- what we can talk about today -- and see if there's anything anyone else wants to add. First, I thought we'd just do a quick review of the proposal, talk about what's in it, what's changed since the second draft, what do we think is particularly good about the report and recommendations, and where do we have concerns with the recommendations.

I thought we'd talk about the timeline -- go over that -- between now and the next couple of months in particular. It will continue to be pretty intense. And then we can start to go over what the NCSG response is to some of the questions in the public comment. There were the 12 recommendations, and the CCWG co-chairs have designed a survey that basically asks, "Do you support this recommendation or not?"

And so we can start to get our responses together. And so we've created a Google Doc with the 12 recommendations.

And since we've had such good participation from the membership in NCSG in the CCWG Accountability working group, we've also kind of divided up so different members take a different recommendation -- basically a chunk of the work -- and come up with an initial response for us to talk about as a group submission.

So - and then any other business. I don't know if there's anything anyone else wanted to add to the agenda for today.

There will be a CCWG call in about three hours from now. And the timeline is on the agenda so it could change. But as of now, this is where we stand.

Did anyone else want to add anything to the agenda or have any comment on this, or should we just start plowing through the materials? Okay, not hearing any response, let us start plowing through.

Okay, so first let's talk about -- at a very high level -- what's in the third report -- the third draft report. There's a lot of recommendations; there's a lot of material, there's a lot of changes coming as a result of the Accountability Working Group.

So we've got changes to the independent review process, we've got changes to the reconsideration request, we've got creating these seven new community powers and empowering the community to exercise them over ICANN; things like removal of individual Board members, removal of the entire Board, the creation or the rejection of - the right to reject fundamental bylaws, approval rights over strategic plan and the budget of ICANN, making sure the affirmation of commitments make it into ICANN bylaws.

There's a lot of materials that have come out of this working group, so it's really important that everyone take a few minutes to read through the report and particularly the annexes and appendices because those have a lot of the materials in it as well that actually will become part of the subsequent implementation work. So it's important to pay attention to those materials in the appendices and annexes.

So one of the big changes since the second draft was using - switching from a membership model -- corporate model -- into a designator model as the

recommendation for the community mechanism -- the community vehicle -- for how to exercise these different powers that the community will have. And that was a significant change from the last report that happened in Duplin.

Some of the reasons for this were some of the powers of the membership model were just a little bit too broad; there was concern about derivative lawsuits; there was concern about rights to dissolve the corporation.

And so folks realized that we would be able to exercise -- more or less -- the powers that we wanted without going so far as reorganizing as a membership corporation. And we could remain as a designator corporation which is what ICANN sort of is now except we don't have our rights to recall Board members.

And so this would fix that and this would make us truly empowered designators and have the full rights of designator to the - that come in the statue would actually be applied to us as a community here in addition to some of the new community powers that we're creating that will be put into the bylaws.

So that is a significant change since the last draft and it's worth paying attention too, I think.

Now everyone was particularly happy with that switch; there were some compromises. There was some concern that, well, membership came with certain transparency rights and so we're going to lose those transparency rights if we switch to designator model. So we've managed to try to get some transparency rights -- what we could get under a membership model -- get that transposed into a designator model. So that's one change that I think we more or less have been able to rectify.

So what's - another change since the second draft was - the previous draft, we had each of the different parts of the community. And when we say each of the different parts of the community, what we're really talking about here are the five SOs and ACs meaning the GNSO and the GAC and the ALAC and the SSAC and the RSAC and the ccNSO and the ASO. Did I say them -- these different parts of the community?

Before we're going to be given a certain number of votes, and these votes would be tallied up as part of the entire community mechanism in terms of deciding whether or not to exercise a particularly community power.

And so one of the changes since the second draft was to change that from the different parts of the community having different weighed votes to basically everyone having - each one of these parts of the community having a single vote to vote yes or no, and whether or not to exercise a particular community power. So that was another significant change from the second draft.

And it's worth commenting also, I think, that it was in the opposite direction of what public comment requested after the second draft was out. And so we went in the exact opposite direction of what public comment asked for which was concern about the degree that the Advisory Committees were being elevated, and what we did was basically elevate them even further from the second to the third draft. So that was another significant change.

So what's good news about this report? Well, I think one of the things that's really positive about it is the incorporation of respect for human rights into ICANN's bylaws. And I think that was something that many of the members in NCSG pushed really hard for.

And I know Niels and Tatiana have been working very hard and particular draft language, and getting that through the working parties/sub groups is not easy. And it's made its way into the report, so that's really good news.

I think there's also a lot of really good things in the report about fixing the independent review process and the reconsideration request process, and sort of widening those scopes and narrowing the grounds for dismissal, and giving more time for people to be able to respond to actions or inactions of the Board or Staff. I think those are all really great things that are in this report.

So there's a lot of really good work and hard work. And, you know, a lot of people have put enormous amount of time and energy into trying to fix some of the holes in ICANN's accountability currently. And there's a lot of really good things in this report.

But not everything is good. One of the things that I'm most concerned about, and filed the dissenting opinion on, which was something that NCSG commented in the first couple of comment periods, also is what I alluded to before. And that was this marginalization of the Supporting Organizations to the Advisory Committees. And particularly, changing the role of the GAC and giving the GAC a decisional role as opposed to an advisory role over ICANN governance matters and ICANN operational matters.

And so, you know, there's concern about changing the role, and there's also concern about sort of getting the second bite of the apple because they get to keep their special advisory due-deference status while at the same time having a vote in the community mechanism. So it's a bit of a double-dip in addition to the issue of changing the role. So that concerns me.

There are other things that I think, you know, could be of concern depending upon how it's actually played out. You know, the powers over the budget, some of that could be concerning to me in the sense of I know that the Intellectual Property Constituency and the Commercial Stakeholder Groups are really key to try to use budget power and ICANN's compliance department as a way of really trying to control what content can be on the Internet. And so how that could be exercised and practiced is of some concern to me.

Also, what ultimately happens with the human rights language is worth paying attention to because it could really blow up in our faces if, you know, suddenly Intellectual Property Right is considered a human rights, and that's pretty clear what the IPC is gunning for here. So I think there are a lot of concerns with that, but I also think we can handle that.

So those are some of the things that -- very high level. I want to open it up to others because I know we've had a lot of people participating in this working group and spending a lot of time in this working group. So that's just a very broad overview.

And let's hear from others who have been participating in this group as well about, you know, sort of their general thoughts about what's good news and what's concerning and what should we really focus on in our own responses going forward.

I sat Matt has his hand up. So Matt, why don't you get us started with that? Thanks.

Matthew Shears: Yes, hi Robin. Can you hear me all right?

Robin Gross: Yes.

Matthew Shears: Perfect. That's a great overview. So I just thought I'd just jump in here just because I wanted to highlight a couple of other issues.

And I think, before I get into some specifics, I think one of the things that has been useful about this third version coming together in the way that it has is that there's a much greater sense of clarity and also much greater level of detail in the overall package.

And certainly for me, looking at this as a whole, it's probably the first time I've done this in some time because we've been so focused on our various parts of the puzzle. And now looking at the puzzle, it's certainly highlighting some concerns and also some, you know, it's also showing where we've put a lot of work and it's paid off.

So I just wanted to talk about a couple of things.

I think one of the issues for me is that there's a certain element of the package as a whole -- which is completely understandable and normal -- is this notion of it's not tested. And we have created situations where even though we've developed the stress test and everything else, we're still facing a situation where we're putting in place accountability measures and governance changes that fundamentally changed the structures in ICANN, and we really haven't tested them; we haven't taken them out for a test drive. And we won't be able to really do that until we actually have gone through the transition.

So it's just a kind of a little worry in the back of my head. We may find ourselves having put things on paper that once we've gone through the process, may not actually deliver what we had anticipated.

The other thing is we've built in some uncertainties. And you were very rightly noting the fact that we have now empowered Advisory Committees which were not empowered in the past.

But we've also built an uncertainty in the process of exercising the powers because it is not at all clear -- as of right now -- whether or not and when, for example, the governmental advisory committee would actually participate in exercising the power themselves. And where in the process of engagement, escalation and enforcement would they participate.

So I think there's - in a way, we're raising a little bit of question mark when we have uncertainties in terms of how the powers are going to be exercised.

But one thing I would say is that one good change is -- particularly in this process though -- is now called Engage, Escalate and Enforce, which is before when we had the process that was really totally geared towards using of the AC community powers as opposed to trying to solve the problems that the powers were going to be used to address along the way.

And we now have this staircase, if you will, of escalation. Put the focus on the staircase of escalation isn't just on exercising the powers; it's also on, hopefully, finding resolution before we have to get to the point of exercising the power. So I think that's an improvement.

The one thing though, going through because I was asked to look at Annex 2 which is exactly about the process -- which they call the CC - they - we, the CCWG, call empowering the community through consensus, engage escalate and enforce -- this staircase or escalation is quite fascinating when one looks at it quite closely, which again, I really encourage people to do because what

you realize is that the timeframe within which to engage, escalate and enforce are incredibly tight.

So it's literally one week here or six days there or two weeks here to get the community engaged and to find resolution. So I think that's certainly one of the concerns I would raise going through this process of engage, escalate and enforce.

But also, what's also become, I think, a question mark for me -- and maybe somebody else can jump in and say that it's been covered, but there is an assumption that when it comes to approving the strategic plan or the operating plan or the budget and things like that, that there is a process - there are existing processes for engagements on those. But what the working group is calling for is effectively a more extensive engagement process.

And as far as I can tell, we haven't actually spelled out -- in any great detail -- perhaps it's somewhere, I'm just not seeing it, what that extensive engagement process is. And if that doesn't exist or we haven't spelled it out sufficiently, I think it's something to raise because so much of this engage, escalate and enforce staircase really does depend on the engagement level in the beginning of the process for the plans or whether it's the budget or the strategic plan, et cetera.

So I think there are some question marks on that that we probably should raise. I don't think that questions would imperil the process, but I think there are things we definitely need to spend a little bit more time on.

So I think that's - I just wanted to build on a couple of things you said. And I think there are still, from my discussions, there still are concerns -- and question marks -- about the empowering of the GAC and whether or not that's

appropriate, and indeed within many governments that continues to be a question mark.

So I think we're far from - we're far from any kind of resolution on that. Thanks.

Robin Gross: Thanks very much Matt. That's a really helpful overview of the process and some of the open issues and some of the concerns that if they're not addressed properly, could create really big problems for the recommendations that we've come out with such noble intentions.

Okay, so let's see. Next in the queue we've got Brett. Go ahead Brett.

Brett Schaefer: Thank you. It's actually just a question to clarify something Matthew said about the process of the timeline involved in the staircase.

And that is how much advanced notice will the community have of Board decisions and deliberations before their decisions are actually announced sort of triggering this process?

Is it possible that something could be announced and a decision by the Board by made that the community was completely unaware of prior to that announcement? Because that would raise far more concerns for me about the timeline than the opposite which would be if there is several months of awareness that the Board was considering a potential action, and then the community has this rather truncated timeline. So I just wanted to ask that as a clarifying question. Thanks.

Robin Gross: Thanks very much Brett. I see Matt has got his hand back up I presume to respond to that. Go ahead.

Matthew Shears: Yes, it's a great question. So what we have to remember is that when we're talking about this process, it's very much about the powers that Robin made out and we've all become so familiar about. It's approving the strategic plan, approving the operating plan, the budget, what indications (sic) to stand or fundamental bylaws, and Board decisions within the IANA Functions.

So what is supposed to happen - this is why I raised the point about the need for this engagement step. What is supposed to happen is that when there comes a point dealing with any of these issues -- that the Board and the community disagree fundamentally -- and the Board, I'm assuming, goes ahead and votes for a strategic plan or an operating plan, then the community has effectively 15 days, I believe it is -- and again, we have to go back and look at those timelines -- fifteen days for someone to raise a petition within an SO and AC, and for that SO or AC to actually endorse that position to take it to the next step.

If it doesn't happen within 15 days -- as far as my reading of this is -- as of that Board decision, then there is no opportunity to do so.

So when it comes to these powers, hopefully there will have been extensive engagement between the community and the Board prior to that happening. So there will have -- or there should be in place -- a process for having that engagement, for example, before the adoption of a strategic plan or something like that. So the community should be aware -- hopefully -- of what's going on.

But I think you make a great point because unless we have clarity as to what that engagement process is, I think we could be presented with situations, well, we may end up being surprised. But I think, again, you know, this is for

my read or so, I think it's important for us all to spend some time working our way through this process.

Robin Gross: Thanks very much Matt. And I also want to add to that how this really, I think, elevates the need for transparency particularly with respect to Board deliberations so we're not caught off guard when the Board makes a certain decision. We will have a sense of where they were on an issue and what their concerns were.

And I mean we have had Board decisions in the past that, you know, were made in secret and we didn't find out about them until six months later. And, you know, that kind of a situation just cannot be acceptable anymore.

So one of the things that we'll talk about later when we talk about Work Stream 2 is I think we really need to add an element of transparency with respect to Board deliberations on issues. So I just wanted to highlight that as being one way we can try to mitigate that concern.

And I also wanted to add an issue that I sort of overlooked accidentally earlier which was one of the things that's changed in our recommendations since the second draft, and that has to do with Stress Test 18. And that is the Board's obligation to provide a due-deference to a government advisory committee advice -- whether or not they have to do something that the GAC has said they ought to do that they consider to be their formal advice.

And so we've - gosh, I don't even really know how this happened in the working group -- how we actually got to a point where we gave in on this. I guess it was just the relentlessness of the GAC members in pushing and pushing consistently and singularly on this issue. So the Board will have to do what the GAC says that it considers advice unless it reaches a two-thirds vote

of the Board to not do that, and then they turn to negotiations to try to find a solution.

There was sort of this compromise paragraph -- sort of a second paragraph -- added at the end that says that the GAC has an obligation to confirm the lack of any formal objection. And so I think that's trying to mitigate that concern.

So also, I just wanted to add the Stress Test 18 as something that's changed and something that's very concerning, and I should have mentioned that before.

So did anyone else have any other sort of points they wanted to -- high level points -- they wanted to make on any of these issues in here?

Avri Doria: This is Avri. I have my hand up.

Robin Gross: Yes, please. Go ahead. Oh, I didn't see that.

Avri Doria: Yes, that's because I got stuck in the presenter's thing, so I'm not...

Robin Gross: You're right -- that's right.

Avri Doria: ...for some reason. But no, I guess Maryam though I'd actually be presenting slides or something, so I apologize for that.

I think that the report has very much improved. There's an immense amount of compromise in it, and that's something that I think we need to be aware of.

Stress Test 18 that was just mentioned -- not the reason I put up my hand -- but the Stress Test 18 was very much a compromise and not just a symbolic

one, but a compromise where it acknowledges that that's pretty much what's already being done, that, you know, when the Board goes against, it's not just by a majority.

And so it's not that they have to do what the GAC says, its they have advice that they need to (do) something on whether they are going to do or not. And so I think it's a lot less dire than it's being presented on a couple of things.

In terms of the decision (sic), the ones where the community powers come into play, (such as) the budget, bylaws, et cetera, those things all have long lead times; they all have public comment. Budget and strategic plan is interminable, it's (such an) ongoing process (unintelligible) something to and out of any time that it is quite elaborate.

So I don't think in those things, for Brett's question, that there's really any threat. That they make a decision there that hadn't been discussed at length to the extent that people wanted to discuss it. Part of the problem is not enough people pay attention to the strategic plan and budget as ongoing, but it's not that those discussions aren't ongoing for a long time.

In terms of the exercise of the community powers, I do look (at it), Robin, the community powers -- or rather the participation in the community powers -- (it is) for all of the SOs and ACs. And in terms of (painting) parity of the balance between ACs and SOs, it's kind of necessary that all votes rise equally.

These aren't powers that the SOs have now; they aren't powers that the ACs have now. They are new powers for a community that can work together, that a community that, in essentially, are on the same page on an issue.

So I don't see that as being incredibly (prejudicial) to the SOs because it does not relate to the SOs' main function which is policymaking. So that, I think, one of the best things that has improved is some of the accountability work that's been put into it; the transparency statements, taking the ATRT2's recommendation of the annual report including accountability and transparency, and expand that and defining it in quite a better term. So I think that's one of the things.

I think some of the issues that people are missing is the things that are being done as implementation issues. And I think that that is both (unintelligible) to us. That once the thing enters implementation, that we cannot, you know, lose intention, but also that it might be worth mentioning some of the things that are implementation concerns in our comment.

That's what I wanted to say. Thanks.

Robin Gross: Thank you, thank you very much Avri; appreciate that.

Okay, so did anyone else want to make any sort of high level comments on the report, or shall we just quickly review the timeline and then go through the recommendations one by one? Okay, I don't see any other hands. So I guess I will take that to mean there are no other people in the queue.

Okay, so let's talk about what's sort of next in the timeline. So right now is the public comment, and we've got until December 21 for public comment. And then, unfortunately, the translations of the report and the annexes and appendices do not come out until nine days before public comment.

And so, you know, this is really a woefully short period of time for people to be expected -- particularly non-English speaking people -- to be able to read

and understand and respond to these very sweeping changes at ICANN, and significant changes from the third - excuse me - from the second draft report.

So that was something else that I raised in my minority opinion was the concern over the timeline. But the Chairs have really been just unrelenting, and a lot of people in the CCWG have complained about the timeline. And I don't know why, but they simply will not budget on that.

Maybe that will change in today's meeting in a couple of hours. I'm not hopeful since all the pleading in the world hasn't done it before, but we'll see.

So basically, we've got until December 21st to draft public comments. And then the ICANN Staff will be reading all of the comments and providing summaries of them to the members of the working group on December 24, so that's what we get in our Christmas stocking.

And then we have from the 25th until - excuse me - December 31 for the various work parties within the CCWG to do the analysis on the comments that came in.

And then it doesn't really say this in the official timeline, but the reality is is we're going to have to decide what changes are going to need to be made to the report basically between December 31 and January 7 and make those changes because, as of now, the plan is to send the amended report back out to the chartering organizations for approval on January 7.

And then assuming all of the chartering organizations approve that amended report, then we would deliver that to the ICANN Board on January 22. And that is, as of this moment, the official timeline.

We're also supposed to work on - decide which items ultimately go in Work Stream 2 and try to finalize the items for Work Stream 2 in Marrakech, so that will be an important meeting for Work Stream 2 issues as well as some of the implementation issues. There's been a new IRP Implementation Working Group that's been set up to make sure that the recommendations that we've made in the IRP get implemented properly.

So there are things that will continue to move forward in the interim, but this is our timeline as we stand today -- at this moment. Again, it could change in a couple of hours at the meeting; don't know.

Anyone have any comments or questions on the timeline? Okay, I do not see any hands on that. It's pretty straightforward at this point.

So let's talk about the preparation for our NCSG comment. And the way the CCWG Chairs have set this up is basically accepting public comment, in addition to the usual method via email submissions; they set up this Survey Monkey that basically lays out each one of the 12 recommendations. And then says, "Do you agree with this recommendation? Yes or no?" And then there's a space where you can put in a comment.

So what we've done here is we've just tried to take those 12 recommendations and split them up amongst the 12 different participants within our stakeholder group who are working on the different issues, and for each one to sort of take a chunk -- take a whack -- at one of the questions or one of the recommendations and come up with a draft response for NCSG.

So if you see the Google Document that has been created, and there's a link to it there on the screen, we can see who has been volun-told, if you will -- one of our famous ICANN's terms of phrase -- to come up with a draft response,

or at least some bullet points to get us sort of started on coming up with something. And - so let's just start sort of plowing through these.

Unfortunately, Milton isn't on the call and he's agreed to do our first recommendation on the empowered community and enforcing the community powers. So he wasn't able to make the call, so unfortunately, we don't have his input on that at this point.

But I don't think it's much of a surprise. You know, he was very active in drafting the NCSG response in the previous comment periods on this and participating in the working group recently -- he recently joined -- on this issue. So I don't think there's any surprises here, but we don't have any text at the moment to go over on this.

Let me just page back over here. So let's go on to the next one because I believe we've got some.

On the Recommendation #2, Empowering the Community through the Consensus/Engage/Escalate/Enforce Path -- the triple E path -- Matt has been very (tuned) in coming up with some initial thoughts on this.

And Matt, I don't know. Do you just want to take a moment and give us, quickly, your overview on how we should respond to this particular recommendation?

Matthew Shears: Yes, well I haven't - yes, thanks Robin. So some of the points I raised earlier on, sorry, I kind of jumped the queue, I guess, in terms of your agenda. I apologize for that. So I have been going through this.

I think that, as you can see if you're in the document, I think, you know, I think one of the points that, Robin, you raised very early on is that we've moved from this voting where we had, you know, five votes for an SO and AC, now effectively to what's been called a consensus model where each one of the SOs and ACs -- except RSAC and SSAC it looks like -- are empowered with what effectively is kind of one vote, if you will.

So whether or not this is a consensus or voting model, I think it's a semantic argument probably.

But the important thing there is that from this voting or consensus approach, there are these thresholds that have to be met. And on the staircase that I was talking earlier on -- this escalation staircase -- there are three steps that require a consensus vote or taking a vote or getting a consensus.

And this staircase has three steps. And the first one is, obviously, there has to be a petition and that has to be supported by the SO or the AC in question. But then the first step is actually can the SO and the AC actually get other parts of the community to come along. And the first step is to have a conference call about that particular petition. And to be able to hold that conference call, there would have to be at least two ACs and SOs.

And then the next step is once there's a conference call in this agreement that this is an issue and it should be pursued further is it goes to community forum. And a community forum is really the place where these issues are discussed and what brings together the community as a whole -- and people from outside the community. And there you need to have three ACs and SOs to support having a community forum.

And then the final step -- once you go through the community forum and there still is no agreement -- of course you get to the final step which is how to exercise the community power. So let's just take, for example, rejecting a Board proposed operating plan or budget or something like that.

And in the case of this particular case, you would need to have four SOs or ACs supporting rejecting the budget, and no more than one objection. And so in a way, you're still voting but it's at full (unintelligible) consensus or some form.

And I think that, as I mentioned earlier on, I think one of the challenges here is that this - there is this sense of -- or certainly from my perspective -- a sense of uncertainty in this process when we don't know how many parts of the community are actually going to engage.

And I think, you know, there's even, if you go through the text, you'll see there's even a situation where if only with the threshold will change if there are only four SOs or ACs participating. These thresholds that are in the big box that are in the recommendation that you'll see when you go through it are actually five SOs and ACs participating.

So it worries me that, as I said, you know, we've got this sense of uncertainty in this process.

I think the other good thing about this staircase is that, as I said before, it does encourage the resolution of problems. But I think the timelines within it are, in some ways, somewhat unrealistic. And so that's what I'm trying to get at here. So I've raised some of these points and highlighted, and then I'm working through the text in the non-bolded there.

So I'd like for others to jump in, but I think that pretty much covers my thoughts so far, Robin. Thanks.

Robin Gross: Thank you very much Matt. I really appreciate that.

Did anyone want to add any points on this or have any questions on this recommendation or suggestions for response or issues to raise on this one?

Yes, I see Brett has his hand up. Please, go ahead.

Brett Schaefer: Thanks. One point I will make about this without - obviously, anyone who's been paying attention to the comments has strong feelings about the GAC participating in this as a voting participant in the empower community.

But regardless of that, the fact that they move forward with this draft and, in essence, been treating it as a final draft without actually confirming which SOs and ACs are actually committed to participating as full-time members in the Empower Community, I think is a very serious mistake.

First of all, you don't have firm numbers which the thresholds must be met in terms of exercising the community powers. Second, if the GAC does end up participating, I think that would affect my support of this proposal rather dramatically. And it should, I think, influence how others perceive how the community is arriving at its decision points as well in terms of the post-transition ICANN.

So - I mean just as a process matter, I think it's very hard to pass judgment over this draft in terms of approval or not approval when you don't even understand the circumstances of which it's going to be operating.

And I just think that that is a gross procedural error on the part of the CCWG and a reason to call for a final comment period after this is all said and done. And one of the reasons why I said that the Chairs should reach out specifically to the SOs and ACs to determine their participation or intent to participate so that we could actually make an informed decision. Thanks.

Robin Gross: Thanks very much Brett and I share that concern. And I think it's worth noting that, again, this was an issue raised in our public comment previously, and when I say our, I mean throughout the CCWG process when we did the analysis of the comments. This issue of we don't even know whose participating and who isn't, and until we figure that out, we can't be really talking thresholds.

That issue was raised as being one of the most important issues for us to work on, and we didn't. We being the CCWG did not address that. You know, again the timeline was so compressed and there was so much focus on issues like Stress Test 18 and such that some of these other issues that are very important and were raised in Public Comment Periods time and time again didn't get addressed. And this is our chance now to -- our last chance -- and how to get that fixed. So I think we should be making those points in our comment.

Another thing I wanted to raise on this procedurally is my reading of the CCWG charter means that the recommendations don't necessarily come as a package deal. There are some that can be approved and others that won't be approved or at least will be sent back to have further work on before they can be approved.

So I think it is possible to say that there are one or two of these recommendations that we're not comfortable with the way they're currently

defined, and we would withhold our support on a couple of these recommendations.

And again, this isn't over the whole package. This wouldn't, you know, hold up the transition per se, but this (unintelligible) understanding of the approval process of the recommendations is that they will not essentially be a package deal. But we'll confirm that on the CCWG call later today; that's my understanding.

But I do think we do need to have these thresholds clarified in any event in the final document because otherwise we really don't know what we're doing, and I don't understand, frankly, the resistance to getting this crucial information or crucial implementation detail actually clarified for the record.

So did anyone else have any other points on Recommendation #2?

Brett, I see your hand is up. Is that an old hand or are you wanting to get back into the queue?

Brett Schaefer: Sorry, an old hand.

Robin Gross: Okay, no worries. Okay, so I don't see anything more on Recommendation 2 so let's go on to Recommendation 3 which is redefining ICANN's bylaws as standard bylaws and fundamental bylaws. And Tatiana has graciously agreed to provide us with some initial response for that which is entered into the document.

Tatiana, can you give us an overview of your proposed response on this recommendation please?

Tatiana Tropina: Yes, thanks Robin. Tatiana Tropina is speaking for the record. I hope you all can hear me.

Yes, I think I show that my recommendation, which I got from you, was the simplest one and maybe the most straightforward or at least it looks pretty straightforward to me. So I would say, like, if you open my document, mostly what I did was an overview, and it's on the last bullet point that I suggest to support this recommendation.

Just briefly why it's straightforward because it proposes to empower the whole community by splitting the tide of the bylaws -- the fundamental bylaws -- which should mostly resort to the mission, to commitments and core values would be more difficult to change. They would require consultation between community and ICANN Board, and the first call for approval is raised three fours compared to (unintelligible) which we have now.

So where it's also changed, I mean compared to current processes, is that right now, public consultation for (unintelligible) all changes is not needed, but ICANN Board has been doing this voluntarily as far as I understand.

I think that there are some concerns related to these bylaw changes and process and escalation and so on. But we can't address them into comments of Recommendation 3 because they are mostly related to what Matthew was talking about or to Recommendation 4 -- Community Powers. So all this a very realistic timeline for example, (unintelligible) date or reject changes to standard bylaws after the Board (unintelligible) and so on.

They are related to this recommendation but they are not exactly in Recommendation 3. So Recommendation 3 is very straightforward. And this is why I suggest approval because, to me, it looks like a good balance

between, on the one hand, empowering the community with regard to fundamental bylaws, but at the same time, not making ICANN (unintelligible) too rigid (sic) and just allowing for standard bylaws to be rejected but in some easier ways.

So I suggest we just support it and address our concerns about a realistic timeline in response to other recommendations. I mean this is just my vision on all this.

And by the way, I forgot to mention, I did forward some discussions after the second draft, and this was already proposed in the second draft. And as far as I remember, there was no concerns from non-commercial stakeholder groups. And I think there was some reports of members of NCUC, for example, like James for this department (sic).

So as far as I understand, this hasn't changed much in the third report. But what changed was a different model that has been chosen to empower the community. Just so again, it's just this recommendation is very formal. It's under bylaw fundamental bylaw -- (unintelligible). And I propose to support it. Thanks.

Robin Gross: Thank you very much Tatiana, I appreciate that.

Did anyone have any comments or questions on this recommendation or this proposed response forward? Okay, I don't see any hands, so I will take that to mean there are no comments or questions on this recommendation.

Okay, and so the next one going forward, the recommendation for ensuring the community involvement in ICANN decision-making -- the seven new community powers -- which James has agreed to take a stab at for us.

And I don't think he's on this call unfortunately. James, are you on this call? I don't see him, so we don't have his text in front of us at the moment. Okay, so we will have to come back to this one.

Let's go on to Recommendation #5 -- Changing Aspects of ICANN's Mission, Commitments and Core Values. And David Post has kindly agreed to take a stab at the initial NCSG response on this one.

David, can you give us an overview of this response on this issue please? David, are you on this call? I'm not hearing anything. Oh, I see you're typing but I do not hear you. Does anyone hear David? I don't. Maybe we should do a dial-out?

Man: (Unintelligible).

Robin Gross: I still don't hear anything. Okay, should we maybe dial out to you for this?

Woman: (Unintelligible).

Man: Why don't we move onto Niels until David figures it out?

Robin Gross: Yes, I think that's what we need to do. Okay, so David has requested a dial-out, and we'll go on to the next recommendation until we can get a good audio from David. Sorry about that folks.

Okay, so the next recommendation, number 6 -- reaffirming ICANN's commitment to respect internationally recognized human rights as it carries out its mission -- Niels has kindly taken the initial attempt at a response for us on this one.

Niels, do you want to go over that please?

Niels ten Oever: I would love to Robin, and thanks for this opportunity to explain a bit. And it's great to do this on a remote call so I can smoke and at the same time not damage your right to health. As I said, that's a great thing.

Luckily enough, we came to a consensus in Working Party 4 where we were not completely at at the previous comments. And the consensus now sounds like within its mission and operations, ICANN will respect its mission and recognize human rights, which was where we kind of converged on.

But then to really satisfy the needs and the concerns by the community, we've added onto the text, "This commitment does not in any way create an obligation for ICANN for any entity having a relationship with ICANN to protect or enforce human rights beyond what may be required by applicable law. In particular, it does not create any additional obligation for ICANN to respond to or consider any complaint or request or demand seeking enforcement of human rights by ICANN."

So this should also protect from any IP enforcement via human rights in ICANN. So I think we can be quite happy with that definition and especially with the added transitional bylaw is suggested, which reads that, "The bylaw will be implemented in accordance with the framework of interpretation to be developed as part of Work Stream 2 by the CCWG Accountability or another cross-community working charter for such purpose by one or more supporting organization or advisory committee. This group must be established promptly in order to develop an appropriate framework of interpretation as promptly as possible or no (unintelligible) later than one year after the bylaw is adopted."

And this interim bylaw will exist temporarily in the ICANN bylaws until framework of interpretation for the actual (unintelligible) bylaw is published.

So this will both give us a (unintelligible) to further work on human rights in Work Stream 2 to ensure that the commitment is not just a wording that will stay in the bylaw, but that will actually have a frame of interpretation which will then further grow into a human rights policy so that ICANN can truly live up to its commitment to human rights. And with this transitional bylaw, that space will also be created in Work Stream 2. And in case anything might go wrong with Work Stream 2, there will be a place in another CCWG for this.

I also suggested already some text which is already in the Google Doc which gives a bit more in the detail the things we like, we don't like, and also helps to hold the consensus that we achieved after so many discussions and back-and-forths that happened in Dublin before. If there are any questions to that, I'd be more than happy to answer them. That was it for me.

Robin Gross: thanks very much Niels. We're very much appreciative of that.

Are there any questions or comments on this particular recommendation or proposed response? I see Stephanie's hand is up. Stephanie, please, go ahead.

Stephanie: Sorry, can you hear me? It's Stephanie. Is it working?

Robin Gross: Yes, we hear you.

Stephanie: Perfect. Okay, thanks very much. This is great.

I didn't realize an impressive caveat was added to it at the end there. I'm sorry; I guess I wasn't paying attention.

I'm a little worried when I hear discussion of "subject to applicable law" in that many of the jurisdictions we're operating in -- notably the US -- don't have applicable privacy law or relevant privacy law that gives us the kind of protection we're looking to do some of our WHOIS policy work.

I understand that once we get the human rights group going, you'll be able to frame that. But we've got implementation committees starting after Christmas that I'm a bit worried about.

Can you tell us a bit about this discussion of applicable law? And did anybody figure out what it means for either the folks who are not living in a regime that has applicable law that would protect them, or for the broader question where we're fighting for privacy rights that our constitution is protected for both, you know, that are not classified as individuals, so the whole commercial fight we had over the privacy/proxy services? Just wondering what everybody, you know, what the debate was on that. Thanks.

Robin Gross: Thank you very much Stephanie.

Niels ten Oever: Thank you very much Stephanie for (unintelligible). Shall I respond to this one?

Robin Gross: Please.

Niels ten Oever: I'll do a small introduction and then I'll call upon Tatiana to finish it off. So I'll go at it from a discussion angle, and then Tatiana, hopefully, can hopefully comment on it from a specific lawyer angle.

So the part of applicable law is specifically mentioned within the framework of protect and enforce. So this is part of the policies and operations of ICANN will need to respect human rights. So we've still got the human rights framework within there.

And then of course, then the other part is that ICANN needs to comply with applicable law, but that doesn't restrict ICANN from its obligation then to respect human rights according to universally agreed upon human rights.

So here I will give over to Tatiana who can then fill us in in a bit more detail. And I think Tatiana is on the phone please.

Tatiana Tropina: Thanks Niels. Tatiana Tropina is speaking. So as Niels already told, these close (sic) on applicable law is related only to protection and enforcement of human rights.

Concerning the ICANN respect - ICANN obligation to respect human rights within its mission, ICANN doesn't have any restrictive clause about applicable law, and that was actually our goal -- to make ICANN to commit to respected human rights.

Concerning applicable law -- the question of applicable law -- I was also being confused because this clause was inspected (sic) by Sidley lawyers. And I wrote to Holly Gregory, and she replied that for ICANN US consideration, that includes state and federal law. But in the question of applicable law, it refers to the law of any jurisdiction where ICANN is operating.

So I do agree that there might be concern about privacy laws and other laws, but they're not related to the main commitment of the ICANN to respect

human rights -- let's say. So here, we are absolutely clear, we are absolutely clean -- it's a clean obligation concerning the respect.

That's all from me. I would be happy to answer any further questions.

Robin Gross: Thank you very much Tatiana and Niels. Did anyone else have any questions or points they wanted to raise on the human rights recommendation and response?

I see a hand from Brett. Okay Brett the floor is yours.

Brett Fausett: I just wanted to add that the work on the human rights group was - or this language was a compromise between those who wanted to particularly enumerate what rights we're talking about in terms of freedom of expression and other things that most directly relates to what ICANN does and those who wanted to not have an enumerated list.

And therefore they set it on the respect language and also wanted to make sure that it was strictly within ICANN's operation and mission that the human rights commitment to respect human rights applied.

I think that this was a very difficult compromise for some people to reach and I appreciate what (Nils) and other people did to try and accommodate those concerns that were raised there.

But I think that there was a significant concern at least on my part and others that this would lead to a mission (creep) by ICANN and therefore that's why some of this language is included in the text as it is thanks.

Robin Gross: Thanks very much Brett, appreciate that. Anyone else want to respond on the human rights recommendation issue? Okay I do not see any more hands at the

moment so let's go back to our previous recommendation, recommendation number five.

Changing aspects of ICANN's mission commitments and core values and I believe we've got (David Post) on the audio bridge now. We can go over this. Thank you, please (David).

(David Post): You can hear me now I hope.

Robin Gross: Yes loud and clear.

(David Post): Good thanks. So just quickly the point of sort of recommendation five I think with fundamental purpose and service (unintelligible) is to set forth this the limitations on ICANN's fundamental limitations on ICANN's power if it extends beyond which it can't operate and submit them enforceable in some way to give them enough specificity and teeth so that the - primarily the IRP I think will be able to sort of manage the boundaries and pushback if necessary if there is submission (creep) or they're strained from the mission.

So in part I think this - I think my recommendation that the NCSG working relation should be probably to accept this - these other conditions as (unintelligible) qualification to questions in part this can't be evaluated independent of the IRP itself if that institution doesn't work then the material that's in Annex 5 I think doesn't work because it's the IRP that is going to be enforcing these limitations.

And also because I think we really do have to wait until the lawyers come back with language to see exactly how this is going to be implemented because there's enough ambiguity in the language here to leave open various interpretations that we want to see.

I think we will have to look very carefully now this language is being implemented ultimately in the bylaws. The mission statement I don't think has changed from version two although there is this little issue that (unintelligible) seems to be missing a few words about the DNS and that this is about the stability, security, resiliency et cetera of the DNS.

I think that's just a qualification that the (CCW) if you will agree to because they think it's everybody (unintelligible) if that's what it means. So we have the mission statement I think in good shape and (unintelligible) that ICANN is not to act other than in service of its mission.

The complicated thing in Annex 5 I think are these varied qualifications that have been added to that since the last draft that - I'm looking at my - that ICANN shall not impose regulations on services.

But (unintelligible) is you need to identify the content of such services that ICANN has the ability to negotiate and enter into agreements with contracted parties in service of its mission that - and then the sort of grandfather clauses that specification one and specification four are understood to be within the scope of the mission.

And that the existing registry agreements and make sure accreditation agreements shall be grandfathered in. There is general agreement I think in the CCWG but this is not intended to expand the mission in any way but just to qualify all of that first I think it will just be very important to - make sure it helps the case when the final language is presented.

And I guess one question I would flag coming out of this discussion and I wasn't in on the memo when we were talking about stress test 18 it does seem

to me like that's how you stand the recommendation of that stress test 18 outside the mission because it is explicitly saying that the (unintelligible) has to act or it was a gap consensus independent of what the daily (unintelligible) census among the other members of the community.

And I think that might want to be explicitly acknowledged that that's what it's intended to be as a way of making sure other camels don't get their nose under the tent, you know, because if that's an exception then it could be acknowledged and set forth as one in the hopes that there won't be a lot of others that are sort of poking their way through because I think keeping that mission statement sort of intact, those boundaries intact is sort of critical alone. So that's my beef and now I'll speak to this.

Robin Gross: Thank you, thank you very much (David) appreciate that. Is there anyone on the line whose got questions or comments on this issue, this recommendation and ICANN's mission, core values?

                 I do not see any hands on…

(David Post):   (Robin) may I ask is - who was writing about stress test 18 for this document is that Brett?

Robin Gross: Yes.

(David Post):   If Brett is still on the line I'm just wondering if I'm misreading the stress test the sort of recommendation of stress test 18. Is there a way to make that consistent with the mission statement as its currently written or kind of what's going on with that or just consider that.

Robin Gross: Yes that's a good point to make sure it's consistent. I'm sorry go ahead Brett.

Brett Fausett: I'm sorry yes. (David) could you restate your concern?

(David Post):   Well they - I'm sorry the concern is that if the one party recommendations say
                    that the board is absolutely required to act when the GAC in certain
                    circumstances when the GAC and the GAC alone tells it (unintelligible) that
                    would seem to be inconsistent with the idea that its mission is defined both by
                    the requirement that - concerning the policies, concerning the resiliency et
                    cetera of the domain name system and that it be defined within the consensus
                    bottom up decision making process.

                    So if the GAC comes forward and says you have to do this and if the bylaws
                    actually say yes the board has to do that not just consider it but actually has to
                    do it unless it comes up (unintelligible) majority otherwise.

                    That's not a consensus policy that's a GAC policy. So I would argue that's
                    outside the mission although putting it in the same bylaw document I mean it
                    seems to me to be a concept.

Brett Fausett: Well two responses to that. One is that if it is indeed outside the mission it
                    could be appealed to the IRP as a - as the process that lies outside of ICANN's
                    mission and in violation with the bylaws.

                    The I guess though it could be consistent with the bylaws if it's a GAC (issue)
                    as well. But the other part of it is that that obligation of the board to adopt
                    GAC advised already is in the bylaws.

                    So the - what is being proposed under stress test 18 is an amendment to that
                    existing bylaw. And I can go into more details about how that changes but I

mean I certainly see your point and it perhaps is worth mentioning that that should be clarified in the comments that we make on the third draft.

(David Post): Okay I guess (unintelligible) that the common bylaws just say that there is a requirement to consider and give a reason and decision if you're not - reasonable explanation if you're not going to do what the GAC wants.

But the current recommendation is there just was a consensus in the GAC there's an obligation for the board to act which was I think really is different.

Brett Fausett: Well it says that the advice of the GAC on public policy matters shall be taken dually into account in both the formulation and the adoption of policies. That language remains the same.

It says that if the board determines not to take an action that is not consistent with the GAC advice it shall inform the committee and state the reasons why it decided not to follow that advice. That remains the same.

And the government advisory committee in the ICANN board will then try in good faith and timely and efficient manner to find a mutually acceptable solution when it doesn't do, follow GAC advice.

That remains the same except for we clarify what the level of consensus means or that or we clarify rather that GAC advice must be adopted by consensus and we define what consensus must be.

And we in the threshold for board rejection of GAC advice is raised from a majority under normal process to 2/3 in the new language here. But I don't - I'm trying to look in here and see what you were saying.

Yes it says any government advisory advice approved by GAC consensus may only be rejected by a vote of 2/3 of the board.

(David Post): Right, right there has to - that's an obligation to adopt it and I think and if you - well anyway I do believe you need to some clarifications to whether that looks like it's outside of the mission statement to me by definition.

And if that's what's intended I think that's...

Brett Fausett: No, no that's actually an excellent point. I don't think anybody really was thinking about whether GAC advice would be outside the scope of mission of ICANN.

(David Post): Right well I think one other thing is right it's (unintelligible) to the document that's (unintelligible) but I think this is a place where there might actually be a conflict and (unintelligible).

Brett Fausett: No I think it's an excellent point it's definitely something that should be made in there just to clarify and I think most of the community would probably welcome that clarification.

(David Post): Right okay good thanks.

Robin Gross: Thanks very much that was an extremely helpful exchange on this point. (Stephanie) I see you've got your hand up do you have a comment or question?

(Stephanie Perin): Yes my question - (Stephanie Perin) for the record is - I beg your pardon I'll just click this phone off. My question is have you folks kind of rated these

recommendations as to where you expect the action or the stated play to take place in the comments?

In other words what happens if we get 100 comments on a particular area where you fought hard which ones are the vulnerable ones where we're going to see more things coming in?

Robin Gross: This is (Robin), (Stephanie). I think for sure we're going to see more coming in on recommendation number 11 which is the one which deals with board obligations regarding GAC advice stress test 18.

I think that nobody is really satisfied at the moment. I really don't think we're done with this one and this one is going to require more work and we're going to see a lot of comments on that. So I think that one for sure.

I think recommendations one and two, you know, that deal with establishing the empowered community and the process of enforcing those powers I think there's some unhappiness that remains and we can expect to see some comments on that particularly from I think the ccNSO are not particularly happy with the marginalization of the SO's.

Whether or not we can actually get any changes on that recommendation I don't know but I think that, you know, I heard that the registries and the registrars are also not happy with that now and may go against that recommendation.

So, you know, this is just rumors but I'm hearing there's a lot of morning after second thoughts if you will. People saying oh my gosh what did we just agree to do and so I'm not sure that - I think that's one we're going to see some comments on.

Certainly the human rights issue we're going to see a lot of comments on particularly from the intellectual property constituency and how they want that defined.

So I think we need to comment on that and to cut that off at the pass. Those are sort of the ones that stand out for me as being still somewhat hot button issues and that we can expect to see some comment on.

And I think we will see changes on the stress test (18-1) because I just don't think anyone is particularly happy with that one. I'd be curious to hear what others who have been active in the working group think about that in terms of these recommendations and which ones might we see more comment than others or potential change between now and January 22.

Anyone else have any thoughts on that? Okay, well I don't see any other hands. So any - did anyone else have any other comments on this particular recommendation on number five or should we go ahead?

Okay I don't see any new hands raised so...

(Stephanie Perin):   If I could come back its (Stephanie) again...

Robin Gross: I'm sorry yes please go ahead.

(Stephanie Perin):   ...I'm just going to read what I (unintelligible). Do you see a need to organize the public comment campaign on some of these ones we're vulnerable on? I mean I had the situation both situations where the IPC say well astroturfing who cares about your 20,000 comments.

And then on the other side they will say well that's only one comment. So I would hate to be the only one NCSG comment shoring up for instance the human rights language when we could have got 50 over the Christmas holidays.

I realize the timing really sucks but we could rustle up some more comments if you felt we were vulnerable on certain ones.

Robin Gross: Thanks very much (Stephanie). Yes I do think that would be worth doing and I know (Nils) has already and (Tatiana) have already talked about trying to organize some additional comments and civil society input particularly from outside the typical ICANN insider community on the human rights issue.

So, you know, I do think we do want to do this and there may be other issues as well including the empowerment of government issue. There's a lot of cross community support on that issue as well.

I see (Nils) has his hand raised. (Nils) please go ahead.

Niels ten Oever: Yes so unfortunately this public comment period also coincides with my vacation. So tonight I will be sending off example comments to the (best fit) list and to some other organizations to ask them to submit comments if they want to the accountability process.

Specifically on human rights and we'll give them like a simple option to (unintelligible) commitment to human rights, to more detailed commitments so organizations can find it out for themselves.

If people have very concrete points that they would like me to add to that email and those suggestions I would very much welcome them within two hours of the end of this call.

Robin Gross: Thank you (Nils) that's very specific. Very much appreciate that I know you've been working very hard on this issue right up until the very next moment of your vacation probably even then some. So we're very grateful to you for that.

Okay, did anyone else have any comments on this particular recommendation or issue? Not seeing any hands let's move on. Okay so the next recommendation is recommendation number seven, strengthening ICANN's independent review process.

And (Ed) has graciously agreed to take the initial respond for us. (Ed) are you on this call are you able to walk us through that initial response?

Ed Morris: Yes hi (Robin). Apologies I'm under a tree in a rainstorm in Paris and the (Astro) was flooded. So this is the best - I was in a church for a while but they threw me out. So if there's background noise that's what's going on.

Yes the IRP I like it. Generally there are - a few minor details but it's a vast improvement over what we have now and to give credit where credit is due folks (Robin) is the reason.

This is in work stream one, (Robin) is the reason a lot of the good stuff is in here because she pushed it early on in the process. In fact when was it February, March way back when, when this whole thing started?

Okay, anyway if you know anything about the current - excuse me. The current review process, IRP process in order to even take this case to an arbitration panel generally in Switzerland even to be able to show bad faith on the part of a board member.

It's a high standard you really can't meet it. That's why with this reform. Under the reform we have now all you have to do is show a bylaws violation or violation submission statement.

If you get that you have the right to go forward with an IRP. Anyone can do an IRP although those in the community there's a special community...

Robin Gross: (Ed) are you still on the line?

Ed Morris: Hello, yes I heard a bunch of - okay sorry about that are you still there? Can you hear me?

Robin Gross: I'm - I can still hear you.

Ed Morris: Okay thanks. So there's going to be a special community independent review process where it basically means members of the community who wish to take an IRP against staff or board can do so for free.

One of the - let me try to draw this back a little bit. For our members we seem to be able to access the IRP is affordability. Now one of the things that's going to come out of this is that we propose that the (unintelligible) itself harbors the infrastructure, the cost of the panelist would be parties having to meet their own legal fees.

There will be a special community independent review process which ICANN is going to pay for both sides. Let me talk to you a little bit about the structure. Three member panels appealable to end bank of seven panelists in house rather than throwing this over to some of the international arbitration bodies.

On the document that I've submitted a few more or less minor problems related to the things we might want to recommend to be changed going forward.

There's going to be panelist training and one of my concerns is that the panelist training would be done as board training is now done by ICANN legal.

We don't want ICANN legal to have (unintelligible) to train the panelists in the way they want. So I would suggest that we make sure there is community involvement in the training.

There is going to be - there - its alleged there is going to be - we should have pro bono representation for non-profits basically our members. But I don't see a firm commitment to get that going at the start of the transition.

So I would suggest we may want to say hey when we're going to make you switch over to the new system we have to have some sort of pro bono situation in place so our members can access the system.

The community independent review process it's not clear to me whether that's just for the sole member or whether that's is also for the SO's, for support groups or constituencies.

I'd suggestion we should make the proposal that all of those, all of these groups from the community should have the ability to take an IRP up against staff or board on ICANN's dime.

One of the things I thought of maybe this is where I am right now is it's suggested that English would be the sole language of the IRP and I was having lunch today with a French attorney and we talked a little bit about the difference of the common law or civil law systems.

And she brought up the fact that a lot of the linguistics involved in international arbitration for example is very biased towards a common law English oriented system.

So I would question whether we would want to propose at least another alternative language so we would have two official languages and two working language for IRP's.

One being from the common law system that grabs French from the civil law system and that also would enable us to attract more panelists and more jurists from around the world in a more diverse way.

The CET, the CET is the most odious part of the current - I think (Robin) would agree. I feel it's the most odious part of the current so called accountability system of ICANN.

You basically go on a call with the head of the ICANN legal department. It's not recorded, there are no transcripts. ICANN uses this for discovery for an IRP.

And so I thought we had (unintelligible). I distinctly recall a work stream two sessions with Greg Shatan and I out of the same (unintelligible) but it keeps coming back its like locusts you can't get rid of it.

We're going to review it in work stream two but the one thing I would suggest is we propose bringing into work stream one the CEP at least make it open. At least if the plaintiff party wants it to be open, wants transcripts and wants reporting right now let's do that immediately with further review on work stream two.

The other problem I have with this setup that's been proposed is there is a provision that if a panelist believes that an IRP is either frivolous or abusive that you can ship the costs onto the loser, a lower pay scenario.

My concern is that would have a chilling effect particularly upon our members because our members are not the richest in the world. So I would suggest that we try to build in some sort of summary judgment system early on this proceeding if it is frivolous or if it is considered to be abusive we can get rid of it early on with little cost plus we don't have to shift to a loser pay system.

But if there is going to be a loser pay system I would suggest that we don't just let this three person panel make the decision that a particular IRP is either frivolous or abusive that that automatically would trigger a review to the whole panel before any punitive sanctions are thrown out there. That's Europe.

Robin Gross: Thank you very much (Ed), very much appreciate that. Anyone have any questions on the IRP recommendations that the group has come up with or the proposed response to them?

I do not see any hands in the Adobe Connect room. Okay so it looks like we're heading in the right direction on that. Did somebody want to say something?

Okay I do not hear anyone and see no hands so let's move onto the next recommendation which is fortifying ICANN's reconsideration request process.

Okay and I took a stab at some talking points on this particular recommendation overall I think that this is a very good recommendation and we should strongly support this process.

This is a process where a lot of decisions staff or board decisions can be overturned by asking them to take a second look at it and so we tried to increase the scope of things that could be - you could ask for reconsideration of and enlarge the timeframe in which people can make those reconsideration requests added in a rebuttal opportunity for a requestor before final decisions were made.

One of the changes that we recommended in the report and I think is really important that we highlighted in our comments is the necessity that it's a neutral part, a truly neutral party perhaps the ombudsman to be the first, do the first cut of the reconsideration request reviews to advise the board.

Right now it's ICANN's legal department that makes that first cut and of course their fiduciary duties to the corporation and as a result there is some concern that the board doesn't exactly receive the most neutral and objective analysis of whether or not there is an actual issue that should be reconsidered.

And so trying to move that decision outside of ICANN's legals hands and into perhaps a more neutral party would be one thing that could help.

Another thing that we've requested or made a recommendation of but I think we need more of and so I think we should raise it in our comments is more transparency needed in the process particularly with respect to the board deliberations trying to get a sense for what are they thinking, what are they concerned about and trying to achieve with some of these decisions.

So overall I think we should - I think we should also support the recommendation that it should be the board directly who should be the entire board who should be engaged in this process and not just a subcommittee because then the rest of the board doesn't really know what's happening and just sort of rubberstamps what the subcommittee does.

And so the idea is really to get more board engagement in the process. So some of these understandings, how some of these decisions are taken and whether or not they were appropriate in the first place.

So in general I think that this is an excellent recommendation and we should strongly support it. Did anyone have any comments or questions on this one? It looks like I just lost the Adobe Connect room, I've just been booted out of the Adobe Connect room.

Can people still hear me? I'm just - I think I'm back in. Okay, okay well I got booted out and I'm back in all in one moment there. Are there any questions or comments on this particular recommendation number eight?

I don't see any hands. I think this one is pretty straight forward and not controversial. Okay, so let's go onto the next one recommendation number

nine, incorporation of the affirmation of commitments and Avri has kindly agreed to take our initial response on this recommendation. Avri can you give us an overview please?

Avri Doria: This is Avri hopefully I can be heard. So some of the...

Robin Gross: Yes.

Avri Doria: ...changes made to - yes okay, some of the changes made that I was pointing out one of the biggest changes is that except for the (unintelligible) of the function of the (PPI) so from (unintelligible) affirmation of commitment reviews will not go in as fundamental bylaws but go in as regular bylaws.

Part of that was it was felt I think in our discussion that there needs to be more flexibility. So also in addition to the (unintelligible) the one that can recommend the (unintelligible) of a review.

The group responsible for that review can also make that kind of suggestion. So that was one of the big changes. To deal with some of the accountability issues the section seven that I mentioned earlier about the yearly reporting being goofed up was part of the work that was (unintelligible) was the affirmation of commitment.

They've made the rules more flexible in terms of the number of people. So still a desire to keep it small at 21 but allowing the AC's and SO's to recommend between three and seven people.

And then the (unintelligible) seven people to be members and then the chairs in the various groups will decide what is the up to 21 balance (unintelligible) group for a particular review.

It's no longer that (unintelligible) for a while, no longer decided by the chairs, the CEO or the GAC chair but decided by the group of chairs (unintelligible). Let me see, that was probably it for the big things.

Now in terms of comments I recommend that we support the putting in the recommendation nine that we support putting (unintelligible) of commitment including the whole explanation about once (unintelligible) are approved then (unintelligible) could go to a mutual termination page (unintelligible) and ICANN.

Either one of them can do it now on 120 days' notice. Unilaterally, you know, the (unintelligible) obviously affected whether ICANN would do that or not. But at this point part of the reason it's being put in is that they felt it is a suggestion that we strongly support this.

One of the concerns will be the implementation of the (unintelligible) recommendation and the implementation phase of these new bylaws themselves.

(Unintelligible) have done a very good of making recommendations over the years, the board has even approved many of them except for perhaps the Whois one and some of the other conditions.

But the staff has had more of a problem to put it kindly getting these things implemented. So I have a great concern about the implementation and I guess one of those things that's worth being mentioned.

I think that a comment should also put a special emphasis on the recommendation that's been made on access to internal documentation that

was defined in paragraph 60 through 67 about information and documents that are not normally (unintelligible) be made available to the members of the community.

And if there is good reason for (unintelligible) to keep them confidential then they would be (unintelligible) on that but at least the team would have access to it and recourse to the ombudsman and board if they weren't able to get that. Those are important.

A small concern I have which is more of bookkeeping is that the review on the special IFR, the special IANA review function does not include the mention of the separation (unintelligible).

It mentioned that there would be (unintelligible) (FIS) or IFR for that matter could decide on a separation process and it would be one but it (unintelligible) discuss that at all.

So I think that back to the mission it's being talked about certainly in CWG where I'm the NCSG representative, it's certainly on the drawing board, you know, physically looking at draft bylaws but that it's important that it be included in this one as well.

So that's what I've written up as first point (unintelligible).

Robin Gross: Great thank you very much for that Avri that's great. Any comments or questions on this recommendation number nine? I do not see any hands or comments in the Adobe Chat.

Okay so let's go on to the next recommendation number ten, enhancing the accountability of supporting organizations and advisory committees. And

(Farsi) has graciously agreed to take an initial stab at the response on this recommendation. (Farsi) can you give us an overview please?

(Farsi Dauby):   Hi yes, (Robin). (Farsi Dauby) for the record. So recommendation number ten is about the accountability of SO and AC. This recommendation because there has been this discussion that if the board should be accountable as we are, you know, if we are empowering the community then the community should also be accountable to outsiders and also to the stakeholder groups.

So they came up as working party number three they came up with this recommendation that the Section 4 of Article 4 of the bylaws should be amended.

So this article is about the periodic review of the structure of the SO's and AC's. And basically what they suggested in the proposal is that the bylaws should also include in the review the accountability mechanism of the SO and AC.

The problem with this suggestion is that if we look at the - if we look at Article 4, Section 4 we will notice that the entities that can actually initiate this is the board.

So the board can initiate the periodic review and also they can decide on the changes in the governance mechanism of the SO's and AC's. And if we - so this section is problematic on its own there is no doubt.

And if we have also the accountability mechanism and of the review of the accountability mechanisms or features (unintelligible) then so that the board will initiate it and it's kind of like they can unilateral change our governance.

The other thing that I have noticed is that in the same section it says that GAC should come up with its own review process. This should be official of being discussed like beforehand and I'm not sure why they say that the GAC should come up with its own process and some other people that have (been invoked) earlier but must be able to tell us.

But what we send and if we accept this then the GAC can just come up with its own review and ICANN is (unintelligible) accountable and is not subject to this review.

So for these reasons I believe that we should not accept this suggestion.

Robin Gross: Great we appreciate that very much and those were some really good points that you flushed out from that recommendation. I share your concern and do wonder where a lot of this came from because it wasn't in - it really didn't come from the working groups or the working parties one or two which were doing most of the work on these recommendations.

And so, you know, part of it just kind of seems like a staff board attack on to sort of claw back at some of the power that the community is getting. I'm hearing a beeping. Am I still on the call?

Maryam Bakoshi: Yes his (Robin) this is Maryam it's (unintelligible).

Robin Gross: Can we lose that beeping? There we go. Okay so I see in the chat (Stephanie Perin) asked who is holding the pen. I think it's the technically the co-chairs but really I don't know because they've brought in some professional writers, staff is clearly doing some of this drafting or at least sending it to the co-chairs and they are approving it.

It's a bit disconcerting frankly not - the sort of black box that the actual drafting of this has taken place. We saw an earlier draft and, you know, I sent in a comment saying this is something needed to be changed because it wasn't in our previous drafts and it's changing a very significant thing.

And frankly the comment was just ignored and so with respect to the definition of work stream one. And the draft came out with that same erroneous language and, you know, you just don't know who do you go to to complain that this doesn't actually represent the members of this group, certain aspects of this report.

So it's a bit frustrating and may be a subject of discussion in today's CCWG call later. Okay so did anyone else have any questions or comments for (Farsi) on this recommendation?

I don't see any hands raised. Okay so I guess we can go onto the next question or the next recommendation number 11 which is the word obligations regarding GAC advice the infamous stress test 18 issue.

And Brett has very graciously agreed to take an initial stab at a response on this question. Brett please can you give us an overview?

Brett Fausett: Sure, I'm sure most people are familiar with stress test 18. It's been the subject of quite a bit of discussion over the past about a year and a half or so. The basic premise is that under the current bylaws the board has to adopt GAC advice if by - unless a majority of the board rejects it.

And I'll read here and take that advice dually into account and even if it is not adopted by the board it has to enter into a good faith effort with the GAC to try and find a mutually acceptable solution.

This is considered special advice or a special advisory power on the part of the GAC. The problem that was or the concern that was raised in the discussions during the transition was that this could potentially give rise to excessive influence by the GAC where the GAC could be providing advice to the board which would compel it to either reject it or enter into formal negotiations to find a mutually acceptable solution.

If - even if it were supported by a bare majority or a less than unanimous support in the GAC and it would do so by changing its operating procedures which could be done by a majority vote of the GAC.

Currently the GAC operates on the principle consensus but the concern was that that could be changed and give rise to situations where the board could be forced to negotiate between different opinions among governments in the GAC or could be forced to adopt or enter negotiations over potential changes to ICANN that would be opposed by a large portion of the community.

So in the second draft a proposal was made to modify that bylaw which would say that the board would only have to give due consideration or would only have to consider GAC advice that was adopted by consensus.

In that draft report there was no definition of consensus provided in the bylaw change. This was subject to a number of comments during - to the second draft and this was also strongly opposed by some other GAC members to define what consensus is.

Some GAC members thought that this was an inappropriate intrusion into GAC self-governance and by defining consensus you are imposing rules on the GAC that the GAC itself did not approve.

This led to the creation after Dublin of a stress test 18 group and in attempt to try and find a mutually acceptable solution here the compromise - there was a proposal made by the Brazilians which I found to be very objectionable.

It would have essentially amended that bylaw to allow the GAC to send non-consensus advice to the board. It would have raised the threshold for the board to reject GAC advice from a majority to a 2/3 majority.

It would have changed the standard from advice of the government of the GAC on public policy matters should be taken dually or shall be dually taken into account into one where the board must give the GAC advice due deference which is a different legal standard at least in the U.S.

And fourth it would have required the board to find a mutually acceptable solution even for non-consensus advice. And it wouldn't have been to try in good faith to find one but it would have been required to find a mutually acceptable solution again a higher standard.

That proposal was very strongly opposed by a number of people in the community. Denmark offered a compromised text which would have kept the (two) vote for rejecting GAC advice.

And the requirement for the board to give special treatment to non-consensus GAC advice. That it's hard to communicate the sense of momentum that was going behind the Denmark proposal even though there was again opposition by some parts of the community.

It appeared to be on the verge of being adopted. The chairs had essentially signaled that this was, you know, they took sort of a vote in the room and deemed that was the consensus position of the group.

And shortly after that the ICANN board voiced concerns about the Denmark proposal or at least the provisions within it and NTIA also weighed in saying that the - that it would be unacceptable for the GAC to - for their - for the board to give special consideration to non-consensus GAC advice.

After those two comments were made the stress test 18 group met again and they arrived at the compromised text which is on page 2 of the comments on the recommendation 11 in here which I won't read to you in full.

There is also a second paragraph to that which I think has an objectionable example in it which says for example disallowing a single country to continue in the objection - well it's a clarification which says that the GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered.

And it gives an example for example disallowing a single country to continue in objection on the same issue if no other countries would join in an objection. And then when transmitting GAC advice to the board the GAC has an obligation to confirm the lack of formal objection.

So what it is is it essentially allows a (weasel) option for the GAC to sort of redefine an operating principle in a way that has a sort of get out of jail option when there is actually a lack of consensus by defining the formal objection is not a formal objection if a sufficient number of votes were taken which is obviously a big problem.

Over the past 20 minutes or so I've tried to make some specific recommendations at the end of the document. One would try and address what (David) raised earlier which is that what happens if GAC advice goes against the mission and scope of ICANN.

A second is trying to clarify that GAC advice that lacks consensus isn't really considered GAC advice it's just a view of the government committee and shouldn't trigger the - even a board vote or a board process of negotiation unless the board chooses to do that.

Instead it would just be considered a view to be taken dually into account in the formulation of policies. And I think we also need to clarify that the - our concern about the second paragraph that was added to the text which I think is concerning.

So hopefully that's been clear and if you have any questions I'm happy to try and address them.

Robin Gross: Thank you very much Brett that is very clear and this is a really good way forward on this recommendation which as we've discussed is not quite finished yet.

I think there is just, you know, where there's still some last minute negotiations and amendments to be made on it. So we should keep pushing for sure.

Did anyone else have any comments, any questions on this recommendation dealing with the infamous stress test 18? I don't see any hands. Okay so I guess we have a path forward on that.

The last recommendation, recommendation number 12 committing to further accountability work in work stream number two. (Erin) has agreed to take an initial stab at that for us. (Erin) are you on the call today?

Okay I don't see or hear him but we do have some initial thoughts in the Google Doc on this. And one is that we need more transparency issues to be addressed in work stream two than what we've currently laid out including more transparency over board deliberations.

We've got transparency in work stream two but we've talked about it mostly with respect to improving the DIDP the documentation information or document inspection information policy.

And that's I think extremely limited for a transparency issue also looking at the whistle blower policy improving that. Again I think these are two very important issues but they certainly aren't the only sorts of transparency reforms needed at ICANN.

So I think we need to make sure that we clarify that something that was said much earlier and was in our earlier recommendations the sort of culture of transparency at ICANN as part of work stream two issues.

So I think that's one of the issues. Another point that's been made is the need to maintain independent legal counsel as we go forward on work stream two. There is a lot of pressures to ask ICANN's legal department or Jones Days their outside counsel.

Now that's the law firm that represents ICANN externally - to do a lot of the drafting, a lot of the legal drafting on some of these issues, bylaws, changes and whatnot.

And unfortunately the draft that come back from ICANN's lawyers tend to reflect ICANN's wishes much more than the wishes of the working group. So I think it's extremely important that we maintain our own independent legal counsel as going forward on work stream two.

I don't know if anyone else has any other issues they want to raise that we should focus on in work stream two and get in our comments or any issues that are currently listed in work stream two that they want to highlight and emphasize or maybe they shouldn't be there, don't belong.

Any comments on this one? Okay I don't see any hands. And that is our last recommendation and the last issue on the agenda. Is there any other business, was there anything else anyone wanted to bring up?

I think as we've said before we've got a call in about an hour a CCWG call and I think one of the things on the agenda is the timeline. So maybe we'll have an updated timeline after that call, you know, I wouldn't count on it but maybe and I'll keep you guys informed.

Let's just continue to go forward and in terms of collaboratively working on these Google Documents to come up with a recommendation or excuse me our response to the recommendations.

(Matt) asked what's the deadline for inputs to the Google Doc? Good question, so if our response has to be filed by December 21, boy maybe a week before that which would be I don't know like what tomorrow?

No, say the 15th can we say December 15 how does that work for folks? Okay so let's say that tentatively for now and see what others have to say on that.

(Milton) has kindly agreed to hold the overall drafting pen on the response the NCSG response. So, you know, making sure we get it all filed is in his hands. So we've - okay we've got (Farsi) with her hand up. (Farsi) did you want to make a comment on this?

(Farsi Dauby): Yes I just want to make a short comment because I think - why can't I hear myself. So because I think it's very important to see especially for the new members to see how effective our work is.

We have had kind of like a battle for getting the transparency rights which is part of the statutory rights and are the other model which we wouldn't have had in this model.

And thanks to (Ed) and Brett and other people that we worked with and we asked for the transparency or the rights transparency to be inserted in bylaws and by various things.

So we kind of have a similar right to that inspection rights and I think this shows how effective we can be and this can also show to our new members that if they get engaged they can actually make a change.

Robin Gross: Thank you very much (Farsi) very much appreciate that. Another thought is maybe we should have another phone call to go over sort of a final draft after we continue to rework the one we've got here and perhaps incorporating any updates from today's CCWG call in terms of changes into the timeline or the plan forward.

So why don't we do that why don't we schedule another call for maybe the middle of next week and try to have a final response that we can then make sure it's filed on time on December 21.

So folks when they get their inputs into the Google Document why don't you do that for the next week between now and say the 15th. How does that sound tentatively does that work for folks?

Let me know, if not this is, you know, very flexible I'm just trying to propose a way forward. Okay so let's head in that direction and I think we've certainly exhausted our time for today.

And I want to thank you guys all for staying on the call for so long.

Ed Morris: (Robin) I'm sorry.

Robin Gross: Yes.

Ed Morris: It's (Ed) I got disconnected for about 10 minutes. Can I just - I don't - something tell me (unintelligible) we haven't brought it up. I just want to raise the issue that I think we really need to press to get independent legal help for work stream two.

I'm told by the chairs it's not guaranteed. We have so many important issues to us and our members that without counsel having to deal with Jones Days in the next year without being able to go back to (Rose Marie) in particular would be very difficult.

So I think that's an issue we need to stress in our response.

Robin Gross: Yes I think that's right and, you know, that's been listed in the doc, the Google Doc for work stream two already and so I think, you know, we're all in very strong agreement on that point and thanks for reiterating that.

Okay so did anyone else have anything to add and thank you all especially for the drafters and of the initial responses. This has been really great to have, you know, 12 really engaged participants from the NCSG in this working group contributing to our overall response, very much appreciate it.

And I guess if there are no other questions or comments we can call it a day for now expect that we'll probably all see each other in a few minutes on the other call. Yes, yes.

Brett Fausett: I just want to in case anybody is interested in stress test 18 I've spent a bit of time during this call trying to specifically make recommendations toward the end of that document.

So even if you've reviewed it previously or during the call you might want to take another look at it as I tried to address some of the concerns that were raised during the call and that occurred to me also during our discussion. Thanks.

Robin Gross: Thank you very much Brett, appreciate that. Okay any other - anything else to add to this? Wonderful thank you all very much appreciate it, meeting is adjourned.

Woman 1:   Thank you very much all for attending the meeting. (Lans) you may now disconnect thank you very much.

END