

ICANN

Moderator: Maryam Bakoshi
August 5, 2015
3:00 pm CT

Coordinator: The recordings have started.

Terri Agnew: Thank you, (Ollie). Good morning, good afternoon and good evening. This is the Update on ICANN Accountability and Public Comments taking place on the 5th of August, 2015.

On the call today we have Rafik Dammak, Patrick Lanahan, Robin Gross, Avri Doria, Sam LanFranco, apologies, Sam, and Amr Elsadr. (Romina Cabrera) has requested a dial-up but we're still working on that for her. I show no apologies listed for today's conference.

From staff we have myself, Terri Agnew. I would like to remind all participants to please state your name before speaking for transcription purposes. Thank you very much and back over to you, Rafik.

Rafik Dammak: Thanks, Terri and thanks for everyone for attending the call. So today's kind of an NCSG webinar to talk about the draft proposal from the Accountability cross community working group. It's kind of opportunity for us to kick off the process to review the report and prepare the comment.

For today webinar the speaker will be Robin who is our representative from NCSG to the cross community working group. And you can see the agenda in the Adobe Connect so we - she will try to highlight what's important in the report, what's good for us, what are the main concerns. And from there we will start to see how we can - how we should proceed.

And it's really about open discussion and Q&A session. So over to you, Robin and thanks.

Robin Gross: Hi. This is Robin Gross. Can you hear me okay?

Rafik Dammak: Yes, Robin, we can hear you well.

Robin Gross: Okay great. Great. So first I wanted to talk a little bit about what's in the Accountability report so if you could upload those slides. And I was going to go through a few of those. I'd very much appreciate that. As you all may know we've been working on this effort - the cross community working group, I should say, has been working on this effort since the end of last year. And we've had meetings every week and really every couple of days and sometimes several a day with all the various subgroups so we've done an awful lot of work.

And we had a first report that came out earlier this summer. And then we got a - just before the Buenos Aires meeting - and then we got a bunch of feedback at the Buenos Aires meeting and during the public comment period and have come up with a revised report making some significant adjustments to the recommendations that we had before.

So I just wanted to go through what they are and these slides here are part of the slides that the CCWG has put out generally and they're very comprehensive and very good so I was just going to pick out a few of these to go through and do some explaining. And if anyone has any questions please feel free to just, you know, raise your hand or signal me however audio-wise however works for you and so we can have a discussion.

There was a number of us that participated in this working group from the NCSG. We also had Avri Doria and James Gannon and Ed Morris and Matt Shears and they were all very active and extremely helpful in crafting a lot of the solutions that ultimately came out of the report. So if any of them are on this call I certainly hope they will weigh in with their experiences and perspective as well. I see Avri is. Excellent.

Okay so let me just go through a couple of these slides in particular. Let's see, here we go. Does that - that's not turning it to the next slide. That's the pointer. Okay so how do we go to the Slide Number 3? Okay there we go, Number 3. Here we go.

So this sort of sets out the overview of what we've done. And basically we've come up with proposals that will improve ICANN's accountability in general to all the stakeholders that it serves. And so we have to do this before there can be an IANA transition. The transition cannot occur until some of these accountability reforms are committed to or in place and well underway.

So what we did is we divided the issues up - the scope of the issues up into Work Stream 1 and Work Stream 2 and so Work Stream 1 is the more immediate concerns that we were focusing on mechanisms that must be done that have to be in place or committed to before the IANA transition can occur.

And then Work Stream 2 are those more broad ranging general accountability issues that don't necessarily have to be done before there can be a transition but at least if we have Work Stream 1 in place we can ensure that we can get the reforms that we need in Work Stream 2 done as well.

So we've thus far sort of broken it up into these two work streams. And, again, right now the focus is on Work Stream 1 and what we're trying to get accomplished in Work Stream 1 so that there can be a timely IANA transition.

Okay, let me see - go down to Slide Number 6. Okay Slide Number 6. Okay so in a nutshell this slide sort of shows what the building blocks, if you will, for the accountability mechanisms and the different components that need to be in place.

So in the top left you see the empowered community. And this is sort of the idea of the various SOs and ACs that participate in the - in ICANN as its constituent parts and trying to empower the people in the community to have some say over some of the decisions that are made by the ICANN Board of Directors, things like reviewing and rejecting the budget, strategic plans, bylaws, removals to - being able to recall board members that are appointed those sorts of powers.

So then we also worked on some principle - and fundamental bylaws to go into ICANN's new bylaws that are supposed to guarantee the core mission and commitment to the values of ICANN. And then in the bottom left we've got independent appeals mechanism process because this is really sort of the judiciary process by which all of these other mechanisms will be played out that's the way that we will achieve the different - a lot of the different powers that we're trying to create in this process.

Okay so let's go to Slide 7. So some of the - basically the principles that ICANN has - will be baking into its bylaws will deal with its mission and its commitment and its core values and describing the scope of ICANN's activities and the values that guide ICANN's decisions and actions and also requiring that some of the Affirmation of Commitments review processes are baked into the bylaws as well.

Okay let's go to Slide 8. Okay. So some of the principles that are being proposed to be baked as fundamental bylaws into the new ICANN have to do with the mission and the core values and the framework for the independent review process, the manner by which the fundamental bylaws can be amended.

This community mechanism is the sole member and I'll come back to that in a few minutes but that will be baked in as a fundamental bylaws.

((Spanish Spoken))

Robin Gross: Okay I just heard some Spanish language speaker on the line there. Okay, anyways let me continue. The new community powers, with regarding the budget and the strategic plan, operating plan, removal and recall of the directors, the IANA function reviews, the post-transition IANA governance structures, those all get baked into the ICANN bylaws as fundamental bylaws which are much, much more difficult to change than just...

((Spanish Spoken))

Woman: ...I know about the process. Oh yes, yes, yes.

Robin Gross: I hear somebody speaking in Spanish. Could you maybe hold off on that? We've got a conference call going on here on the Accountability reforms that are being proposed to ICANN. I'm not sure if you're on the right call or what not but we're in the middle of a presentation here.

Okay so let me go to the next slide, Number 9, which is the appeals mechanisms dealing with the independent review process. So this is, again, sort of the new judiciary system, if you will, that's being set up at ICANN. And this will have a standing panel of at least seven members from which each particular issue, the composition of the individual panels, the review panels on each individual issue, will be three panelists to make decisions.

And this will serve as a dispute resolution function for the community and will also try to resolve conflicting opinions amongst other judiciaries on the - that deal with IRP issues. Okay so then let me go to the next slide, Number 10 which deals with the request for reconsideration. And we had a number of significant reforms to the request for reconsideration process.

It's a process whereby any person or entity that's materially affected by an action or inaction of ICANN board or staff may request review for reconsideration of that action by the board. So we've done a number of key reforms here that we've proposed including expanding the scope of permissible requests, extending the time for filing requests from 15 to 30 days, the grounds for summarily dismissing requests have been narrowed.

We've required the ICANN Board of Directors to make all determinations, not just a subcommittee as it was before in some issues. We've come up with the proposal to task ICANN's ombudsman who is making the initial substantive evaluation.

Currently it's the ICANN's lawyers who make this initial substantive evaluation and so their fiduciary obligation is to protect the corporation and so there was some concern that there's a conflict there and we need to have that process - that step, that initial evaluation done to guide the board by a more neutral party. And so the ombudsman was proposed to do that job instead of ICANN's legal department. And that's a significant request or significant reform.

We've also created an opportunity for requestors to rebut the board governance committee's recommendation before the entire board makes its decision and provided more transparency requirements in terms of what gets posted and what's required to be provided for the reconsideration request. And also cost, that's not on - excuse me, that's IRP where we've lowered the cost significantly and that we can come back to that.

Okay so let's go to Slide 11. The community mechanism as the sole member model. So there was a number of powers that it was felt like the ICANN community needed to come up with to have in order to be able to hold the board in check and keep the organization accountable to the stakeholders. And so we really grappled with how to create these powers, if you will. And the - you may recall the initial recommendation a few months ago was to have a membership model where the by different ACs and SOs would be different members within ICANN, the larger organization.

And there was a lot of concern about derivative lawsuits amongst various constituent parts and about the need to become an unincorporated association, the different constituent parts. So there was a lot of concern about some of the aspects of that proposal that weren't sitting well with a lot of people. And so our lawyers thought about it pretty hard and came back with a suggestion of well, what if we did a sole member model whereby there's only one member

and that one member of the community at large, the various AC SO constituent parts but all make up a single member.

So that way we can take care of the some of the concerns about derivative lawsuits because, you know, you can't have the member suing itself so to speak. So we could remove a lot of those concerns but still have the benefit of the different powers that we were trying to create.

And so this is what's come out a significant change since the last proposal is now this new model of the sole member model. And let me go down to Slide Number 12 where that's enumerated more specifically what those powers are that the community would be able to do. And we've talked about this a little bit already, reconsidering and rejecting the budget, the operating plan, the strategic plan, it's important to realize that these are powers that would come into play after the board has already approved these plans but before they come into effect so then the community has an opportunity to reject them before that happens.

Another power is the reconsideration rejection rights with respect to changing ICANN's standard bylaws, approving changes to the fundamental bylaws, removing individual ICANN board members and recalling all of the ICANN board so these are the new sort of powers that we wanted to create through this sole member mechanism.

Okay let me go to Slide 13. So this shows how this mechanism would carry out the exercising of the powers. Basically there would be some action that the board would take that would cause significant concern amongst the community whereby a petition would be lodged of at least one SO or AC and that starts down the formal process of discussion and decision making.

So then we have basically a 15-day discussion process where we're supposed to have a community-wide conversation, all the SOs and all the ACs together discussing what the issue is. And then we have a decision making process where the SOs and the ACs have different voting rights in the community and cast votes on whether or not to use a particular power.

And then once there's an outcome of that decision the ICANN Board of Directors must act in accordance with the community's decision. Okay so that's, in a nutshell, how that sole member mechanism is worked out. Let me go to Slide Number 16 here.

Okay, yeah, Slide 16, which is the influence in the community mechanism, also known as the voting weights. So this is the different weights, relative weights, if you will, between the different SOs and ACs in terms of how much voting power do they have. And the way it's come out right now here in this report is that the recommendation would be that the ASO and the GNSO and the ccNSO and the GAC and the ALAC would all five votes and the SSAC and the RSAC would have two votes each in this mechanism.

There was a couple other minority reports, in fact this particular voting weight that we see in front of us it really isn't a consensus voting weight proposal because there were several others who had different ideas as well. So there was a proposal that I put out and a number of others as well that had more of a modeling the relative weights with the board composition between the different SOs and ACs.

So basically the ccNSO and the GNSO and the ACs would have - excuse me, the ASO would have four votes and the At Large would have two votes and the GAC and the RSAC and the SSAC would have advisory powers like they do now, they don't have voting weights on the ICANN Board of Directors but

they do have significant advisory power and so the idea with that proposal is to model the power in the community mechanism exactly - or to the extent that it can be on the way the existing ICANN board is currently modeled so as to not cause a favoring - a raising of power or an empowering of certain members or certain AC SOs in the community at the expense of other SOs and ACs that's the proposal - the rationale behind that proposal.

There was another proposal that said that all the SOs and ACs should have five votes across the board of - period and that there shouldn't be any distinction amongst the SOs and the ACs. And so these are other - these are two different proposals that we've talked about and are listed in the report as the minority reports, although I'm not really sure that's entirely fair since the report - the recommendation we have here is not truly a consensus recommendation. So there's that issue. And let me see what - let me go down now to Slide 18.

Amr Elsadr: Robin, this is Amr, can I interrupt you for just one second?

Robin Gross: Oh yes, please. Go ahead.

Amr Elsadr: Thanks. But I do have a few questions but I just wanted to ask one right now before you move on to your next point.

Robin Gross: Okay. Absolutely.

Amr Elsadr: Yeah, just to help us understand the significance of the voting weights here and why they may be problematic could you also explain what voting thresholds would be required for the sole member mechanism to be enacted? Because that would maybe explain the context of why we would want one or

another sort of distribution of voting weights amongst the different SOs and ACs. Thanks.

Robin Gross: Well it will be dependent - the different thresholds will be dependent upon the different powers. So it's not like there - like a uniform threshold across the board for actually using some of the powers. It will be dependent upon what is the power and, you know, kind of trying to tailor the different power to - the different thresholds to the different powers so to speak.

So it will depends on the particular one and there's a lot of details about what some of those thresholds are. And in these slides - and I skipped over them, I apologize, but they are - there's a lot of them that are in here already. Let me see if I can go back.

So for example, the - recalling the entire board would require a 75% of all the votes available within the community mechanism to be in favor of that power - for that power to be effective. Let me give you another example.

The changing the standard bylaws to succeed a vote would require a 2/3 level of support to change the standard bylaws that would be the threshold there. Let me see, the - so that's, you know, just sort of an overview about how these thresholds are being set. But I think they're really important to look at individually and consider commenting on because one thing we've heard a number of times and frankly it's because it's true is the devil is in the details of this report. And so it is all the different ways in which we will implement it that it will be - you know, that it actually will matter.

One of the - let me see, let me go to Slide 18 here. Okay so this is - this here is talking about sort of where we are now and what the next steps of this are and so we're out for a public comment period right now for 40 days which started

two days ago. So I would like to encourage everyone to take a look at the report and take a look at a lot of the comments and - that came in previously on the list as well as the NCSG list. We've had a lot of interesting discussion on that. And so take a look at that and please comment both individually as well as contribute your thoughts and maybe your drafting or editing skills to an NCSG comment on that.

And then we'll have - at the end of the Dublin meeting in October there will be a vote on this on the Council and on the different ACs and SOs will have to vote whether or not they want to approve this. And assuming they do, and, you know, that is kind of a big assumption, we would go into the Work Stream 1 implementation and beginning to develop Work Stream 2.

And some of the items that have already been set out to be talked about in Work Stream 2 are instituting a culture of transparency within ICANN, doing more to ensure the SOs and ACs themselves are accountable, considering the issue of national jurisdiction, define the modalities of how human rights can be added into the bylaws.

One of the really interesting things that have come out of the report is that - the report recommends that ICANN will add a commitment to human rights into its bylaws. And this was - this is actually very significant because ICANN has never had any such sort of explicit commitment in its bylaws to a human rights value.

So this is a very important issue but it's also going to be a issue where the devil is in the details. So - which actually leads me to the next part of our agenda which is what's good in the report. And I just mentioned the opportunity to have commitment to human rights in ICANN's bylaws is extremely important and it's a real opportunity. And it is - I don't think, you

know, we ever would have been able to get there if this wasn't this sort of pressure just pushed to get this transition completed in a timely way.

So that worked in our favor in many respects on getting human rights mentioned in a recommendation that human rights commitments will be made in the bylaws.

What also is good is I think the IRP and the reconsideration request process have been significantly improved. With respect to the IRP a lot of the cost issues have been taken off, the standing issues, the scope issues, the - there've been made significant improvements. To those two processes - and these are really the two most important processes, the ones that will be called on a day to day basis in order to rectify the accountability concerns with ICANN. It really isn't the community mechanism power.

That's more of an escalation path, an extreme measure powers whereas the IRP and the reconsideration requests are really going to be the bread and butter and meat and potatoes so to speak of making sure that ICANN is kept accountable. And I think that there's a lot of significant improvements in those.

So what am I concerned about with this - with the new recommendations in the report? Well one of my concerns is also one of the things I'm excited about which is the inclusion of human rights in the bylaws. There's a lot of different ways that this proposal could go. And a lot of different objectives and different intentions and, you know, the governments and some very restrictive governments are jumping on board real fast to try to get a handle on this and to manage this.

And I understand that the ICANN board and the ICANN staff are up in arms over the idea that there could be some human rights obligations. And so, you know, there's a lot of mangling of this concept that will be attempted and at various opportunities in the public comment process, as things go to draft in the implementation process, as they get drafted into bylaws, I mean, at every opportunity this is going to be an issue where things could go wrong - very, very wrong.

And we have to be vigilant on it and have a number of significantly dedicated people working consistently on this issue and in these different working groups, particularly the one that's been set up on human rights, this new subgroup that we just set up in the last few days to deal with this issue. So that's something that's both exciting to me but also of concern. And I think we need to monitor very carefully and help shape significantly.

Another thing that concerns me is the voting weights issue. And I talked a little bit about that already but I think that I'm concerned that this - the proposal the way it came out empowers ACs, advisory committees, over the supporting organizations, and elevates their power relative to the SOs. And so I'm concerned that it doesn't track with the existing board model - the board composition. And as a result changes the relative balance of power in a way that frankly disenfranchises the GNSO. And so that's a concern for me.

I'm also somewhat concerned about possible misuse of the community mechanisms that we've set up particularly with respect to the budget plan, the strategic operating plan. I'm a little bit worried that it may be an issue every year that someone is going to threaten to veto the budget unless they get XY and Z. And that's going to create a pressure that we hadn't intended.

And so, you know, again this is all very speculative and it's not a grave concern but it's something I think I want to - I think we need to be on the lookout for. And another issue that I brought up earlier already which was keeping the legal department out of the reconsideration request analysis and making sure that it's - there's clear separation there between the ombudsman and his guidance of the board and what ICANN legal may wish for the ICANN board to do on a certain issue.

So that was just me just really going over everything. And then I wanted to open it up for questions and for discussion and for other perspectives. And so let me see if we can get a queue going here. I haven't had a - I haven't been able to keep an eye on the chat so I hope I haven't missed anything in the chat box about - let's see, I see Amr's got his hand up. Okay and okay great. We've got a queue going.

Amr, you have the floor.

Amr Elsadr: Thanks, Robin. This is Amr. Actually if Avri wants to go first or she has more to add I wouldn't mind waiting seeing that she was a participant (unintelligible) as well.

Avri Doria: Okay we've got an echo at the moment. All I was going to do was - and put in a - just a point of clarification on the two different powers dealing with bylaws changes. And in the one sense (unintelligible) a power with regular bylaws is that the community power would be by this grouping with the votes we're talking about that it would be able to overrule a bylaw change.

The difference with a fundamental bylaw is that the community needs to also approve it. And so that's where the higher threshold on changing is whereas a regular bylaw the board can still change it as it does now it's just that the

community is not happy about that change, they can take action unlike with a fundamental where we both have to agree. Thanks. That was the only thing I wanted to point out because I felt that hat had gotten sort of quickly passed by when Robin was talking. Thanks.

Robin Gross: Thanks. Yeah, that's a very important point - distinction in the fundamental bylaws and the standard bylaws. James, it looks like you're next in the queue.

James Gannon: Hey, thanks Robin. Thanks for doing this. It's been very, very good. I just want to draw particularly your own attention to I think it's an important comment as well -I have my own kind of ideas around this question which was what are the contentious aspects of the proposal, like the more controversial issues that may flare up as we kind of come out of the public comment and as we go into the final drafting and we're trying to set things in stone what do you believe are the issues that the group needs to start thinking about now and what we need to start thinking about in the public comment that we put in about the more controversial aspects that we need to take a position on.

And my own opinion would be things around things like the voting weights and the recent discussions around the incorporation of the Whois review out of the Affirmation of Commitments and also possibly the - we will obviously have a strong stand from the human rights issue about how we're going to frame that and what are our direct responses to those should be.

Robin Gross: I'm sorry, was that a question for...

James Gannon: I suppose - my question specifically would be in addition to those kind of the bigger issues is there anything else that you feel the NCSG and the NCUC

should be aware or that may be controversial that, you know, might be hidden away in the text that we need to take a stance on.

Robin Gross: Yes, there is one other thing that I meant to mention - meant to mention before and just overlooked in my notes here is the issue of how the board handles the GAC advice, advice from the Government Advisory Committee and the extent to which it is required to give due deference and what does that mean and what is the acceptable level of consensus that must be achieved within the GAC before the board can be required to provide this heightened level of deference to advice.

And this was an issue that was very contentious all throughout the process and frankly continues to remain very contentious because it was the last day of our meetings and we had a number of GAC representatives speaking one after another saying, you know, they were threatening to - that the GAC would not approve this proposal unless the other SOs and ACs sort of backed off on what they saw as being their turf.

And so this remains a very sensitive issue and the report tries to negotiate through that very thorny issue. But there was a lot of conciliation at the end just because I think people are trying to get this done and to get to a speedy transition and so maybe more conciliation than I'm personally comfortable with on this issue. But I think it might be something that we would want to pay some attention to in our public comments as well.

I know Milton has raised the issue on the NCSG list as well. So I just - I thought that was another issue that we hadn't talked about yet that will remain as a very sensitive and controversial issue to - going forward and we may want to put some cycles on that. Okay so it looks like Amr is next in the queue. Go ahead, Amr.

Amr Elsadr: Thanks, Robin. This is Amr. And thank you very much for - I hear an echo. All right, thanks for taking the time to brief us on all of this. I have two questions, would you like me to ask them both now or ask one and get the answer and then move to the next?

Robin Gross: Yeah, let's do them one at a time.

Amr Elsadr: All right, cool. Well my first question is could you possibly maybe walk us through a scenario where the new community powers could be a benefit to the NCSG for example? And let's just use, for example (unintelligible) the trademark plus 50. If these community powers that are being recommended in this report exist now what could the NCSG do in response to the ICANN board or staff sort of adopting this trademark plus 50 issue that we felt was sort of dictating policy from top down? And what would we have to expect from the rest of the community in terms of what level of support we would need to have to help us with this? Or what could we do on our own? Thanks.

Robin Gross: Okay. Yes, absolutely. So let's take the trademark plus 50 example where the board violated the bylaws by replacing the GNSO developed policy with the staff developed policy and how could we prevent that now with what we've got in this report?

So I think the answer is a couple of things. I think that the first thing that we do when something like that happens is we file the reconsideration request. And I think that some of the reforms that we put in place like not having the legal department do the analysis and guide the board in its decision making process on that would have been a big help. And maybe we would have had a better chance to have succeeded in the reconsideration request process because of some of the reforms that we put in place.

But let's assume that the answer is still no and what would we have then done if - had the - if the new reconsideration request process fails us? Well we could - the next step in this escalation process is to file the IRP. And we weren't able to do that before because it was too expensive and, you know, you have to have \$1 million that you can put up front to pay for ICANN's lawyers before you can do this as well as the scope of the issue what the way in which ICANN could be found liable under the IRP was so significantly narrow that even if we would have shown that ICANN violated its bylaws we still would have lost because it didn't do so with bad intent, it was an honest mistake so to speak.

So that's another thing that's been fixed in this iteration of the proposal is that just we would have been able to have brought that - an IRP and we would have had a much more lenient standard of review by which it could have been decided. And had the decision gone our way the ICANN board would be required to implement or make that change as directed by the IRP.

So I think that there are some significant new powers that we've created here. I think that when it comes to relying on the specific powers of the community mechanism that we've created I think that is going to be much more difficult. And we want - we sort of want that in many ways because we didn't - we don't want to make it easy to always be - have individual SOs and ACs threatening ICANN every time they don't get a policy that they like and putting that kind of pressure to lean the internal process in their own favor.

So not being reliant on the community mechanism powers per se but more, again, going with a beefed up and enforceable and more fair reformed IRP and reconsideration request process is I think the way to do that. And then if we got a judgment in our favor, an IRP and, you know, if the board didn't want to

implement it then we could bring a - use the community mechanism to try to enforce that decision.

So I think that - I think we've got some important and key reforms here that would have helped had we had them in place a couple of years ago when that issue happened. I hope that answers your question. Did you have another question?

Amr Elsadr: Yeah, I did. Thanks, Robin. To be honest I've always had a bit of an issue with the fact that the community can veto the budget. And I remember this was raised by a couple of the board members who have been participating with the CCWG. To be honest I'm not very comfortable with the idea of the community being able to veto the budget. And I'm not sure I see the wisdom in having this in the report.

The way I see it is that the community should hold the board accountable for their mission and how they perform that is really up to them. And so they need to deliver on what it is they need to deliver on. Vetoing the budget seems to me to be somewhat of micromanaging how they do their business. I was just wondering why do folks feel that it is desirable to have this power? Thanks.

Robin Gross: Thanks. And I'm really glad you brought up this issue because it is an issue that I've sort of vacillated on or moved around on myself somewhat over the course of this process. When we got started I thought, yes, of course we want the budget powers, the power of the purse, that's where the real action is.

And so that's really where I started off as saying of course we want this. But then as I, you know, set back and saw some of the different ways in which I can see the - some other members of the community are hoping to utilize that power, I'm very concerned. And this budget power is a good example because

I think that the Intellectual Property Constituency, the - a lot of the Commercial Stakeholder Group folks, they very much see this budget power as an opportunity to beef up ICANN's compliance department in order to turn ICANN into the content cops of the Internet.

That's very much my concern. And I think that is a real possibility - could happen as a result of this power that we've created. So I think that you may want to raise the concern that you've just raised on this call. You may want to raise that concern in the public comment process and advise a little bit of caution or whatever the - whatever the perspective is that you have on the issue with respect to that power because, you know, I really sort of had second thoughts on it myself in recent - more recent months or weeks I should say.

Okay, let's see, who's next in the queue? Avri, please.

Avri Doria: Thanks. Avri speaking. Yeah, I wanted to comment on a few of the things where I guess I am in a different minority than perhaps you are and just wanted to give quick conversation. But I also wanted to address the question that Amr just brought up on the budget. And I think one of the things to remember in looking at this is that this is community trying to act as a consensus body or as a rough consensus body.

And so the interest of just the IPC in terms of the budget wouldn't necessarily be, you know, the swaying factor. And in fact when you talk about, you know, enforcement or compliance certainly you're going to find the IPC and the registrars probably on different sides of those issues. So getting one of the notions behind the community powers was that this is kind of what happens when we all gather together and say wait a second, something is wrong, we need to do something about it.

Now in the past when we've done that we've written a letter and stomped our feet and that's pretty much been the end of it. And perhaps we were paid attention to and perhaps they weren't. In this case we're saying that by and large the community comes together and has - and has made a certain, you know, has used one of its powers.

So I don't necessarily think that it could get used quite as frivolously in terms of the budget. The other point with the budget is any issue that they are taking the task for has to be one that was already discussed and already brought up in the review period - the adoption of the budget.

So it's not like, you know, we can keep our cards guarded and then all of a sudden at the end after the budget was out (unintelligible) but you didn't do X and we need X. And if - but if X hadn't been discussed beforehand in detail that would not be a valid challenge. So it's a little bit more constrained than just, you know, somebody doesn't like the budget therefore we vote it down. And it's not even a voting it down, it then goes into this process.

So in terms of the vote I'm one of the ones that's going for greater parity and whether it was three votes to every one of the ACs, SOs which was my original proposal, or five votes as was deemed absolutely necessary by some of the XO because of regional diversity or what have you, that this isn't the board. This is the community with all of the checks and balances and the sort of weighing of recommendations and advice.

And when you really get right down to it, you know, recommendations for policy and advice about anything else, the word recommendation and advice are different but the board can overrule either of them. The board can ignore any advice, including GAC advice. And the board can overrule any supporting organization recommendation.

So in essence if you take a, you know, a sort of abstract look at the powers now of an SO and AC they're fairly equivalent and they're countervailing. So basically I - when I looked at the community I looked at the community as a multi-stakeholder community with equal votes and was much less GNSO-centric about it than many from the GNSO. So that's kind of where I am in arguing that.

I was also on the perhaps long side in terms of the GAC regulation. I very much support that the GAC should have to give consensus advice. I very much also support that the GAC like every other one of the ACs, SOs, defines its own meaning of consensus. And in there is part of the problem. We essentially - many of us want GAC to be restrained to the, you know, the any country can veto GAC advice approach that we have now.

But GAC has difficulty with that because very often, you know, one country does stop, you know, the rest of the GAC and therefore there is that concern. So, you know, having us say that they need to give consensus advice then there was the other part of it that was about the GAC having to give its advice within the confines of the bylaws.

Now I am absolutely in support that the board has to always act within the bylaws and that they are - the consideration request and the IRP will enforce that upon them if they don't. But in terms of any of the ACs or SOs being constrained to only give advice or recommendations that are within the bylaws, that would be first of all they're not the determiners of what's in the bylaws, the board is.

But that would also constrain the GNSO because in the GNSO, for example, when we get an issues report for a PDP the legal staff tells us it's in scope of

the bylaws for the GNSO, it's out of scope. And we have the ability to sort of say we don't care that it's out of scope, we want to do it anyway and we want to make a recommendation anyway.

So the whole notion that any of the AC SOs are confined in their actions by somebody else's definition of what's in scope or not, is problematic. Certainly the board has that liability. But with the way that was written it really appeared that it was saying that the GAC would be constrained by an a priori definition of what was in the bylaws and what was not as opposed to that being incumbent on the board. So those were the kinds of issues.

On the human rights I just wanted to add one thing is it's a very good chance that we've got now. We're still going to have to come up with wording that can be accepted and that's going to be difficult, you know, where we're talking about - in very simple terms we're saying ICANN, you know, must respect human rights. But then we need to say things like with its mission and operations.

We need to say, you know, are we scoping the human rights? Are we treating them as indivisible or are we saying we especially care about the human rights of, for example, freedom of expression and free flow of information that was specifically mentioned by the NTIA in some of their supporting documents on their requirement? So that's where that definition is going to be tricky. And that's the subgroup that was mentioned on Work Party 4.

You know, and I believe that Robin is right, we are going to have a hurdle to overcome with the board on those. There's a real difficulty among people in differentiating between ICANN as a human rights organization which of course it could never, ever be, and ICANN as a corporation that respects human rights in the work that it does.

And just getting enough people to understand that difference is probably going to be one of the first very difficult chores. Thanks.

Robin Gross: Thanks, Avri. Is there anyone else in the queue? Okay, I don't see any other hands. And we are just at the top of the hour. Anyone else have - want to ask any other questions or raise any other concerns on this report at this point? Otherwise I will call - I will call it to a close.

Okay, Rafik, was there anything that you wanted to add? If you're still with us?

Rafik Dammak: Thanks, Robin. Okay, I mean, thanks for the presentation. I think we have to - more to think how we should proceed from here. We have less than 40 days to make a comment. So we will share the recording of this webinar on the list so those can at least listen and there is also the - ICANN webinar I think on Friday.

So I'm not sure if there is any question in the chat that maybe you can respond, Robin? So but...

Robin Gross: I don't see any in there.

Rafik Dammak: Okay, so thanks again, Robin. We'll follow up on the NCSG list hopefully trying to get more people involved to discuss about the report. I am, like everyone, I invite everyone to read the report. I know it's not easy but that's the best way to have (unintelligible) going there. Thanks again, yes, let's end the call for today. Bye.

Robin Gross: Thanks, Rafik. Thanks, all. Bye-bye.

Avri Doria: Bye-bye.

Amr Elsadr: Thanks, everyone. Bye.

Man: Thanks, Robin.

Terri Agnew: Once again, the meeting has been adjourned. (Ollie), if you can please stop the recordings. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END