

ICANN

**Moderator: Gisella Gruber-White
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2:00 pm CT**

Becky Burr: For everybody on the phone and in the Chat, the chart that is up now is out of date. I meant to circulate yesterday but I think I didn't circulate the updated chart that reflects the second call that we had on Monday and the group of volunteers, the additional volunteers. Hopefully, Alice will be able to put that up when it comes.

But meanwhile, I have circulated it to everybody now. And I'll send it in a PDF but I haven't done that yet.

Okay great, thank you. Okay we'll just give a couple of more minutes and then we'll get started.

Woe. Is there still an echo? Yes, I'm going to call back because there's a big echo here.

Hello, hello? This is Becky. Can you all hear? Great. Okay, perfect.

We are going to get started. This is the WP2 Work Party 2 weekly meeting. Hopefully we can have a relatively short call because we want to kick off the

work on the sub groups some of the various tasks that people have volunteered for.

To the extent that there is anybody, you know, on this call who wants to be part of, either actively or passively, any of the work groups, will have an opportunity for you guys to let us know.

Could I just ask a procedural question here as to whether we should expect that (Etenell) was for each of the subgroups would be set up? Is that typically what happens here?

Adam Peake: Hi, it's Adam, if you can hear me.

Becky Burr: Hello Adam.

Adam Peake: Yes, that's what we're planning for you to have for the groups.

Becky Burr: Okay, great. So I've sent around yesterday the preliminary list of everybody who's volunteered, but obviously we can use more volunteers and the more the merrier because there's a lot of work to do.

Our goal is to, you know, have some solid progress to discuss in our face-to-face in Istanbul on the 22nd and 23rd - or the 23rd and 24th.

What I would like to suggest is as the groups get started that the task for this week would be to try to just do a rough draft of a template for the accountability mechanisms that Mathiew and Thomas had provided in Singapore, and Adam and (Brenda) hopefully a little bit later on we can get to that.

But just to, with you, since our last call on Monday, as the second group we discussed the - uh-oh - the principals for our work and I think there was agreement on that.

The work item relating to completing and refining the mission statement and the commitments or Compact, or whatever the group wants to call it, is Robin and (Paul Rosenzweig's) light (sic). And I know Paul is not on the call, and David Post and David Maher have volunteered to start in on that.

Obviously that's not going to lend itself precisely to the template, but if we could get from you, you know, next week a sort of statement about, you know, what you think the level of completeness and refine what questions we might need to ask about it.

The next group - I think I don't have scroll access here guys, so if we could get it to go down - oh, now we do - is the Office of the Ombudsman. And Chris and Robin and Edward Morris have volunteered on this one. I don't know if Chris is on the line today, it doesn't look like he is.

But I'm hoping that Robin and Edward, you guys could kick off, as soon as we get our email list out, kick off a discussion and start to think about the various enhancements and the thinking about it in terms of template.

Going down to the reconsideration, Nathalie has got Chris and David McAuley and Robin. And now we'll get these guys unpunished - and Carlos Gutierrez has volunteered for this. And again, I think this is one of the areas where we have had a significant amount of suggestions for changes on this one. And so I think this is going to be, you know, something that the community deals with an important change.

We we're hoping that since the mailing list came out, we can kick off the conversation there.

Again the template is there. Okay, Edward has volunteered for Reconsideration Rule. We'll put you down there and we will welcome everybody who can help. Thank you Edward.

You know, the template is offered there for - since it's not a - if it isn't fit for a purpose I would not stress over it too much. Really it's meant to get just us flowing and to, you know, so that next week we can begin to talk about the substantive issues and ideas that the various subgroups are having.

And then the final work item is the Independent Review Reconsideration. And we've got Paul and David McAuley, Jonathan Zuck, Robin Gross, Chris LaHatte, David Post Greg Shatan and David Maher have volunteered on that.

If I've missed anybody other than - I know I missed Edward on the Reconsideration. If I've missed anybody on anything else or if you just want to get on, we just need to let (Brenda) and Alice know so that the name and lists are formulated.

And then again, as I think we - for those of you who were on the call last week but not on the call Monday, over the weekend Jordan Carter and I spent a lot of time going through our work tasks and our documents to make sure that we didn't have overlap.

And as a result, the category of new mechanisms, some bylaw changes for Powers and Committee representatives, the permanent cross-community working group recall and community detail, those items have moved to a Work Party 1. And to the extent that we had volunteers on those, Jordan has

been made aware of them, but anybody obviously who wants to work on these items would be most welcome to join in Work Party 1.

So what I'm hoping is that we can have a conversation today to make sure that we're - so that we understand what we think would be reasonable for us to be able to deliver by the Istanbul meeting on each of these things. It's very - you know, it's obviously not very far off and so we will be having the repertoires and the co-chairs will be having a conversation early tomorrow my time to make sure that we have sensible and workable timelines here for the deliverables.

But my goal would be to have, you know, some pretty decently progressed descriptions of the enhancements and the issues that arise with that so that we can have a very substantive discussion in Istanbul.

Any questions or comments on the list and the proposal for how we would move forward?

Berry Cobb: Hi Becky, this is Berry.

Becky Burr: Yes, go ahead Berry.

Berry Cobb: Sorry to interrupt, I just wasn't in front of my computer to raise my hand.

To your point, like you said, we'll refine timelines and everything tomorrow with the chairs. But tentatively or kind of a loose target would be the 19th of March to have any drafting complete. This will allow us to send any materials to the greater group and they have those to maybe review during their travels to Istanbul.

Becky Burr: Okay.

Berry Cobb: But the principal would advertise more once we know more tomorrow morning.

Becky Burr: Right. And I didn't - I just want to mention, I mentioned on each of the other calls, but we are going to try to set up a face-to-face meeting of the Work Party 2 on Sunday late afternoon in Istanbul. Obviously we'll make remote participation available on that just so that we, you know, if we haven't, we'll finally have the ability to have a deeper discussion here.

What I would love to have, you know, is not a leader for each group but somebody who would volunteer to sort of kick off the discussion as soon as the lists are circulated.

Berry, do we know when - or (Adam), when the mailing lists are likely to be circulated?

Adam Peake: I can't promise on that. So let's just say as soon as possible. I'll have to get back to you. I'm sorry I don't know.

Becky Burr: Okay.

Adam Peake: It won't be long. It will be as quick as we can.

Becky Burr: Okay, great. I'm just anxious to get the conversation started, you know, in the meanwhile.

So the list has gone a ways here. Now I don't know who my volunteers are.

For those of you who - David Maher, could I impose on you to sort of kick off an email to the Compact Mission Statement list to get the conversation started.

David Maher: Sure.

Becky Burr: Thank you. Let's see. The Ombudsman, could I have a volunteer to sort of start that conversation? Again, I'm gazing who are our people on the ombudsman. Robin and Edward, Edward would you like to take (unintelligible)?

Edward Morris: I'm happy to do so Becky. No problem; happy to do so.

Becky Burr: Thank you very much. Great, perfect. Robin, you are going to get stacked on something else.

On the Reconsideration, David McAuley, could I ask you to kick off that conversation? I know David is in here, but he's silent. Oh, he's typing. "Yes, having my problems." Okay thank you, I appreciate that David.

And then on the Independent Review, Robin could you kick off an email on that one?

Robin Gross: Sure.

Becky Burr: Okay, great. Any other questions/comments/input, you know, reports out there? No. Sorry - my - okay.

So it looks like we have a very silent group here. I mean it seems to me that the work needs to sort of get started.

I see that Keith Drasek has drained (sic) the call which is great. One thing I wanted to make sure that you noted Keith was that the mission statement, making sure that ICANN was limited to its limited (sic) technical mission has been moved from Work Party 1 to Work Party 2. You were a volunteer on the Work Party 1 group, so I don't want to assume anything but we would love to you invite you to become part of that work stream item here.

Keith Drasek: Yes, hi Becky. Yes, thanks, of course.

I did take a crack at a first cut at the topic on the - so the mission statement and would be more than happy to contribute to this group.

Becky Burr: Okay great, so we will add you to that.

And I see David McAuley is out of pocket so perhaps it would make sense for us to ask Robin to kick off the Reconsideration discussion, and then Keith, ask you to kick off the - no, I'm sorry. Robin and then we'll get to - and then ask anybody else on the list here - yes, I don't know who's on the telephone. Let me just look and see who's here that I can impose on.

Does anybody else want to take the lead on the Independent Review? Okay, I'll kick that off and then we'll go from there.

So my goal would be to really start a robust discussion about this as soon as possible and to start kicking around some ideas, you know, thinking not only substantively but, you know, what the questions are, what the information that would be needed, where these mechanisms might be useful, and you know, other issues to sort of think about how to progress this work forward.

Steve, is there anything that as we're going through this we should be thinking about in terms of stress tests? Should we, you know, be looking at the particular stress tests in light of what we're proposing here?

It's a question to Steve DelBianco. Did I lose you? Oh, he's typing; okay. Okay, somebody is typing very enthusiastically.

Steve? Okay well we seem to be having some computer issues. I would love Steve to elaborate a bit on his comment about prescriptive measures or distinct remedies after the Board makes a decision.

I think I have a pretty silent group here today. I'm going to be - I would like to be, you know, on all of the email lists - oh great, Steve is dialing in so he can help us out on that. So hopefully we'll get this as soon as the co-chairs and (unintelligible) and we talk tomorrow.

We will get word out to everybody about what the goals for what we have, what we will have in place, what we will strive to have in place by the 19th would be.

I think we should just hold on a moment and see if Steve can join us.

Obviously to the extent that anybody is working on other parts of this, you know, Working Party 1, you know, where there's overlap, we do have folks in the room who, you know, are not - Steve DelBianco; there you go.

Steve, what I was asking was if you could just give us some sense of whether there are particular things with respect to the stress tests that we should be paying attention to as we start our work.

Steve DelBianco: Thank you Becky; Steve DelBianco here.

Of the 25 stress tests, several refer to the CWG but most of them are about accountability at ICANN. And the subsets of those, perhaps as many as four, gets into question of what happens if ICANN attempts to exceed its limited technical mandate.

There are two approaches to that; one is proscriptive, building in a golden bylaw of some kind that restrains ICANN's conduct, and the other is reactive or remedial so that if the Board took a decision and a supermajority of the community could challenge or veto that decision.

It strikes me that those two seem as if they're redundant, but they're not. If the community took a look at an ICANN decision to expand its scope or mission, if the community had the opportunity to do a supermajority veto, that would simply nullify or veto the decision of the Board and send it back to the Board or management to come up with something new.

On the other hand, if the community said that the Board just made a decision that we think is outside the scope and we want to refer to independent review panel, well Becky at that point the independent review panel would need some standard by which to review management's decision to go outside the scope.

And for that reason, the work that you, Paul and others are doing ICANN's limited mission would end up being the standard against which an IRP would determine whether ICANN had exceeded its mandate.

And this is a belt and suspenders world we're in in the sense that we may or may not succeed at getting a community veto. And if we don't get a community veto, we may have to lean very heavily on an enhanced

independent review process where the community suddenly has standing to evoke the community review. Not only standing but access; not having to come up with a million dollars to do an IRP. And then we'd need a standard against which to do it.

But keep in mind that if we had a community veto on a supermajority of AC/SO/SGs, that would be based on the community's feelings. It would not be based on a standard.

So given all that, I will send you the four stress tests that speak to this issue. And in doing the stress tests analysis, I've been writing them up as if we may or may not have both kinds of measures. If you understand what I'm saying, we need a standard no matter what because whether it's proscriptive or reactive we still need a standard to be written. So you should do that work.

But let's not try to like perfect the enemy of the good here, we could end up with a community veto that doesn't require a standard.

And Becky, I'm looking at you. I know you're a little nervous about the community vetoing decisions because that means that the communities will - could hold for us even if it were in conflict with maybe a perception of a limited mission.

How's that?

Becky Burr: Okay, that is an absolutely accurate description of my anxiety which is to say I would be very concerned if, you know, the community could expand the scope of ICANN's mission by consensus. So you know, that discussion about, you know, whether the mission limitation the subject of our golden bylaw and not changeable bylaw I think is something that standards can maybe - and

then all of us together will have to come together at Istanbul and talk about how that plays in each of these things.

You know, I see Robin typing in that she shares my concern about the community expanding the organization's mission.

Steve DelBianco: Becky, could I respond to that real quick?

Becky Burr: Sure, absolutely.

Steve DelBianco: I've been a big fan of Robin's idea of a community veto. We first brought that up in the Singapore meeting.

But let's suppose Robin that the Board decided, in the hands of a brand new CEO who wants to boldly expand ICANN's mission into places it's never been before, and the Board approved it. At that point the community veto could restrain ICANN's mission.

But it could not expand it because the veto doesn't tell ICANN what to do, it simply says you can't do what you just said you wanted to do.

If in fact the community tried to expand the mission, and it would probably have to happen through a bottom-up process where a PDP or some such bottom-up multi-stakeholder consensus process resulted in a policy that took ICANN way beyond its mission. Suppose it instituted really strong IP protections or over the top human rights protections - to serve both sides Robin.

Either way, if that came up and the Board approved it, although the community could veto it, but there's really nothing to stop the community

from cooking up a brand new seam in a bottom-up process. Maybe the only thing that could stop it would be a bylaw provision that you guys would design.

Becky Burr: I see Markus has his hand up. Markus?

Markus Kummer: Yes, can you hear me?

Becky Burr: Yes.

Markus Kummer: Can you hear me?

Becky Burr: Yes, go ahead.

Markus Kummer: Okay, no I'm just listening (unintelligible). (Unintelligible) remarkably well. That's why I keep (unintelligible).

This is a very important discussion to have. And I think the more we can freeze in bylaws the better it is.

I was involved in setting up an association on the Swiss law that the IGS support association, and there basically Swiss law provides also for what you could call bylaws by saying this probably is intangible. You know, all provisions can be changed by two-thirds measure of the members of the association, the association of the membership association, ICANN is not, but whatever it is.

I think it's important to freeze certain key elements in the bylaws that cannot be changed in whatever way. And obviously everyone understands you have

to be very careful. Any organization may be evolving that some core principles.

I think the safest way to deal with it is to really have been stowed in the bylaws with this - at least my feeling, and once again I'm not speaking on behalf of the Board but as a member of the community trying to give my input.

But again, it's an important to discussion to have and I think you (unintelligible) in the right way. Thanks.

Becky Burr: Thank you. Since we have some time, I propose that we have a bit of a discussion about this right now.

Steve, you have your hand up?

Steve DelBianco: Yes, despite Markus's best hopes, or what Robin suggested as a sentiment, the fact remains the community could through let's say - let's just say we do a Whois affirmation review and it makes a recommendation that takes things in a direction that are potentially outside of the limited scope of maintaining the operability of the DNS. And let's suppose the Board accepted the review team's recommendations and began go to implementation.

If that were to happen we still need, in a belts and suspenders way, we still need to go deep (sic) for the community and say, "Hang on, that's outside the scope." And the community would then either do a veto, if it had that power, or the community could refer to an IRP, and they would need a standard of review.

So it isn't enough, as Markus indicated, to just indicate a preference. There has to be a way to arrest, stop and review decisions that the Board takes sometimes in response to a bottom-up community recommendation.

Becky Burr: Correct, I agree with that. And that I think is the point of having this mission statement and then the commitments to the community as we get - the notion would be to have two things. We have a mandatory "Here is what your mission is and you must stay within that mission. And in carrying out that mission, you will behave in the following ways."

And then, you know, in our various work items we are looking at, those mechanisms. We would say, the theory would be, "Okay, is this within ICANN's - is this activity that we're concerned about within ICANN's mission statement or not?" And if it's not, then you know, who has standing under what circumstances to raise that issue and invoke the accountability mechanism.

And then the second prong would be, well even if it's in ICANN's mission, have they done about it in a way that's consistent with these commitments to the community? So that's what the sort of the nature of this straw man is.

Markus, I see your hand is up. Is that an old hand? Okay, it was an old hand.

Markus Kummer: Sorry, it was an old hand.

Becky Burr: Okay, that's fine. Oh, our mission statement went away.

As soon as we get it back, you know, we've had - this document has been floating around now for a couple of weeks, and I wonder if anybody has had

the ability to, you know, review it and think about whether we are missing items or we're, you know, overly prescriptive or the likes.

And in the mission statement, you know, it has a lot to do with ICANN's current mission statement, but I think Item 3 on the list is a different - it's a restatement of that.

So there's implementing consensus policies and that's something that's differing - and that is in the registry and registrar agreement - that ensure the stable and secure operation of the Internet unique names (unintelligible) and involves issues for which uniform or coordinated resolution is reasonably necessary to facilitate both in this interruptive (unintelligible) security and/or stability.

Any thoughts on that? Keith has noted that the mission statement in the current bylaws refers to values and powers. That is what the commitment to the community - that below list below is. It reflects the core values that are in Article 1.

It also reflects the fact that there is a standalone provision in the bylaws that says ICANN may not single out one or more parties for disparate treatment. And it also reflects some of the commitments that are in the Affirmation of Commitments. And finally, it reflects some of the conversations and suggestions that we had.

So this is really just my attempt to kind of pull from all of the available sources what is either on the table now or has been suggested by somebody, but obviously, you know, the list has to be, you know, finite enough so that, you know, that things can be balanced and the organization can operate but

comprehensive enough to articulate what our expectations for ICANN behavior is.

Does that make sense to you Keith? Is that responsive to your reference to values?

Keith Drasek: Yes Becky, thanks, it does. I think you summarized it very well.

Becky Burr: Great. Sam, I see your hand.

Bruce Tonkin: Becky, it's Bruce Tonkin. I've been in the queue when you're ready.

Becky Burr: Okay, let's take Sam and then you Bruce.

Samantha Eisner: So Becky, and this relates to a question that I asked you. Sorry, this is Sam Eisner for the record.

I asked you a question in Singapore when some of these proposals were initially put out. I guess I'm still not clear on whether this is an effort to redefine ICANN's mission and core values or simply identify some areas where the implementation of them requires standards against which the ICANN behavior will be measured.

Becky Burr: So there's no attempt to redefine ICANN's mission at all. I just was attempting to capture it in a perhaps more comprehensive way. Again, the core values is not an attempt to revise those, and I don't think that this one does that dramatically (sic).

I think that the - if there's something again - I don't understand what the difference is. If something is a core value or if ICANN's behavior is going to

be measured against it, I would think that, you know, the core values and the measures are sort of - we want them to be concise and manageable, but you know, we want them to be in one place.

Bruce?

Bruce Tonkin: Thanks Becky. It's partly a question I guess but I notice generally in the ICANN community, there's a lot of similarity with the bylaws particularly because they get used a lot in policy development and other activities.

There's much less use of the Articles of Association. And I notice there's text in the Articles of Association that are not in the bylaws, in particular I think some text that's quite useful about public interest, etcetera, objectives of ICANN.

Where should something be in the bylaws versus the Articles of Incorporation, and is one harder to change than the other? I'm just wondering whether some of the things that people are saying shouldn't be changed whether they should be in the Articles of Incorporation or not. Just partly a legal question but also just a suggestion to look at the text in the Articles as well as they could be perhaps linked into the current mission.

Becky Burr: Okay, that's a good point. What of the role of the Articles have been and have we included all of those things?

I'd like some help from some of the corporate lawyers on the call on this one. I sort of think of the bylaws as being the important document. But I see Sam and then Greg.

Samantha Eisner: So Becky, this is clearly one of the areas - again, Sam Eisner. This is clearly one of the areas that we can get some additional clarify around as we bring in the advisors.

The Articles of Incorporation are far more limited in the scope of the things that they cover. ICANN is of course, as is any corporation that has Articles of Incorporation and bylaws, bound to follow each one.

If you look at the Articles of Incorporation, it also includes within there a threshold required for changing those Articles. There are requirements with the state for filing Articles if they wind up getting changed. You know, these are our incorporation documents that reflect our status with the State. So it is a State requirement that we maintain them.

You know, if they haven't - as far as I'm aware, they've really never been changed. But they've been a pretty solid document which doesn't mean that there couldn't be things - there could be things out of this process that we require some changes to and we could go through that. But I think we look at them as complementary documents and there are specific requirements for certain things that we would need and Articles of Incorporation.

You know, it might be for example, if the membership idea that's floated, there might be requirements for definition of membership and certain things that have to do with the structure of the organization that go into those.

But there is no difference in import of the obligations between one or the other document, and we could surely impose similar requirements on modifying any certain of provisions whether in the Articles of Incorporation or the bylaws as being necessary to meet some of the accountability issues that have been raised.

Becky Burr: Greg?

Greg Shatan: Thanks; Greg Shatan for the record.

In addition - Sam covered a lot of what I would cover so just a couple of things in addition.

The Articles of Incorporation tend to be almost entirely boiler plate by which I mean very standard language that is virtually identical from one corporation to the next as long as it's, you know, in a particular state. That's basically true for the ICANN articles.

You know, basically the only place that things are a bit different is in describing the purpose of the corporation which is an important part of any set of articles. In some cases, there's very generic language used. In the case of ICANN, there's more specific language used regarding the purposes of the corporation.

And then that's, you know, basically the section on the Disillusion of the Corporation also has some language that's more tailored. But just about everything here is, you know, standard issued.

In terms of intent of the two documents, the Articles, you know, first off, it is the document by which the company is incorporated. Secondly, it really goes to just purposes and some very basic general information about the corporation.

Bylaws are used really for rules and regulations; that's really kind of the, you know, private law within the organization. So it's, you know, much more

common to change the bylaws as rules and regulations and needs change, and you know, Articles of Incorporation generally only get changed when the nature of the corporate changes. Thanks.

Becky Burr: Great, thank you for that.

((Crosstalk))

Becky Burr: Yes.

Bruce Tonkin: Yes, I think just to pick up on that, it seems to me that's kind of my read of the Articles as well. The bit that stands out to me is the purpose. And that's really the bit that interests me because there's words in the purpose that are not in the mission, and very rarely do people ever go back to that purpose.

And the earlier conversation was about are there some sort of golden bylaw, whatever you want to call it, that you want to lock in the purpose or scribe (sic) to the organization. That's kind of in the purposes of incorporation at the moment at least as I understand.

So you probably want to look at those two things when you're looking at trying to constrain the overall scope of the company.

Becky Burr: Great, thank you. David Maher?

David Maher: I just wanted to point out what I typed in. The Articles could be amended by a two-thirds vote of the directors. So when we're talking about restraining a corporation, we have to think very carefully about limiting the ability to amend the charter.

Becky Burr: Right. Isn't that the same issue with the bylaws as well David?

David Maher: Yes.

Becky Burr: That's what I thought. Okay, but I think to Bruce's point, that is a useful point that there may be words in the Articles of Incorporation that we want to think about incorporating.

Greg Shatan, I see - is your hand a new hand? No it's not, okay. So we have (unintelligible).

Now as I look at 1 through 11 here, you know, these are mostly items that are in fact in the mission statement, but you know, perhaps could be, you know, maybe they're a little bit more clear.

I would also point out that in the bylaws, there's a statement that says essentially these core values are sort of, you know, they can't be cast in stone and applied in stone and they have to be balanced against each other and the like. and I would certainly think that that issue is important, would be very, very important, for this task group to look at in terms of whether that the statement of how these issues are to be balanced as an important piece of the work of the group here.

I would point out that the non-discriminatory treatment provision in the bylaws is actually not part of the balancing. It appears to me, although I think, you know, that it's a matter of interpretation, but it's sort of an absolute.

But again, for those people who are working on this issue, you know, it's going to be important to think about, you know, what happens if somehow

these values or commitments are intentioned with each other in a particular situation.

Any thoughts on that aspect of it? Okay, well I'll just commend that to the group to look at.

So obviously the point of these is to, you know, try to capture a lot of these things. But there are obviously, you know, words that are in here that, you know, we need to think about that need to be perhaps explicated. I always think public interest is a particularly difficult issue.

Anybody have any other comments on the mission statement or the commitments or values or whatever we're calling them?

Sam and then Keith?

Samantha Eisner: This is Sam Eisner again.

I did have a concern about the limitation in 3 about consensus policies. So clearly there is an important limitation around consensus policies. Consensus policies are the only way that ICANN's current contracted parties can be required to modify their contracts, right. If there are policies that aren't developed as consensus policies, then those can't be imported as obligations on that contracted party.

But there's also mission for ICANN on implementing other policies and not just limited to consensus policies. There are policies throughout the different policy development groups that aren't termed consensus policies or at times policies (unintelligible) GNSO itself that isn't a consensus policy, so I just wonder about the limitation there.

Becky Burr: So I think that raises an incredibly important issue because I at least am very confused about what thing out there is a policy that's not a consensus policy. I mean maybe it's the contracted provisions.

But I'll just leave that comment out there and turn to Keith.

Keith Drasek: Yes, thanks Keith.

To Bruce's point and to this ongoing discussion, I'll volunteer to do a bit of a cross reference between the sort of mission, values and powers on one hand and the Articles of Incorporation on the other so that we can maybe do a bit of a mapping exercise.

Becky Burr: Great, thank you. Okay.

Can anybody - Sam, can you give me some examples of the kind of policies that you're talking about? And then I struggle to understand how to deal with these and I'll give you one example that always creates some confusion for me.

When we talk about the RSEP, the new Registry Services process, there are sort of three prongs to it as you know; sort of stability and security. And then there's this competition issue.

And I think sort of all of the process of reviewing proposed new services to make sure that they, you know, are consistent with the security and stability requirements make total sense to me, the competition one is sort of if the policy that was developed by the community is not completely clear to me, that it's within the definition of consensus policy in the registry thing, and in

part - so I think you raise a really good point. Because if there are other policies, we should try really hard to understand what those are and to separate them out. Because it's not clear to me that, you know, if you can adopt policies but registries and registrars cannot be forced to implement them, you know, what the world looks like.

So I see your hand is up so hopefully you're going to shed light on my confusion.

Samantha Eisner: It was an old hand but I'm happy to try to weigh in. I think that this is part of an ongoing conversation probably.

So I think that there's a difference between the policies that impact existing contracts, and let's take for example - and I'm avoiding the example that you raised just because I'm not familiar enough with it to speak competently on it.

So I'm just going to take it out into something that's not as close as a case. Because I think that part of what you were raising is that there are some things that are very close cases as to whether or not they should require consensus in order to impact existing obligations, right.

But then there are other types of policies - in the gTLD realm, we could consider the new gTLD program and the policy recommendations that were approved by the GNSO Council in 2008 as a policy that is not a consensus policy in some ways because it did not actually seek to modify any existing contractual relationships. It set out how ICANN was to move forward with a community on developing new potentials for contracts, but it didn't impact the contracts that were in existence at that time. That's one example in the G realm that I see.

There are policies that come out of the ccTLD world though that are somewhat few and far between but that - for example, the work on (IEN) ccTLDs is progressing. We have numbering policy that comes out of the ASO. So there is a world of policies out there that aren't about the consensus policy work.

But I think that you raise a really important point that it is always important for us to be very clear particularly in the GNSO realm when we're dealing with contracted parties, what exactly are the policies that are creating new obligations on those contracted parties because of the unique stance that contracted in ICANN world? And what are the policies that don't?

Becky Burr: Okay, so we're at the top of the hour but let me just say and then we'll have a last call for comments.

I - the bylaws uses the phrase consensus policy, the contracts use the phrase consensus policy. I certainly think of the new gTLD policy as being - if it's not something that was intended to be within ICANN's mission and a consensus policy, I'd be surprised.

And frankly, if the only limit on, you know, consensus policies in the picket fence is to change something that all is to impose a new obligation, then I'm query whether we have a huge scope creep (sic) issue -- just sort of off the bat.

And you know, this is really important - this is a critical important conversation. I think the bylaws and contracts have been confusing about this. You know, we've had this condition for a while.

And as Steve DelBianco points out, there is implementation of policy.

Okay, any last comments on this? Clearly this has been a useful discussion. I think it points to the significance of getting this part right.

And Sam, maybe you and I are going to have to have a further conversation about this. But I think that the community is confused about the difference between consensus policy in the contracted sense and policies developed by consensus.

Okay, I see lots more comments in the Chat. Do folks in the Chat want to share them with us or shall we just leave the Chat and pick this up in the work stream?

Okay, I don't see any other hands. It's two minutes after the hour here. I look forward to kicking off the substantive discussions; I think this has been a useful discussion. And I will be reaching out to all of you.

Thanks everybody and good night/good afternoon or whatever.

Samantha Eisner: Good night. Thank you.

END