

**ICANN**

**Moderator: Brenda Brewer  
April 23, 2015  
2:00 pm CT**

Coordinator: -recording has started.

Mathieu Weill: Thank you very much. So this is our third session of Thursday, April 23rd, from the Cross-Community Working Group Accountability and I am delighted to welcome you to this three-hour marathon for our intense session. Before we start I would like to do a roll call as we usually do. So as usual we will rely on the Adobe Connect list of participants and if there is any colleague who is audio only please make yourself heard so we can add you to the participant list.

Michael Clark: Hi, this is Michael Clark from Sibley. I'm here with (Holly Gregory) but I'm not in the chat room yet in Adobe.

Leon Sanchez: Matthew this is Leon. I'm not in the Adobe Connect room at the moment. I will be in short but just to make myself heard I'm not on the Adobe Connect room at the moment.

Mathieu Weill: Excellent Leon. Thank you. So with that formality I would move to our agenda tonight or today or whatever the time of day it is for you. We are

going to focus this session on the Work Party Two items which we will review slowly but before that just a quick recap of where we were with Session Two.

Some of you may have noticed we have not yet turned around the updated version of the document we worked on in Session Two which was basically on the board recall. That is due to some issues we have encountered with the notes. If you were in the AC room you remember there were some weird things with the notes and so staff has been fixing this in the meantime.

So we are experiencing a slight delay on the turnaround of this document but that will come shortly. We'd also like to draw your attention on a paper that was circulated a couple of hours ago coming from legal advice. It is an executive summary on the various membership designator for the various community mechanisms. It is a very high quality document, easy to read. I strongly encourage everyone to read it. And that's going to be one of the supporting material for a session we have tomorrow.

Session Two was about the board recall. We would have some items that we will take onboard for further discussions tomorrow essentially on the NomCom proposal as well as the thresholds. But we had a very constructive discussion which shows that we certainly have ways forward. We move onto public comments after our intense session. So after two quite constructive and productive sessions today this sub-session will review Work Party two as I was saying and for that purpose I am now turning to Thomas who will manage the first sections of Work Party Two work. Thomas you have the floor.

Thomas Rickert: Yes but actually Mathieu I think we've swapped this in the prep and allocated these two points to Leon if I'm not mistaken.

Mathieu Weill: No, sorry, sorry.

Thomas Rickert: My fault. My bad. Let me just briefly add to your opening remarks that we have planned to have a five-minute break halfway through this meeting so that everybody has the opportunity to stretch their legs or do other things that you might wish to do after 90 minutes. So with that I think we can move to discussing Sections 6.2 and 6.3. The mission commitment, the core values, fundamental commitment, and for those points you will remember that we did have substantive discussions on those points both in Istanbul as well as during the Meeting Number 20 on the 31st of March.

So we would like to spare the group going through each and every detail of that but rather confirm that what we see in the report is in line with everybody's thinking and ask for comments or objections from the group. But before we do so I would like to give (unintelligible) Becky Burr the opportunity to add anything to - in terms of opening remarks to set the scene for the discussion. Becky.

Becky Burr: Thank you. This document has been relatively stable. We have made changes since Istanbul although largely the point of the changes has been to provide an easy-to-use comparison document to reflect the source of the changes and to highlight the changes from the existing bylaws and to annotate them to show what affirmation of commitments provision is addressed by the language.

So the chart that's in - starts on Page 19 of the text and then on Page 21 the fundamental commitments and core values which starts on 21 have been annotated essentially to describe the sources and to show clearly any changes in language from the current language. I just circulated another copy of this chart with a very small number of changes in purple ink. There are no changes in the mission and core values but if you look at the next page - not in the

mission statement but in the fundamental commitments and core values I have put in purple font the language from Work Party one's work on the affirmation of commitments and you can see that, those minor changes in Purple.

And that corresponds to the language that has been in the - that is in the frozen draft on - beginning on Page 44. So with that I don't think that there are any material changes from the document that has been in circulation for a while now.

Mathieu Weill: Thank you very much Becky. That's very helpful. Let's now open it up for questions or comments. Allen.

Alan Greenberg: Thank you. It's an issue I raised a long time ago and I just let drop but I realized it's still there. There's a reference in the beginning under - I guess under mission, a reference to consensus policy and then a sub-reference to specification one. First of all I - I would think that a pointer to a - to a section of a contract does not belong in the bylaws so I'm not quite sure how you envision this in the final version but I question whether it's correct to say the ICANN's mission is to coordinate the development and coordination of consensus policies.

If you look for instance for the GNSO an Annex A it talks about (unintelligible) policy and the specific PDP rules must be used for consensus policy for but other policies other rules could be used. So I'm not quite sure why you're restricting this to consensus policy.

Mathieu Weill: Thanks Alan. Becky your hand is up so the floor is yours.

Becky Burr: Thank you. So first of all this language is not intended to be bylaws language, final bylaws language. And I agree that the final language would not refer out to Specification One necessarily.

Second of all you and I have had this discussion and I am a little puzzled as to what kind of policies ICANN can adopt and enforce that are not actually consensus policies. So I continue to be a little puzzled by that. I mean they are - it is ICANN's obligation to develop policies based on consensus as I understand it.

Alan Greenberg: May I answer?

Becky Burr: Please.

Mathieu Weill: Please go ahead Alan.

Alan Greenberg: Yes certainly our mission is to develop policies based on consensus but the expression consensus policy capitalized is explicitly used in contracts and in the bylaws regarding things that we generically refer to as within the picket fence in context. That is things that are eligible for being changed immediately upon approval of a policy and implementation of a policy that changes contracts that are already in force. Other policies might project how we handle something in the future but they don't necessarily have the effect of changing a contract that's currently in force and that I thought - I believe is the definition of consensus policy.

Thomas Rickert: Thanks Alan. Becky.

Becky Burr: I just would like to sort of repeat my request for I think it would help us have this discussion if we could have some very specific examples of policy that's not a consensus policy.

Alan Greenberg: I'll give you one. The new gTLD policy did not have the force of changing existing contracts. For instance the new gTLD policy said all registries under the new policy will be thick registries, thick whois registries. That did not have the effect of changing existing contracts. We in fact had to go through a completely separate PDP to ensure that all existing registries had thick whois. That's the simplest example I can give.

Thomas Rickert: Thanks Alan. Yes, there's a queue forming and before we move to the queue let me try help us navigate this topic. I guess there are two facets to this item. I think one of them is to discuss what ICANN's mission is -- i.e. what's the raison d'etre for ICANN. And that is to develop policy. The second aspect would be enforceability. So policy that converges into consensus policies would be binding for the contracted parties.

Alan has given one example. I can add one to it. The PDP process for example in the GNSO has been criticized of being lengthy and cumbersome and the GNSO is more and more using tools that do not follow the typical PDP life cycle that would enter into consensus policy but rather give policy advise on other subjects. So if you look for example at Specification Number 13 for brand TLDs that was deemed policy by the GNSO council yet it hasn't chosen to pursue the route of a formal PDP to give policy advice on that.

And I'm sure that there are many more examples than that in that area. So I think it's good to have this discussion. A pragmatic way forward maybe would be to just speak to the - us the language referring to policy without specifying the consensus policies in this area because I think we have covered

the consensus policies in other parts of the bylaws but let's move to the queue and Kavouss is the first one.

Kavouss Arasteh: Yes Thomas. I think in order to shorten the discussion (unintelligible) the first reading perhaps by introducing a qualified in the beginning in saying that unless otherwise specified then go by consensus. Then those where as specified the new UTLD or GNSO policies which you have mentioned or those which I think there are specified somewhere. So you could say - start the sentence whatever you want to start it with, comma unless otherwise specified in this bylaw or in elsewhere or in Article 10 by consensus.

So we need to maintain the consensus. That is a major element. So we could not (unintelligible) of that that let's make exception of that by unless otherwise specified. Thank you.

Thomas Rickert: Thanks Kavouss. Just a point of clarification, certainly policy recommendations coming out of supporting organizations should be carried by consensus yet not everything that's agreed upon by consensus is a consensus policy and I think that's a distinction that we need to bear in mind. Sam please.

Samantha Eisner: Thanks Thomas. This is Sam Eisner for the record. Thomas I think that you've stated many of the same things that I was going to say so I'm not going to repeat them. I support the way that you've been framing this issue and helping to go through the differentiation between policies supported by consensus as opposed to using the term consensus policy that has a defined contractual term because not only does it have a defined contractual term but it also makes it appear that the policies that are implemented through ICANN really may only relate to the GNSO or to the GTLD space and we have

policies based in consensus that arise out of the CC space and the numbering space as well within ICANN.

So if we could turn that phrase around no problem having the issue of consensus being a characteristic of the policy but they're not consensus policies just so we don't get confused with that.

Mathieu Weill: Am I still connected or have we lost audio?

Man: I think we are still connected. I don't know whether we've lost Thomas.

Thomas Rickert: No you haven't. Actually I was talking to a muted microphone. Apologies for that.

Mathieu Weill: Alright.

Thomas Rickert: Alan the floor is yours and I wanted to encourage you to also mention your compromise proposal that you've put forward in the chat.

Alan Greenberg: Thank you. All I said is I have no problem saying the mission is to develop policy by consensus and perhaps you want to-it needs to be worded slightly more elegantly but that's not a problem. And to answer Becky's question in the chat we can set policy outside of our mission all we want. I don't think anyone is going to listen to it but there are lots of policies that are within our mission that are not going to alter contracts immediately when setting them.

So that's the real issue. If we set a policy regarding IANA it's not going to alter a contract necessarily but it may well be a policy.

Thomas Rickert: Thanks Alan. So we have another suggestion made by (Suzanne) in the chat. Let me read it out for those who are just on the audio bridge. She wrote would bottom-up community-based policy be a possible substitute. The point is to constrain ICANN from its own thing, from doing its own thing, right? And that got some support. Becky has her hand up and Becky you might also wish to comment on the (unintelligible) proposals that have been made.

Becky Burr: I think that something of a combination of the language that (Suzanne) and Allen have suggested plus bringing into the specific language of the mission about policies for which global coordination is necessary to preserve stability, security, interoperability, et cetera. So I will - I can propose a third way. I'm not quite sure how we want to do this in terms of moving forward and getting something out there for people to chew on but I think that the problem that is being identified is actually probably something that can be solved by specific language.

Thomas Rickert: Thanks Becky. We have Sebastian and then (Greg) and then after that I would like to try and take stock of what I've heard the group say so far. Sebastian.

Sebastian Bachollet: Yes, thank you. Sebastian Bachollet. I guess one part of my trouble is that we are talking about how to constrain ICANN to being only the mission already on the bylaw. I just want to take - it's written on Page 21 for example and it's also referring here. I just want to take two examples. I know one is more contentious than the other. But how we must deal with the time zone (unintelligible). It's outside our mission and then we don't take it and then we don't have anyone to manage those database.

The second, it's Net Mundial and the (unintelligible) meeting and the involvement of ICANN. I really think that we need to give to this organization some possibility to breathe, not just to be in the (unintelligible) as we say it in

France. And my second point, it's about this sentence where we are talking about policy development and we have a lot of different adjective with multi-stakeholder and all that. It's good but I don't understand why we specify that for policy development it must be the characteristic of the organization and I would like to add to multi-stakeholder that we talk about global organization. Thank you.

Thomas Rickert: Thanks Sebastian. I see that your points are being captured in the chat, I think particularly your point on Net Mundial and the need that you see for ICANN to be flexible and be able to react to developments in the world is a vital one. I think though that we are talking about setting policy here and I think that with the consensus of the community policy can be set even in that area potentially. But such consensus would be required.

So there has been a lot of discussion and concern about ICANN's mission creeping into other areas and I think that this tries to help make sure that ICANN does not mission creep. But I think everybody should think about the comments. We've taken note of your points in the chat so let's hear Greg now.

Greg Shatan: Thank you, Greg Shatan. I put my hand up primarily to point out the language I put into the chat that appears just below the 4/23/2015 1522 line. I see several people have seen it. So I just wanted to point it out to the remainder since I thought it should be - in case some people did not see it. Thanks.

Thomas Rickert: Thanks Greg. Alan.

Alan Greenberg: Thank you. I understand the desire of some people to constrain ICANN to its core original mission and I understand the desire of other people to want to give it some flexibility but that's not what this paragraph is talking about. It starts off saying its role with respect to domain names.

So it is a constrained paragraph and I don't think we need to worry about the time zone database or Net Mundial in relation to domain names. Thank you.

Thomas Rickert: Thanks Alan. I think that's a good point of clarification. So I think that the proposal made by Greg has got substantial traction. I would assume that Sebastian is not happy with it although maybe with the clarification that Alan offered you would be in line. So Sebastian let me check with you whether that's compromise language that you would be happy with.

Sebastian Bachollet: First of all I like that (unintelligible) always (unintelligible) me. That's very good and very appealing to this work. Thank you Alan very much. But I would like to know which line we are talking about because I was talking about Page 23. Maybe we are not in the same page. And if we are not I apologize for that.

Thomas Rickert: Okay so let's get confirmation on the page. So I think we're - so maybe somebody can help me with that? So 21-22. Can I ask you all to scroll to pages 21-22? It's in the first red paragraph. So I hope that everybody has it now because I was looking at the document in another window. So it looks like the primary draft (unintelligible) Becky was happy with the suggested change that Greg introduced. Let me check whether there's any opposition to using Greg's proposal.

And in the absence of opposition I will suggest that we re-word that phrase and go with that. But I see that Kavouss has raised his hand. Kavouss please.

Kavouss Arasteh: Yes, not objection. Did I understand that Greg's proposal is to a multi-stakeholder bottom-up consensus process?

Thomas Rickert: That is correct.

Kavouss Arasteh: Yes, is it easy to implement that? Does it go to have a consensus in the bottom-up in the big community that one objection may drop everything or should we make it more simpler? Could you achieve any consensus to the bottom-up? Even with a small group like us it's difficult to have a consensus without very hard discussion so they should be careful what they put, whether it is implementable or not. Do we need to go that far? Thank you. I'm not objecting, just raising the questions.

Thomas Rickert: Yes, and that's a good point. Kavouss reminding us that we need to bear in mind that there are different definitions of consensus in the various groups that we see in ICANN and the definition with the possibility to object and thereby bring the consensus to a halt is the GAC definition that you were alluding to. We have others that would go with rough consensus as to making consensus. For example the GNSO is using that. But I see that Alan is offering some additional comment on that. Alan.

Alan Greenberg: No I'm actually not. Mine was really a more mechanical question. I've been having trouble with page numbers, that they don't match what people are talking about and I realized the document I looked at which was pulled off the Wiki is version 1.2 and the one being displayed is 1.1. Which is the correct one we're working from?

Thomas Rickert: Actually I'm looking at the - this is where I was hesitant to propose a page number but the version that I see in the main Adobe room window has the part we're talking about on Page 20.

Alan Greenberg: I understand, but the title of the notice is one-point - it looks like it's 1.1. The version I pulled off the Wiki which I thought is the most recent is 1.2. I'd just like some clarity as to which version we're talking about as we go forward.

Thomas Rickert: Okay can I ask Becky for a clarification on the version issue and whether that part remains the same?

Alan Greenberg: I think it's staff who pulled the whole paper together, not Becky.

Thomas Rickert: Well it was - I would say it was a collaborative effort.

Becky Burr: The text of the mission and core values that is in the package, the mission statement beginning on Page 19 6.2. I'm not looking at the Wiki so I'm going to have to take a look at that but the mission statement itself has not changed since the frozen draft at all. As I said I did modify the fundamental commitments and core values only to reflect work that WP1 did on the affirmation of commitments language.

So I think that in the - that the stuff in the frozen draft for Section 6.3 is very, very modestly out of date but the language in the frozen draft for Section 6.2 is correct.

Alan Greenberg: Yes Thomas for clarity I wasn't talking about Becky's section. I've had the same problem in the previous two sessions today. Is the current one the latest one on the Wiki or is it 1.1 we should be working on and 1.2 is an anomaly we should ignore?

Thomas Rickert: Alan that's a very good point and let's just be perfectly clear. The version that we're using for the first reading during all these initial discussions that we're having is the version that has been frozen. So you're safe to use the 1.1 version as part of our deliberations. Sebastian's hand is up again.

Sebastian Bachollet: Yes. Okay I finally found where it is and there is a same - maybe same discussion about consensus policy in another paragraph. Here as we are talking about I hope just GNS but I am not even sure but if we are just talking about GNS that's okay. But if we go Page - I guess it's Page 23 (unintelligible) 23 it's written (unintelligible) transparent (unintelligible) processes. And it's why I was commenting on that. Thank you.

Thomas Rickert: So Sebastian just to be clear do you have an objection against this very wording because if so we would need to open that discussion.

Sebastian Bachollet: I have a proposal to change this on Page 23 but if we are on Page 20 then let's finalize Page 20 if you want. If not I can give you my proposal on Page 23. It's up to you. You are the chair.

Thomas Rickert: Yes, yes. Had you confirmed that you had no objection we could have moved on on both issues but since that is not the case let me first try to - start on the discussion on Page 20? So I have not seen or read any objection against using the proposed wording introduced by Greg so we're going to use that and put that into the report.

I would then ask whether there are any further requests for edits and discussion and I would assume that Sebastian, this would be your opportunity to introduce your concerns on Page 23.

Sebastian Bachollet: Okay, I just want to repeat that on Page 21 at the end of the 6.2 I have trouble with the written way of mission not specifically authorized by these bylaws. I already explained why earlier. And on Page 23 I would like to - first of all I think it must be written somewhere that ICANN is working and not just for policy development. It's not just for that. It's for all the purposes, must

be open, global, (unintelligible) stakeholder organization. If you want I can put that in the Wiki. Wait a second. I will do that.

Thomas Rickert: Thank you Sebastian. I think it would be helpful for you to maybe submit your wording in the chat so that everybody has all the information in one place.

Sebastian Bachollet: That's exactly what I have done.

Thomas Rickert: Excellent. I'm seeing it now. Thank you so much. Becky your hand is raised.

Becky Burr: Have we moved to Page 23?

Thomas Rickert: That is correct.

Becky Burr: Okay. There is something I definitely want to point out because this was the subject of a great deal of discussion in Istanbul. At the very top of the page on Page 23 the fundamental commitments; we've added language from the articles of incorporation that references international law and it says ICANN must cooperate for the benefit of the Internet community as a whole carrying out its activities in conformity with relevant principles of international law and applicable law and applicable - international conventions and through open and transparent processes -- et cetera.

That language is directly taken from the articles of incorporation but in order to make it durable or fundamental and therefore difficult to change. And in response to some of the discussion we had in Istanbul we moved it into the fundamental commitment language and so it would become a fundamental bylaw.

Thomas Rickert: Thank you for that Becky. Any further interventions. Any support for the suggested language introduced by Sebastian? Can we have some feedback on that? Just in terms of how we operate I think we - in order to introduce new topics to the text that we've suggested I think we would need some traction for suggested amendments. So I would suggest that we keep the language as it is for the time being and allow for the group to further digest.

The language is in the notes for this - for this call and I'm more than happy to re-open the discussion should more members of this group suggest that we should amend the language. So with that I would like to give you another opportunity to comment on or suggest further amendments to this part of the report. So that does not-

Jordan Carter: Thomas, it's Jordan here. It's Jordan here.

Thomas Rickert: Jordan.

Jordan Carter: I'm really confused now about which part of the report we're looking at. Are we talking about the table still with the mission on page 20-21 or are we talking about the table that's labeled 6.3 fundamentals which is actually the fundamental commitments. Because if we're working through that table, the one that starts on Page 21, the fundamental commitments and core values, then we need to go to the other document that Becky had circulated. So can you please clarify what we're working on?

Thomas Rickert: Yes. So far we've discussed language on Page 20 and Page 23. That is both in the same document. Does that answer the question?

Jordan Carter: No it doesn't because I'm trying to work out what we're meant to be focused on now. Are we still meant to be focused on the mission text or have we

moved on because if we're looking at the table that starts fundamental bylaws on Page 21 there is a different document that we should be looking at which combines the Working Party One and Working Party Two suggestions.

It's the one that was on screen before this was put up and it's the one that Becky E-mailed around on a list a few hours ago. So if we're going to be discussing the fundamental commitments and core values I think we have to move to that document, not use this one.

Thomas Rickert: But you're speaking about the section that was missing, correct?

Jordan Carter: I'm not speaking about the section that was missing. I'm talking about exactly - on Page 21 on the bottom half a new table starts. It's got a heading called fundamental bylaws and the first line in red is fundamental commitments and core values. Becky circulated a paper (unintelligible) that has an updated version of that in the sense that it includes in one place both the suggestions that her working party made which is one Page 21, 22, 23 and includes the suggestions that Working Party One had made to these core values.

So if we're going to be working through that we need what has now appeared on the screen, we need this table. That's why we have to separate the discussion. Sorry. I hope that (unintelligible).

Thomas Rickert: And you're correct and thank you so much for pointing that out. Nonetheless I think it was good for us to have a discussion on what was the frozen version of the document and maybe since we've finished the discussion on that paper obviously let's now focus on the changes to the section, the purple version as we called it. And I apologize for this being more difficult to follow than necessary but Becky maybe you can facilitate further discussions by again

highlighting the changes that have been made so that people can comment if need be.

Becky Burr: Okay. Again these have been circulated and quite stable. On the second page of the document that's up on the screen now in the fundamental commitments Item One on the left we have the language about preserving and enhancing operational stability which was-is the current language. The work party WP2 modified the language to include resilience and openness of the DNS and the Internet.

And in Purple below that WP1 suggested adding the following additional language saying that ICANN must maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single interoperable Internet. That is language that appears in the affirmation of commitment. I think it is implicit in the Fundamental Commitment One but I have no problem adding it as it is completely consistent with what has been the - what we've been talking about.

Fundamental commitment Number Three also includes some purple language which again imports language from the affirmation of commitment related to the language that specifically says ICANN is obligated to take input from the public for whose benefit ICANN shall in all events act and references the private sector leadership. Again that is in the affirmation of commitment.

Then going down to the next page in Core Values Number One Work Party One suggested referencing affirmation of commitments 3B that says making sure that decisions are made in the global public interest and are accountable, transparent and respect the bottom-up, multi-stakeholder nature of ICANN. Again that's consistent with what the work of WP2 was.

Core Value Number Three in the middle there has the purple draft referencing, enhancing consumer trust and choice. Again directly from the affirmation of commitment. And then - and that's it. So those are the modest changes. They are all directly intended to reflect the affirmation of commitment and so in order to make sure that we're all on the same page because we were working - you know, we were working simultaneously in some cases it was difficult to coordinate the work that was going on before the frozen draft.

What I've put together here is just an attempt to make sure that all of the recommendations of Work Party One are in this fundamental commitments and core values section.

Thomas Rickert: Thanks Becky. I'm just conscious of time. In the planning that we have done prior to this meeting we've allocated another two minutes to the subject but I don't want to interrupt the discussion now that I'm nonetheless going to close the queue after (James). I would like to ask you to keep your interventions as brief as possible.

Also I think we don't have to do wordsmithing as a group exercise now. We are rather trying to get confirmation on the general ideas, whether you agree with what's in there, and then maybe we can take minute changes to the language offline. Izumi is next.

Izumi Okutani: Thanks. So regarding this text that we're looking at I support what's been incorporated. It's very much in line with the values that is commonly shared and also in line with the work of the Work Party One. Actually I wanted to comment about the previous section, not this fundamental bylaw section. It seemed that it got skipped before I had a chance to comment. I just want to raise that there was a part that was left to insert related to the IP address and

the number resources and I don't know if the intention was to leave it as it is and not really write anything concrete or it was just left that way because people didn't have an idea what to write.

And if that's the latter case then we actually sent suggestions to all the mailing list. So I just want to share that. Thanks.

Thomas Rickert: Thank you Izumi. Becky I think I will give you the opportunity to respond after we've listened to the others that have queued. Kavouss.

Kavouss Arasteh: Yes. Thomas you remember yesterday we discussed (unintelligible) of commitment and it's a term used, it's in the US government or NTIA and ICANN. (Unintelligible) vision whether or not (unintelligible) this term. Apart from that whether in the bylaw we have the term ICANN commits. Yesterday Steve DelBianco mentioned that (unintelligible) change that instead of saying ICANN commits saying that ICANN shall do.

So we have to raise that flag that at a later stage this term needs to be replaced (unintelligible). So I don't understand fundamental commitment. It's a fundamental bylaw or not (unintelligible) a fundamental commitment. Do we have un-fundamental commitment as well in this text? So we have to clarify the matter at a later stage.

I don't want to waste - to waste the time at this stage but we have to make note of that that this term needs to be revisited to be put in an appropriate term which corresponds to the new bylaw. So we don't have a fundamental commitment. We have a fundamental bylaw but not fundamental commitment because we don't have non-fundamental commitment. Thank you.

Thomas Rickert: Thank you Kavouss. Greg.

Greg Shatan: Thanks, Greg Shatan. I'm not sure if this is the right point in the overall agenda for our high-intensity working session and if it isn't I'll reserve further comment on the subject to the right place -- and I would appreciate knowing what the right place is -- to discuss the deletion of Section 8B from the affirmation of commitments. It's the sole ICANN commitment from the affirmation of commitments that has not made its way into this version of the document.

And somehow we've managed to avoid discussing it somehow, maybe inadvertently. But is this the right time or is there another time allotted for that in our agenda?

Thomas Rickert: We will have - we have planned for another place of the agenda to discuss this but let's do this; let's briefly give Becky the opportunity to respond to the proposal. It is my view that Izumi's proposal got some traction. And afterwards I would like to hand it over to Steve DelBianco to speak to the AP question. But Becky first.

Becky Burr: Yeah Izumi's proposed languages, I'll look at it carefully and work it in. And that's great and I appreciate that (unintelligible) and I think you probably worked on it together. Kavouss' point is well taken on the words. I'm not deeply wedded to the words fundamental commitments and I'll try to think of something else to describe them. And I think Steve will talk to the other issue.

Thomas Rickert: Thank you very much Becky. Steve.

Steve DelBianco: Thank you. Greg we discussed this briefly last week. Page 47 of the frozen document was where affirmation of commitment Paragraph 8 was mapped to where it would go and the core values are elsewhere in the bylaws. And I'm

speaking of Page 47 in the frozen document. 8A and 8C were brought over as a new core value and Becky reflected that in the purple text. But in our last call we discussed that 8B which is that ICANN would remain a not-for-profit corporation headquartered in the US with offices around the world to meet the needs of a global community.

We did a very careful read of the existing bylaws and section 18-sorry, Article 18 Section One reads in a way that Greg I believe that you would acknowledge we can check this box that we pretty much have this covered in the bylaws. I'll read it to you. It says the principle office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, US of A.

That is a normative statement. It says shall be so it's not just a descriptive statement like the articles have where ICANN happens to be located today. So given that Article 18 of the bylaws says shall and we're empowering ourselves to be able to block a bylaws change that the community doesn't support. It struck a number of us that 8B of the affirmation is already reflected in ICANN's existing bylaws. Thank you.

Thomas Rickert: Thank you very much Steve. I think we - it's a good time now for us to move on to the next agenda item.

Greg Shatan: I'd like to briefly respond to Steve.

Thomas Rickert: If you can keep it brief please.

Greg Shatan: Yes. I would say that if in fact this 8B from the affirmation of commitments is redundant we should state that that is why this is not being taken forward into this section. And I guess the issue to them is is that going to be fundamental or

not. If we're taking all of the rest of the affirmation of commitment and if we're making those into fundamental bylaws but not making the other one into a fundamental bylaw are we - why are we making that distinction?

And the reason I say this is that in the language of the document preceding this section it talks - it pretty much gives the impression that we're taking all of the ICANN commitments that are in the AOC and transporting them into the bylaws. And I think we need to be express about this and if we feel it's unnecessary because it's redundant we should say so. Thank you.

Thomas Rickert: Thanks Greg. And Alan sorry to disappoint you but I had closed to queue after Greg and I would really suggest that for the updated version of this report maybe those who have suggestions on the concrete language do get in touch with Becky or WP1 to ensure that we get all the input in there. But I think that's not for the preliminary to discuss now. The only remaining point before I had it over to (Matthew) to chair the next session would be the point made by (Ingrid) in the chat.

(Ingrid) maybe if you could maybe you can give us one, two or three-sentence long explanation of what you're referring to because I trust that not all of us do know what was in your statement of (unintelligible). So (Ingrid) if you could maybe briefly refresh everybody's memory that would be awesome.

Ingrid Mittermaier: Hi, yes. This is (Ingrid Mittermaier), one of the legal counsel. Yes, we had submitted responses in the memo dated April 20th. A lot of what we commented on had to do with thinking carefully about what parts of these mission statements and core commitments belongs in the articles of incorporation versus the bylaws. That's in US legal entities. It's an important distinction between these two sets of governing documents.

That can still be worked out. I think the main pieces to remember is one that these will create legal restrictions and so any of the wording needs to be flexible enough to really encompass everything that the organization does want to do going forward and I know people are very mindful on it. There was a little bit of a narrower comment that if there's a reference in the mission statement or in the core commitments to international law that just needs to be a careful reference.

So with those kinds of legal comments we just want to make sure at the right point those will be taken into consideration as further drafting occurs.

Thomas Rickert: Thank you very much (Ingrid). That's good to remind us. And with that I'd like to hand over to (Matthew) to chair the next part of the agenda.

Mathieu Weill: Thank you very much Thomas. The next part of the agenda is about this item where we had the slight coordination issue between Work Party One and Work Party Two and that is why the document that we will be discussing is this memo that was speculated yesterday by the fundamental bylaws. And our task is greatly helped by the fact that we had a good discussion in Istanbul on the fundamental bylaws and it was - the conclusions were confirmed in our meeting on March 31 where we said that there would be provision in the bylaws where any change would require (unintelligible) approval with specific procedure requirements from community.

And this group of these bylaws would include the commission, the provisions creating (unintelligible) bylaws, the independent review panel and the powers to change bylaws and fill the board.

So we had basically already agreed on the principle, agreed on the scope. We have legal confirmation that it's feasible subject to where we put them. So

most of our discussion tonight is actually about the additional elements that were provided in the memo about the threshold to propose a modification of the fundamental bylaws, the threshold to approve them and maybe the process and also taking into account one of the comments that was made by (Yanat Shultzer), one of our advisors, about the risk if we set thresholds too high that we actually (unintelligible) and create an ability for ICANN to change what (unintelligible).

A couple of examples including the International Monetary Fund where too high thresholds were actually impairing evolution - it was according to some needed. So that's I think the core of our discussions that we need to have now. Becky would you have anything else to add or Jordan because you wrote this document together?

Becky Burr: Not I.

Jordan Carter: Just briefly to respond to a point that was made in one of our previous calls about whether there would be a section of the bylaws called fundamental bylaws which listed all the fundamental bylaws. This memo doesn't propose taking this step. This memo says that there will be a provision in the bylaws that kind of lists which ones are fundamental. And the reason for that is there may be parts of say for example the GNSO PDP. There may be parts of the appointment of the boards, the removal process that make more sense to leave in the place that they belong in the context of the bylaws than to drag them out and stick them into a special fundamental bylaws section.

So it's just saying that if we go with the proposal that's written down there will be a section in the bylaws that says these are the fundamental bylaws and lists them so you can easily find them but there wouldn't be just one longer section in the bylaws that included all of the bits that were fundamental in one

place. It would be easier to find fundamental bylaws if we put them all in one place but it would make the bylaws altogether harder to understand, less transparent, harder for the community to use and therefore it would probably harm accountability purposes if we were to just lump all the fundamental bits in together.

Mathieu Weill: Thanks Jordan. I notice a question by Sam in the chat and having no hand in the queue is why is the process only defined for fundamental bylaw changes that are identified by the board staff and what if a proposal was recommended through a community process. Did you consider that problem? Is that an intention that it moves through the board only?

Jordan Carter: We did encounter that. If you look on the second page of this memo in Section 6.3.3 Sub-Paragraph 4 under there it says that the CCWG (unintelligible) as part of (unintelligible) for any other means or other parts of the ICANN (unintelligible) relative to new fundamental bylaws or changes to existing ones.

As the lead - as the lead drafter for this memo my familiarity with the range of ways the changes to the bylaws could (unintelligible) I don't know whether there are a wide range of ways that bylaws changes might already come into existence but we were trying to capture that at the moment in the end I think wherever these things emerge from they do end up at the board making a decision so that was the place to insist additional process.

Mathieu Weill: Thank you Jordan. Sam you raised your hand. Sam, are you talking to a muted microphone? Sam we can't hear you. You're coming in Sam.

Samantha Eisner: Hello, can you hear me now?

Mathieu Weill: Yes, now I can - yes.

Samantha Eisner: All right, sorry, there was a mute that I was not in control of on there. So am I to understand that this process is only invoked after the board approves a bylaws change and then it's sent somewhere? Do we have an opportunity to reflect where something might be out for public comment? And there are places where changes to the bylaws occur because they do come out of a community process, for example the modifications to the policy development process that happened after the GNSO restructuring in 2008, 2009.

You wouldn't necessarily say that those mileage provisions came out of the board. Similarly for the addition of the at-large director those were both things that came out of community processes. So there's a point where the board currently says yes you can put that out for public comment. And so if the board putting something out for public comment is the trigger I get that but I think the bylaws come out of multiple ways.

It's currently through the organization and they could impact fundamental issues.

Mathieu Weill: Thank you very much (Sam). Jordan, a direct response maybe?

Jordan Carter: There's no intention to change anything involved with the current process or to limit away from what can happen now. That's why Paragraph 3A in the 6.3.3 very deliberately uses through the usual process. It could say through the usual processes. So the point here was that if something was going to be an addition as a fundamental bylaw or a change to a fundamental bylaw it would be flagged all through that process and when it got to the point of board's proposal for public comment it would be identified as such, the board would

need to cast a higher than usual majority, the community would have to (unintelligible) this.

But there's no intention to limit the way these things happen. It just seems obvious that at the moment wherever they arise in the community they do go through the board in the end which does the public consultation. So what we're trying to do here is to interfere as little as possible with current processes. It may be easier to get that or to avoid the confusion by removing some of that language in Sub-Paragraph 3 so you can to establish a new fundamental bylaw or to change or remove an existing one and the following steps would be followed and just get rid of where the board blah, blah, blah.

And then you could add - you could leave sub-paragraph four there. This is a high-level concept. We don't need to get stuck in the detail about where bylaw changes come from and so on I don't think.

Mathieu Weill: Thanks Jordan. I think we could however take the action you're suggesting to clarify this item because Sam's comment shows that we would need to be very clear that we're not changing the existing processes and that it will remain bottom-up processes that come up with the proposals to add or change the - or remove the fundamental bylaws. I think there's a lot of value in this but that's editorial and we can take that after the meeting. Next to the line is Kavouss. Please Kavouss.

Kavouss Arasteh: Yes (Matthew). The document jointly produced, does it go into the public document or just it is for discussions and some relevant part of that goes into the public document starting by the bylaw. I think and bylaw comprises two sections or two parts, fundamental bylaw and non-fundamental -- whatever you want to give that -- and then try to see what is fundamental and so on. So my question is that how the idea reflected in this document will be included in

the document for public comments or you want to just cut and paste whatever is here and put it in the public document. Very simple questions.

Mathieu Weill: I think everything that would start after 6.3, fundamental bylaws, will be pasted into the document for public comment. Correct Jordan?

Jordan Carter: Yes, that's the idea. So this language here what's written under Section 6.3 where at the moment it just says fundamental bylaws straight into that table, because as we know that table isn't actually the fundamental bylaws, it's the fundamental commitments and core values. So we will need to just fix the headings and we do need a section that talks about this. The idea was this language could just be copied and pasted into the comment report.

Mathieu Weill: Thank you Jordan. And I'm seeing a question by (Pedro) on what is the reason behind making 18.1 fundamental. So 18.1 I'm afraid I don't get exactly what that refers to right away. Certainly Jordan and Becky know that. Or maybe (Pedro) you want to explain? You raised your hand. (Pedro) we can't hear you so far. (Pedro) you are still muted. Comment on the chat from (David) mentions that you were probably referring to 8.1 from the AOC and that would be the headquarter location.

So if that is correct there was - so that's referring to the previous discussion on the headquarters so I would rather - we'll certainly move this discussion to - it was a discussion to have when we review the various stress tests (unintelligible) the nations. So there will be room for further discussion of that. But the point is well noted and I think Steve took this item to heart to check the point about whether this particular provision would benefit from the fundamental bylaw protection or not but that is certainly a question we have.

Steve do you want to answer to that? And I suggest - I suppose that Sam's hand is an old hand but this is just supposition. Steve?

Steve DelBianco: Thank you Matthew. To clarify 18.1 doesn't refer to affirmation 8.1, 18.1 is the current bylaw provision that I quoted earlier and to make it easier for people I've pasted it into the chat of 18.1. The principle office for the transaction of business shall be in the County of Los Angeles. So earlier in the chat we had a few folks ask what would be the rationale. But 18.1 you listed among the items that you are considered fundamental and thereby require positive approval.

And that is a discussion that Greg initiated, a few folks in the chat agreed and others are asking to (unintelligible) that move. So I'm just clarifying for you (Matthew) that 18.1 is existing bylaws and it's seen as pretty consistent with the affirmation of commitments Section 8B which is why we don't necessarily have to add 8B to the bylaws. But we still have an open question of whether 18.1 in the current bylaws needs to become fundamental.

Mathieu Weill: Okay thank you very much Steve. That's very clear. So that's an open question we have to come back to tomorrow and that's well noted. And we need to come back with some form of rational whether we want to put it in the fundamental bylaws or whether we don't want to but at least there needs to be some explanation given given the importance of the topic.

So with this I would like to check whether there's any objection to incorporating the 6.3 language from the memo into the public comment report.

I'm seeing none but I need to check that I'm not losing anyone. Okay so with this we will then do that and you will receive an updated version and I'd like

to really stress the excellent work that Becky and Jordan have done together to catch up with this item. I mean they did outstanding work overall but on this item as well. Izumi you have a last question maybe.

Izumi Okutani: Yes. I wasn't aware that we were covering the whole Section 6.3 and so sorry about being late about raising hands. So I actually made a comment on the mailing list as well. So there are parts about policy development that seems to be - seemed to be covering all related policies. It doesn't really specify that it's mainly related to the names. But the things work a little bit different for the numbers and the names so I do want to raise this.

And I think we already have good language on the document that applies for the names policies so I wouldn't want to suggest changing that but add a memo somewhere that if this description is (unintelligible) to be applicable to the numbers recent policies then further consideration should be made and then maybe leave it up to the numbers community to come up with the necessary suggestions during the public comments. So that's my suggestion.

Mathieu Weill: Thank you very much Izumi. Very constructive suggestion. I think you were referring to 6.3 from the frozen document which was the previous discussion on core values and commitments and mission but the comment is valid anyway so we'll ensure we capture that in the edits we are doing into this section. And I did notice your contribution detailed and constructive on the mailing list so that will be certainly easy to integrate.

With that I think we have made good progress on the fundamental bylaws and we will now turn to I think it's Leon. Is it Leon?

Leon Sanchez: Yes it's me.

Mathieu Weill: Are you Leon going to chair the IRP part? Maybe (unintelligible).

Leon Sanchez: I will try. I will try at least. Well as you know in our draft report I believe on Page 26 if we could just bring that up into our screens. I believe Page 26 as I said. We have the independent review panel and this as I understand it might be if not the most important goal to achieve certainly it is one of the most important.

We do have a review process right now in place with regards to some of the operations that are undertaken in ICANN but we of course feel that we need to improve this process because right now what we have is a review process that only takes into account process but it doesn't go into substance.

So while gathering comments from the community many commenters raised the question or the concern that if we were to design an independent review panel as a new review process or as a new review mechanism then this independent review panel would need to also look into substantive issues rather than just analyzing whether ICANN had kept its actions according to the process or just - yes, I mean procedural matters.

So we have of course many things to consider here. I believe the most relevant issues at this point as they are of course open questions in our document are the outcomes, whether these outcomes would be binding or could be binding, the finality of these outcomes, whether they can be appealed or not, the selection process of these (unintelligible) panel and of course the size of the panel and the diversity and interdependence of the panel.

So we received feedback from council as to whether this process may be or may not be binding and I would like to have the lawyers speak a little bit about binding - viability of this review panel in a moment. I would like now to

turn to Becky. So I don't know Becky if you want to add anything to this very brief introduction that I have made about the IFP.

Becky Burr: No I think you've done a very good job of summarizing it. I hope that we have clearly signaled sort of the direction in which we're headed and the questions that remain to be filled out. In particular in the document there are questions that we think would benefit from community consultation, clearly questions about outcomes, questions about the finality of the process, the selection process for panelists, the size of the panel itself and diversity and independence issues are quite important.

I don't know if the folks on the call have particular issues that they want to raise now or whether people are content with the direction and then the level of questions that we will seek input from the community on.

Leon Sanchez: Thank you very much Becky. So I see some comments on the chat, one from (Jorge Canciu) who is supporting the idea that having of course binding outcomes is quite important for our goals. So I'd like to turn to (Ed McNicholas) from Sidley to give us a brief walkthrough of the last memo they sent us with regards to the feasibility or the viability on having the IRP process being a binding process.

And I would also remind you that we also received another memo from council just very recently and it was circulate d and on Page 5 of that document we have a summary chart which I find most useful for those of us who are non-US lawyers and of course those who are not lawyers either from the US or from outside we have this chart that will be able to guide us through different issues throughout our sessions. So I'd like to turn now to (Ed McNicholas). (Ed) could you please take the floor?

(Ed McNicholas): Yes, this is (Ed) from Sidley. Let me just speak to the - as clearly as we can to the enforceability of the IRP process. Particularly for the broader audience we sent around just as this meeting was starting a very brief one-page answer to the question of the issue is the IRP - could the IRP process be enforceable. And in that we've tried to make sure that the overall answer is clearly yes.

The IRP process can be enforceable. It's limited by the scope of the agreement of the parties and there's a little bit to unpack there. And there are a couple of exceptions. But the overall message and the overall take-away should be that it is - it can be enforceable for the vast number of areas. But let me unpack what I meant by the idea that it's limited by the scope of the agreement of the parties.

There's a very strong policy under the Federal Arbitration Act of encouraging parties to resolve disputes in a binding way. And so the parties have great flexibility in designing the sort of process they want in terms of defining how many arbitrators, the qualifications of those arbitrators, the rules of decision of those arbitrators. So the agreement of the parties is vital to this.

The agreement in our context would be probably in two places. One, it would be in the ICANN bylaws so that it would be binding on anyone subject to the ICANN bylaws. But then you'd have to think well how is this binding upon the members or designators? In the agreement to which they would become members or designators we could insert the arbitration clause into that.

So both the members and designators and ICANN would be bound by it. There was an inquiry about does this exclude third parties. No, it does not exclude third parties. Any third party that wanted to use the agreement to want to use the IRP process could do so with ICANN's agreement and that third party's agreement.

And so if we wrote the bylaws that this process is available to third parties as long as they agree to be bound by the process themselves then a binding arbitration could be available to those third parties. The arbitration is enforceable in a sense that the award of the IRP, one it would probably be - people would probably comply with it. ICANN would probably comply with it just because it was a decision of the IRP.

But let's walk out a scenario in which for some reason there was a - one of the parties to the agreement did not want to comply with the IRP decision, what would be done with that. Well in that case the prevailing party could take that decision to a court and get a court order basically compelling compliance with it.

There is a review by the court to make sure that the award reflected due process to make sure the award was within the agreement of the parties but as long as those basic procedural fairness criteria are met the award would be enforceable pursuant to a federal court order.

So it is strongly enforceable in that sense. There is also - these awards can be taken to the courts of many other countries. I can't get into every other country out there but there is broad international acceptance of these sorts of awards. In fact arbitration is used frequently in the international commercial context for this very reason. But let me talk about two exceptions that - and I want to make sure that the - we view these as the exception, not the rule and not get unduly delayed by them.

The one are member - are powers reserved to the members. I recognize it's an open question about whether there will be members or designators and that's a - but if there are members under California law powers can be reserved to

them. And this may be a very effective way if you want the - if the community wants to have certain powers reserved to the members, maybe a power to initiate a budget, to veto a budget, to review a budget, to approve a budget.

However that power wants to be phrased those powers can be reserved to the members in the document in the organic documents, the documents that set up the membership structure. And so if the members are to decide an issue and not the board then that process - that decision would not be reviewable by the IRP because that would be within the sphere of the membership and not the board.

It would give us a very strong accountability measure up front. it does pull it out of the backend accountability of the IRP but it is a very strong accountability measure upfront when people talk about a community veto in the budget or a strategic plan or whatever the scope of that is decided. Again there's a lot of flexibility in the law provided for that.

There is also a limitation in the law that is - I can't say it's crystal clear but there is definitely a limit there but there are matters that are so material to the conduct of being a board that to subject them to IRP review would undermine the statutory obligations on the fiduciary role of the IRP.

For instance if you had everything the board could possibly decide subject to IRP review then if you think about it, the IRP becomes the board and if there are concerns about accountability of the board, you would only have transferred those same concerns about accountability to the accountability of the IRP and we'd have a lot fewer accountability mechanisms over the IRP than the board.

And so if you think about it as a - IRP as a quasi-judicial body, you need to have courts have limited jurisdiction so that they do not wind up becoming the executive and not stepping out of the judicial role. And so there is this fiduciary limitation on central functions that could not be submitted through binding arbitration. The exact line in the law there is not clear. The discussion is essentially that some things are so core to being fiduciary that to put those in the hands of a third party would make you not the fiduciary anymore.

But again that's an exception - that's a very small exception in the middle of the core centralities of the board. The power is reserved to the members - the powers kind of inherent in being a board. But beyond those the basic answer is that the IRP can function very effectively in this quasi-judicial manner and even outside of that area you have a - the IRP would have ability to issue advisory rulings. So even if there was some question about is this a core function or not, it could be put to the IRP and they could issue an advisory ruling and even if it's technically only advisory, it might be helpful in resolving the dispute nonetheless.

So that is kind of an overview of where the IRP process would be.

Leon Sanchez: Thank you very much for that (Ed). There are some questions already being raised in the chat. I have just a few questions from Farzaneh Badii:. The first one being where will be the jurisdiction to challenge to some arbitration award just to which court and whether this resolution could be substantially challenged or not. So could you please comment a little bit on that (Ed)?

Ed McNicholas: If there's a - if there's an arbitration between two parties that have agreed to the arbitration - let's say it's between a member in the ICANN board - and they put - there was a dispute and they put it to the IRP, the challenge to that in court would be a very limited one. The grounds of challenging arbitral

award under the Federal Arbitration Act essentially assume that the process would - that the agreement was in fact to be arbitrated under the agreement of the party - the parties - and that the procedural fairness was respected by the IRP.

So if the agreement was to have three arbitrators and there was only one, that could be a way to challenge it on that kind of procedural ground. But the federal courts would not look back to the substance of the dispute if it was within properly within the jurisdiction of the IRP and they issued their decision, there would effectively be no appeal from that. It is meant as a binding decision.

Leon Sanchez: Good, that's very useful. Thank you very much. Another question was raised by Becky asking if you could please clarify if it's possible to make the existing scope of the IRP materially harmed, etcetera binding even in the core zone of members.

Ed McNicholas: The rule of decision is a flexible one and so you could have whatever standard be - you could have violation of the bylaws. You could have whether someone is harmed - whatever rule of decision the group wanted could be imported. Usually it's compliance with the bylaws and articles but you could have that - the rule of decision be what the group wanted.

In terms of the - for parties that are not members so truly third parties - they could agree to the process when they go into it much like the familiar domain name process where people agree to be bound by it when they sign up for a domain name. Here if you wanted to bring a dispute to the IRP in that process, you would be - you would be bound by it. I don't know if that's responsive to Becky's question or not.

Leon Sanchez: Thanks. Would that answer your question Becky?

Becky Burr: I guess the question is would ICANN have to agree in each case to make it binding or could they agree up front that if somebody is materially harmed a violation of the bylaws that they could bring an IRP and that it'd be binding. Or I mean so could they agree in advance that it will be binding or would they have to agree in each case?

Ed McNicholas: They could agree on a blanket way in the bylaws the same as - they would be expressing an openness to agree - to agree into arbitration with anyone who claims to have been materially harmed by their decision. And so it would be essentially an open offer to arbitrate anyone who says that they are harmed by this.

And so yes, you could - you could open that up and then the party would have their choice of - the third party would have the choice of taking the board up on its offer to arbitrate or if they're a third party not in any way bound to arbitrate, they could look for their judicial remedies. But once they went down the IRP route then they would be down the arbitration route.

Leon Sanchez: Thank you very much for this (Ed). There's another question from (David McCally) with regards to the exceptions or the limitations on whether this IRP would be binding or not and it refers to who would define or who would decide which issues involve those matters that are so material to the board that it would undermine its statutory obligations (unintelligible) to sharing rules. Could you elaborate on this? Could you give us a little bit more clarity on this?

Ed McNicholas: Ultimately that would be decided by the court. There are really only a handful of cases on this because most boards only would participate in arbitration over

a smaller set of issues but the ICANN board - I mean clearly there's an emphasis in the community on having more arbitration and so this is a very broad scope of arbitration we're talking about.

The idea is that there are some things that are so central to the board. For instance, the writing of its bylaws may well be a core board function that an arbitration could not compel the board to add a new bylaw. Now you could get IRP review or arbitral review of compliance with a bylaw and that would be - but it's not rewriting the board's bylaws for itself.

Exactly how far that goes out - there's a notion in the law of the business judgment rule that some things within the management discretion of the board - I don't think it probably goes that far. It might but there is a - there's a great - there's a bit of grey there in the law and it's just - it is there because it's not been litigated that frequently.

One thing I did want to point out about the process is the IRP process does allow the - does allow the board to recognize the standing of whomever they want to to participate in this process. And so even though a legal entity can't go into something that is not an association or formal incorporated association may not be able to go in the court and sue ICANN but they could participate in the IRP process as long as the - that process was to recognize their standing.

And so they could - entities that might not be able to go in the court - could still participate in the IRP process. So it can be an extremely broad binding process if that is what is desired. There's a great amount of flexibility in the law there.

Leon Sanchez: Thank you very much for this (Ed). I see Kavouss's hand is up and Holly's hand is up but before going to them, I just want to clarify some - a comment

that I see on the chat - the first one being Kavouss's and then I think it's in line with what (Tim Patterson) has expressed in chat.

We are discussing an internal solution for the independent review panel. This would be a standing panel formed by members of the committee as by assigned to them or as far as it is explained in the document. And we are not looking to an external - an external solution at this point. I mean it doesn't mean that - it doesn't mean that we can't look at it but so far how it's stated in the draft document, it refers to an internal but independent panel and this of course needed to be clarified.

And so now I will go to Kavouss. Kavouss do you have your hand raised?  
Could you please take the floor?

Kavouss Arasteh: Yes Leon. You replied to one of my questions that we are not dealing with the external entities. Thank you very much. And the second is the small issue of what you said at the beginning. You said what our (unintelligible) I don't know - some minutes of both. So don't forget that. And the point - the second point I want to make is that all these discussions about the possibility and viability of the IRP - is it equally applicable to the designator model or are you just talking about member model because the legal counsel (unintelligible) to members.

No, no. These members were in the context of the member model or members in the general term - just a clarification whether the impossibility applies to both models - members and designators - or they are different. Thank you.

Holly Gregory: So Leon it's Holly. May I answer that? That's what I had my hand up for because I was thinking that maybe we needed to clarify that.

Leon Sanchez: Absolutely Holly. Please do.

Holly Gregory: So there are parallel points here. The IRP exception that my colleague (Ed) discussed around fiduciary matters that must be reserved to the board - it's a very sort of same legal underpinning for the difference between members and directors to integrate and designators.

Members you are able to reserve some things that you might typically give to a board - not everything because then the members would be the directors. But you are really much more limited in the ability to give things to designators that could read on the fiduciary duties of the directors and so there's a parallelism between this point on the limits of the IRP and the limits of what you can give to designators and third parties.

So the IRP point means that members and designators are somewhat different in the IRP world. Now of course as said at the onset, what it really means is if you've reserved something to the members, that item that's been reserved to the members is also not within the IRP overview because you determined that the members are the ultimate decision makers. So if there was a dispute over power regarding what the members had done, it's not clear that the IRP would be able to address that particular kind of dispute. And (Ed) if you could just confirm that I've gotten that right.

Ed McNicholas: Yes, yes, that would be - that's exactly right and on one level the IRP process - it's clear that the IRP process can exist and exist robustly in both models but there is that difference.

Leon Sanchez: Well thank you very much for your explanation. As you can see in the chat, they are highly appreciative and we are most thankful for at this juncture

performing. And I see (David McCally)'s hand is up so (David) could you please take the floor?

David McAuley: Thank you Leon. This is David McAuley. Ed I have one more question on IRP. There's been some mention of enforcement in courts, enforcement of an IRP order. I just wanted to clarify - isn't it true that if there was an issue that arose in another place where ICANN was subject to jurisdiction that someone could seek relief in a, you know, in a court in Belgium or Singapore or wherever it might be? It's not limited to US courts to enforce IRP decisions. Is that a correct statement?

Ed McNicholas: Yes. I mean as long as we structured the IRP process and I think we would intend to structure it this way so that it was consistent with some of the international - the international agreements on enforcement of arbitration. We - you could indeed take it to many other jurisdictions and enforce it. That - the rules of the other jurisdiction may come into play and they may not have as strong a presumption in favor of arbitration as the Federal Arbitration Act but most courts in many countries have - it's a very - it's a very common thing to have a presumption in favor of enforcement of international arbitration but I'm not - I don't want to say that it's everywhere all the time because that would be a huge legal survey.

Leon Sanchez: Thank you for this. I saw Kavouss's hand was up but it suddenly just disappeared. Kavouss do you want to add something?

Kavouss Arasteh: No, thank you.

Leon Sanchez: Okay, thank you very much. So with this I think it's been a very useful introduction to the discussion on how the outcomes can in fact be binding under certain circumstances and of course with some - with some limits to

that. This analogy - as we said that it can either be a final solution or depending on many variables of course, it could also be subject to appeals.

And we begin - we are beginning to jump into selection process which will of course lead us to size of panel and diversity and independence. So at this point I see someone asking for a break time so I think it would be in order to have five minutes break at this point. So if we all agree on this, we can break for five minutes and then we could be able to reconvene so we can jump right into discussion on how we would like to select the members of this kind of panel, which size it would have and of course how we would address diversity and independence.

So if we all agree to this, we can have a five minute break. Do we agree?  
Okay, I hear no objections so I think that is an overwhelming yes for a break. So let's break for five minutes and we'll reconvene and go and stretch your legs. Thanks.

Okay so it's time for us to reconvene. If you agree, we can jump back into our discussions and I'd like to begin by answering some need for a clarification requested by Kavouss on whether there's now a relation between the term IRP and arbitration.

My personal view is that an independent review panel is in fact arbitration but of course I would like to - I would like to pose these questions to the lawyers so we don't assume and rather have of course informed device on this. So anyone from the legal team could be able to guide us as whether IRP is an equivalent of an arbitration procedure.

Ed McNicholas: This is Ed McNicholas if I could go to that. Yes, the IRP can be structured in such a way you could - I mean in theory one could structure an internal review

process so that it was not an arbitration but the way it seems to be contemplated, the IRP would be structured as what would be recognized as an arbitral body as the independent decision maker. And so even though it's internal in some sense, it would be still considered an arbitral body - recognizing that there's some tension between the words internal and independent.

But if it's an independent body as a way it's contemplated then its decisions should be enforceable as long as we stick within the bounds of the Federal Arbitration Act which are - as I said - very flexible.

Leon Sanchez: Thank you very much for this. So I would like to begin jumping into conclusions for our document. In page 27 we have the possible outcomes and two open issues for questions. I believe the second issue has been already addressed and this issue refers to the extent that the board cannot be bound by an IRP decision. It is the ability to recall some or all members of the board as an official mechanism to insure compliance with panel decisions.

And we know that the IRP can in fact be binding and I think this question has been already addressed and we wouldn't need then to recall some or all members of the board to have the board take the IRP decision as binding. Of course if they would - they wouldn't comply - I believe that the mechanism of fulfilling the board would in fact be something that could be explored.

The first question - it says that some members of the working group feel that the board or the committee would need to be permitted under certain circumstances to reject an IRP decision like for example with unanimous support of the board and a designated committee body but of course there are others that think that this would defeat the purpose of having an IRP all the way.

So I'd like to call for agreement. My view - and this is of course my personal view is that the IRP since it's - since we've been told that it's an arbitration procedure and when we - applied ourselves to arbitration procedures - we are of course willing to take any outcome as mandatory and binding to us. I think that it wouldn't be a - it wouldn't make sense to have a rejection on an IRP decision and but it would always be something that could be challenged in a court of law.

So I would just like to open the floor for thoughts on this so we can reach an agreement to have it in mind that we have already taken one question down from the open issues with the possible (unintelligible). So anyone want to comment on this first open issue?

Okay, seeing no one commenting on this, can we have an agreement on at least saying that any outcomes from the IRP would not be appealable under the proper IRP browsers and but always of course leaving the door open to have these decisions challenged in a court of law.

I see Alan Greenberg's hand is up. Alan could you please take the floor?

Alan Greenberg: Yes, just one question. You've made reference to challenge in a court of law. Who would have standing to challenge? May I (unintelligible).

Leon Sanchez: I would think - I would think that one of the agreed parties by the resolution but I would certainly go back to our lawyers to answer that question.

Alan Greenberg: Okay, thank you.

Ed McNicholas: If I - (Ed) should answer here. The standing to go into court would be determined by the rules of that court. Generally it would be the parties to the agreement. It is not clear that if you had two parties agree to binding arbitration that someone who is a stranger to that agreed arbitration and didn't like the outcome of it could come in and challenge that in court after the fact. It would be the parties to that particular arbitration.

Leon Sanchez: Great. Thank you for this Ed. So that also deals in a way with finality of the IRP and I see Mathieu's hand is up so Mathieu could you please take the floor?

Mathieu Weill: Thank you Leon. As we've done before, I'd just like to recap my understanding of where we were in Istanbul on these questions. My understanding in Istanbul was that we were considering that the IRP could issue a limited set of decisions that were basically either council decision that was made by the board or council enact or ask for redo but not completely change the substance of a decision.

And because of that limitation, my understanding was that we were ready to say that this IRP would be last resort except if we go to court. But as we've seen - it's limited reasons to go to court. So we have to appear after that. And I think there was this balance between a limited set of outcomes and the fact that it was last resort and I just wanted to - everyone to take that into account when we try and adjust how we conclude on those items at least for the public comment report. Thank you Leon.

Leon Sanchez: Thank you very much for this Mathieu. I see Kavouss's hand is up. Kavouss could you please take the floor?

Kavouss Arasteh: Yes Leon. I agree with the last resort but I don't understand under the limited cases who decides on the criteria that it all establishes this limit saying that this is the limit that you cannot go beyond. Who decides on that limit? Do we establish that in somewhere in the article or in the bylaw or this is subject to under the decision body - the decision making body to set that limit because it is easy to say that under certain sentiment starters. But what are those sentiment starters? What are those limits?

So could Mathieu - can I resume the discussion of Istanbul about that limit?  
Thank you.

Leon Sanchez: Thank you very much Kavouss. I'm not sure if this is a question that Mathieu would have to answer but rather our lawyers. So I see Becky's hand is up so Becky do you want to react to this?

Becky Burr: I guess one, I wanted to ask a clarifying question of Kavouss. In terms of who decides what the limits are, you know, what we are discussing this would be independent review panel evaluating an ICANN action or inaction against the mission commitments and the core values provision. So that would be the standard against which ICANN behavior would be measured.

Now if you're referring to another align then I'm going to defer to the – to Ed.

Leon Sanchez: Thank you very much Becky. Ed could you please take the floor?

Ed McNicholas: Yes. I just wanted to say we get into the somewhat recursive issue of the jurisdiction to decide jurisdiction - who decides - who's going to decide the limitation of the body.

But there is a lot of case law on this in the US because it's pretty fundamental in some ways. The - I think in the first instance an IRP setup as a panel would have to decide whether it viewed itself as having jurisdiction to consider the complaint that has been put before it. And then that would be one of the few issues that would be - let's say that it issues a decision. The other - the losing party now disagrees with that decision and takes it to court and says that process was improper because the IRP went outside of its jurisdiction in deciding. It should not have decided an issue like that.

That would be something that a court could review because it would be reviewing not the substance of the decision but the ability - the jurisdiction - the power to decide whether that decision should have been made. And so that would be a purely legal issue outside of that. It's a complicated area certainly and luckily it only comes up in certain marginal cases.

Leon Sanchez: Thanks for this (Ed). I see (Sarah) has a question on the chat and she's saying that the scope of the IRP appears limited to the partisan vote while the issues raised in any given case would be either of interest to the program community and the board could set a precedent. So what happens if the IRP parties come to some sort of agreement that is not considered acceptable to others? What will happen in that case? Yes, please go ahead.

Ed McNicholas: So I'll respond to that. The - in that - it is possible in a court decision - in a court context you would normally have - if there was someone who wanted to be heard as part of the process, they would intervene into the lawsuit and there are standards in federal court in the US for - and it's mute in other court systems as well - for whether if you have a stake - direct stake - you can intervene as a right and then sometimes there's permissive intervention.

We could write into the process for the IRP an intervention process so that if one member wanted to take the ICANN board to arbitration over an issue and six other members said we're also interested in that issue, we could have a process for intervention. This gets down to the - kind of the rules of procedure for the IRP on a fairly granular level but it would not be uncommon to allow an intervention and each of the parties when they intervened would be then become a party. So you have a, you know, an eight party IRP process in that scenario.

Leon Sanchez: Thank you very much for this and let me just draw your attention - and I mean the audience attention - to page 26 on our draft report. That would be paragraph two of the introduction and here we - or rather we - but the working party had - led by Becky - had - when this IRP would be triggered and this IRP would be of course suitable for determining or challenging an act of ICANN and staff in order to determine whether ICANN is staying within limited technical mission for example whether it is abiding by policies adopted by the multi-stakeholder community or whether in carrying out its mission then applying concerns with policies.

It is acting in accordance with the fundamental commitments to the community and core values and of course in all cases as required by the proposed of value. So this is like the starting point of any IRP for it to actually get triggered. So I think that focusing on how or under which circumstances an IRP would be triggered might help us to focus of course our work and our outcome.

So with this in mind, I think we have so far - I just wanted to do a pause here to make sure that we have addressed the issues regarding the outcomes and regarding the finality of the independent review panel and I would of course

next jump into selection process, size of the panel and diversity in their defense.

I see Kavouss has his hand up. Can you take the floor?

Kavouss Arasteh: Yes. I'll be very short. You've said that the IRP does not have any appeal process. Is that right - there is no appeal process for any outcome or decision of IRP? But I see it quite differently if one of the parties is not angry with that outcome, they could result to some sort of appeal whether the appeal would be court or be something else. But could you clearly repeat what you said at the beginning that there would be, you know, binding is different of the causing for an appeal. So could you clarify or could the lawyer clarify the issue of the - of the appeal related to the decisional outcome of the IRP? Thank you.

Leon Sanchez: Of course Kavouss. I of course would hand it back to (Ed McNicholas) to address this question. (Ed) could you please clarify what Kavouss just stated? (Ed) are you still with us? I see (Ed) was disconnected. I don't know if maybe Holly could comment on this or we could always of course wait for (Ed) to go back to the Ace room and the phone bridge. What should we do Holly? Should we...

Holly Gregory: Currently on the call-in I have (Josh) with (unintelligible). (Josh) will speak to the issue.

Josh Hofheimer: So if I heard the question correctly, it was whether or not an appeal could be taken from the IRP decision. Is that correct?

Leon Sanchez: Yes.

Josh Hofheimer: So well let me explain the way sort of typically arbitration work. And so the expectation I think would be that - the answer - the short answer is that's not the usual approach. Parties who voluntarily agree to bind themselves - to commit themselves to a binding arbitration decision agree also to live by that decision whether they like the result or not and the only means to challenge it is not so much an appeal but what (Ed) referenced previously which is he demonstrated that there's some, you know, procedural error like to arbitrate. The IRP exceeded the scope of its authority in its decision or in the remedy that it provided then an appeal could be taken too.

And that's an appeal usually that's taken if we are constituting the IRP as an arbitral body. That's an appeal that would be taken to a court of jurisdiction. But typically when you agree to commit yourselves, what you're doing is you're setting up a contractual judicial review process and you agree to make yourselves do that as, you know, reflected in the bylaws or in other related documents then you do say that we're going to live with that decision.

Now it is - it certainly is the case that in some situations people do create appeal mechanisms for arbitration. So if you wanted to write in an appeal mechanism, you could do so and the International Chamber of Commerce - I believe they do have appeal, you know, mechanisms that can provide guidance. If not, there are others.

So it could be the case that the parties could create an appeal mechanism but if you wanted that, you have to create it upfront at the outset. It's not that you can trigger it. In other words you have to write it in in the same way that you create the standards of arbitration. It's not something that you just say I don't like the decision. I'm going to appeal on whatever grounds you could come up with. I hope that answers the question.

Kavouss Arasteh: Yes, you did. Thank you.

Leon Sanchez: Thank you very much (Josh). Well I'm mindful of the time and I would like to of course move forward and just to confirm - the equipment that we have so far with regards to outcome - we have agreed to remove question two. We have agreed that decisions would be final - I mean they would have no appeal - of course otherwise enabled by you all or by (unintelligible) and the panel could only be the following types meaning they would only confirm decisions, cancel decisions partially or totally and of course this follows our preview discussion in our face to face meeting in Istanbul.

So could we get some kind of temperatures here for agreement on these?  
Could we please signal with a green tick whether we agree on this or not?  
Okay, I see many attendants agreeing but I also see many others neither agreeing or objecting and I see Kavouss's hand is up again so Kavouss could you please give it your...

Kavouss Arasteh: That's objecting whatever summary you make - would it be possible that legal counsel look at the wording and look at the outcome because it is one of the most complex areas of the whole process. I'm not disagreeing. I fully agree with your summary but I would like that whatever you put in the wording be seen by the legal counsel. Thank you.

Leon Sanchez: Yes, of course we will have this put through council with the final wording so we can check that we are putting the right words into the document and this is of course useful and we appreciate your input.

So with no further delay, I would now like to jump - we have an agreement - we have an agreement and I'd like to jump into selection process of the panel and diversity of and independence.

So the selection process would be of course one point that we should be discussing because the selection process deals with many issues and as - as it has been discussed - we are - we are talking about a mechanism that - or a panel that would be internal to ICANN and the reason for having this panel to be internal to ICANN is that we would be looking for people that are ICANN experts and of course people from outside ICANN would most likely not have this knowledge on them and it would finally or ultimately damage those raising the issues to be decided by the IRP since of course a lack of knowledge could have terrible consequences on solving the issues.

So with this I would like to open the floor for comments. I don't know Becky would you like to elaborate on this - on this topic with regards to the selection process - how it is depicted on the document or any comments that you might have?

Becky Burr: Yes. I think that we've proposed to provide a number of different and pose a number of different questions but the notion would be for example that we could have panelists nominated by the board and confirmed by the community. They could be proposed by international arbitral bodies, you know, endorsed by the board and then confirmed by the community and of course it could be the other way around as well.

But the notion would be that there would be a separation of powers with respect to the selection of the panels and they would be, you know, they would have - be required to have, you know, expertise and skillsets and largely the group has focused on experienced arbitrators with international law expertise but familiarity with the DNS and with ICANN and supported and being able to access technical and other expertise on an as-needed basis.

The one thing I wanted to say is that I just want to clarify that I think we may be confusing people with the internal language. It's internal in the sense that, you know, working for a standing panel of arbitrators who have and then over time develop greater expertise and understand the importance of consistent opinions across time for ICANN but it's not, you know, it is definitely intended to be independent and safeguards are built in to make sure that it remains independent.

Leon Sanchez: Thank you very much for this. I see a comment from Greg Shatan that if we could expunge the word internal from the discussion. I see no reason for not doing so so far as we understand that this would be a standard panel formed by members of the ICANN community so I have no objection on that - just getting rid of the term internal so far. But it would be of course an independent standard panel as (Nikki) points out in the chat.

And now I'd like to open the floor for comments and I see Mathieu's hand is up. Mathieu could you please take the floor?

Mathieu Weill: Yes. Thank you very much for the (unintelligible) speaking. This is once again to recap what I had in mind based on the discussion we've had already in Istanbul on that matter. I think we were discussing on five or seven type of panel that's still in the documents with geographic diversity so as one of the requirements which is no less member - no less than one member from each region.

And I think in terms of selection process we had discussed and there - I think there was some attraction to the idea that there would be a form of board nomination and confirmation by the members based on external parties providing names. That would be closer to item number three in the proposal by the group where a third party international arbitration body is proposing

names. The board selects or at least proposes names based on this proposal and the community group - whatever the mechanism - would be asked to hold confirmation on the candidates.

And this is meant to kick the discussion off so we can provide some clarity because I think these items are very important to be present with proposals in our public comment. Thank you.

Leon Sanchez: Thank you very much for this Mathieu. This is in fact very important and I see Kavouss's hand is up. Kavouss could you please take the floor?

Kavouss Arasteh: Yes. I have seen similar activity in other area in within the group and respect to yes, they should be from the ICANN community no doubt. However there should be some criteria that they should not be engaged for ICANN for the last six years before they've been elected. So it's important that the board member who has recently left the job after each term could not be a member of that because he has closed relationships in influential buyers by the (unintelligible) condition. So there is some criteria on other selection panels for the last six years. They should not be affiliated or engaged from the financial point of view and from the - and the engaging point of view with ICANN.

Is that criteria implemented? I'm sorry. I did not follow that discussion since I want to know the big risk if someone - as I mentioned - they are six months after the term of the ICANN being selected by the board and communities (unintelligible) I give you that practice. It may be difficult to prove to be independent. I said may be difficult. I'm not saying it is difficult - it may be difficult. Thank you.

Leon Sanchez: Thank you very much Kavouss. I see Becky do you want to react to this? You have your hand up.

Becky Burr: Yes. Kavouss's point is very, very important. It is critical that they strictly independent in terms of previous employment or appointment or indeed any post-term employment or appointment. So I think that is specifically addressed in the template and I agree it's very important for this.

Kavouss Arasteh: Thank you.

Leon Sanchez: Thank you very much for this Becky and while putting back what Mathieu said about our Istanbul discussion with regards to the selection process that this could be third party proposing - of course support for the select and community would confirm. I think that this kind of gives us a bird's eye view of the selected process and then we would need to come to what's been discussed at this point and we would need to flush out the different - the different requirements or the different criteria that both the board and the community should implement to have this designation in place.

So I see of course what Kavouss raised is a very important point and we should be definitely including in the criteria that any member of this panel and designate of this panel cannot be previously engaged in ICANN or for a number of years after performing their duty on this independent panel. And I believe we should also speak into regional diversity. I think that so far well of course to define regional diversity, I think it would be logical to first define the size of the panel. In our document we are looking at a panel of five or seven people and we're also looking into a decision panel of one per three panelists.

I would like to ask Becky just to give us further guidance on what the difference of the standing panel or and the decision panel would be. So Becky could you please explain to us a little bit which would be the difference between the standing panel and decision panel?

Becky Burr: For example you might have a panel of seven arbitrators and in any particular case three of them could be called upon to hear a case and make a decision and that would insure that the parties are able to, you know, select, you know, for example one ICANN might choose one arbitrator and party bringing the independent group you request might choose another arbitrator and the two of them might choose the third panelist. But you wouldn't need five or seven panelists in all cases. And indeed in some cases the parties might want to agree that one panelist could hear the dispute.

So we're talking about a standing panel of relatively small number of panelists from whom a panel could be chosen to hear any particular case.

Leon Sanchez: Thanks Becky. So if I understood well when we were speaking about the standard panel, the standard panel would be - let's say - let's put it some way - the roster of panelists that would be then called to be chosen by the parties to make the decision in which we would go - we would adopt kind of a panel between one or three panelists and then they would of course decide on the matter.

Do we have an agreement on that? Can we move forward and agree that maybe we should need a clarification document to say this as you just said it Becky so it's clear for anyone that reads the document that when we talk about the standard panels, this could be the rest of the panelists that could be in turn called to form the actual panel and decide on any matter. But do we

have an agreement with this size of independent panel and of course then for the assignment of the case on discussion?

Could we signal with a green tick on whether we are comfortable with going to public comment with a proposed standing panel of between five or seven and a decision panel between one or three?

I see some green ticks in the chat and I am aware that Kavouss's hand is up so Kavouss do you want to comment before we...

Kavouss Arasteh: I see no - not just about seven. Five of the members stand on this (unintelligible) outage of (unintelligible) diversities. I don't believe it's a major element. The most important element for this arbitrator or the (unintelligible) a professional. It doesn't matter whether they are coming from (unintelligible). They should first be professionally qualified. So I don't think that we could be political with our orientation in that institution.

Again you have to have another orientation that is gender and that is linguistic and that is (unintelligible). So perhaps if you dropped these regional and diversities then I have no problems with seven or five. But if you in terms of regional then we have difficulty. Given the current five regions of ICANN - it's not a balanced region. One region is three countries and the other region is 75 countries. So it's something that unless we dropped these efforts to be geographical and diversity and go to the professional background and knowledge diversity in various areas that we have discussed at these five areas and these five additional (unintelligible) would be especially in one area.

And they collectively decide on the issue, putting their knowledge together on the matter. So could you clarify the issue I wondered you have discussed that

identical also happened. So geographical distribution is difficult - difficult to get into that in the United States. Thank you.

Leon Sanchez: Thank you very much for this Kavouss. Becky do you want to react on this? I have a comment of myself but I'm not sure if you want to comment on this.

Becky Burr: I think that geographical to their city is critical and clearly that was, you know, why we went with a minimum of five and now surely but, you know, it might make sense that this is a question for the community as to whether we wanted to have some extra arbitrators around but, you know, seven is a - is a random number that was intended to, you know, kind of input the possibility of some flexibility in the air but to keep costs down.

Leon Sanchez: Excellent. Sorry, I was on mute. I see Greg Shatan's hand is up. Greg could you please take the floor?

Greg Shatan: Thanks - Greg Shatan. I pasted into the chat the language from the picked panel request that there should be diversity but I think diversity - a geographic distribution requirement should not be in place because I think then that becomes - that trumps everything else. It's one thing to strive for diversity. There are lots of ways to get there and but I think a hard requirement of the way that we have ICANN meetings in a rotation of - with - would hamstring us in choosing a panel. So it should be part of the mix but not a dispositive factor as to the identity of any given panelist. Thank you.

Leon Sanchez: Thank you Greg. So I think that a middle point here could be achieved by saying that the criteria for selecting of course the independent panel would or should make - or should consider a best effort of providing geographical representation but of course not fixing it to set of course big number of

representatives from any geographical region. Would that be fair? I mean am I getting this right?

Okay, so I see no objections so I would...

Ed McNicholas: If I could just - I would not use the term best efforts. That has a particular meaning, especially when we get to US law and that - we don't want to - we're not going into a best efforts means. That's not really what we want. I think a reasonable effort is what we want.

Leon Sanchez: Okay, okay reasonable effort - that's fair enough. And well I see Greg is that an old hand? I assume it is since you just spoke. And next on the queue is Tijani. Tijani could you please take the floor?

Tijani Ben Jemaa: I don't know if you can hear me. (Unintelligible).

((Crosstalk))

Leon Sanchez: We can hear you but with a lot of noise and interference. I think your mike volume might be a little (unintelligible).

Tijani Ben Jemaa: (Unintelligible).

((Crosstalk))

Leon Sanchez: Perhaps we can take a look into it or if it's something on your side but we definitely cannot listen to you because we have a lot of noise or as (Susanne) is suggesting, you could type your comments or maybe we could have staff dial you out if that's a possibility. Okay so (Brenda) will be calling Tijani and until that happens then I'd just like to recover what we were discussing and

then maybe the agreement or the rather - rather direct the agency to our document to establish that within diversity - the geographic diversity there shouldn't be any fixed requisites to fill in spaces by any geographical reason.

But we should of course be looking into all reasonable efforts to have geographically diverse panel. Would that be accurate? Do we (unintelligible) about this? Now we'll listen to Tijani. We can listen to you well.

Tijani Ben Jemaa: Okay, thank you - thank you Leon. My - my opinion is that geographic distribution is an important thing even as Greg said the contrary but I think it is important and there is no reason not to take it into account. I don't see the rationale behind saying that it is not important and we don't have to stick to the geographic distribution. It is something important in ICANN. The (unintelligible) geographic diversity is something very important in ICANN. Thank you.

Leon Sanchez: Thank you very much. Well I just want to make some observation of this as I'm mindful of the time and we're about to hit 15 minutes before top of the hour and we still need to discuss one more item. And so we have agreement on outcomes. We have agreement on finality. We have agreement on selection process kind of and we have - we do have agreement (unintelligible) reflected in the document.

And one thing that is still standing is whether we want to add wording establishing geographical diversity as a criteria - as a fixed criteria for the selection process or whether we want to leave this open.

And while I agree that geographical diversity is key of course within the multi-stakeholder model and more within the ICANN committee or the ICANN world, I can see that establishing fixed quotas for geographical

diversity in this specific issue could harm the process because if we didn't find a candidate that could have enough knowledge of ICANN and of course enough knowledge of decision making on this type of arbitration processes, it could ultimately take us into an undesirable outcome.

So while I recognize that geographical diversity is key for anything we do in ICANN, I would agree to the suggestions that have been made rather than trying to put language that fixes some seats for geographical diversity. I would climb myself and this of course my personal opinion to have an awardee going forward to have regional efforts to provide as wide as geographic diversity as possible. And I see Kavouss's hand is up.

Kavouss Arasteh: Yes, I wanted to say what you said. We put some sort of qualitative incentives to take certain pockets of geographical diversity because - as I mentioned - we have two difficult (unintelligible) ICANN geographical and the tradition is not to balance for the (unintelligible) and there is one that's ICANN. The other is United Nation. The other is some other organization. All of them are different and I told you that Asia Pacific had 75 entities and one region that ICANN has only three so three or four. So that was only 1998 because of some other criteria dominating.

So I think we should say to the extent process able until we have to find and in the - one of the (unintelligible) of ICANN (unintelligible) now we discuss in detail geographical distributions and we have a working group to see to what extent it is possible and I have some difficulty that sometimes they come maybe to the other criteria such as linguistic distributions or this linguistic diversity. We had that in ICANN last meeting for the election of the chair. Some people decided we should have linguistic - some other - so that becomes very, very difficult. So we should put on to the extent possible geographical diversity. Thank you.

Leon Sanchez: Thank you very much for this Kavouss. So I would like now to go forward with our next agenda item - just taking stock of this and of course we have the agreements on the notes section but with regards to geographical diversity, I think this is still something we need to look into, we need to further discuss at this point. And maybe we could go to public comment by of course consulting the committee on whether this should be something that needs to be put in some kind of fixed seats for geographical diversity or maybe we should be looking to another - into another formula.

So with this I'd like to go back to I think Mathieu for our next agenda item.

Thomas Rickert: Well in fact it's actually me Thomas who's going to share this.

Leon Sanchez: I'm sorry Thomas. You're right.

Thomas Rickert: Don't you worry. We will have to talk about reconsiderations for the next couple of minutes and without any further ado, I would like to give Robin the floor. We have agreed that rather than Becky as her turn helping with this, we would ask Robin as primary crafter of the template to work with us.

I would - we have discussed this during one of our previous calls so I would suggest that we just go through the changes that have - that have been administered to the template since we last spoke about it. So Robin can you please take the floor and speak to this issue?

Robin Gross: Hi, this is Robin. Can you hear me?

Thomas Rickert: We can hear you alright.

Robin Gross: Okay, great. So on the reconsideration request reforms - now bear in mind that the reconsideration request process is currently described in ICANN's bylaws article for section two so we will be changing ICANN's bylaws when we rework this process.

But actually the reconsideration request reforms are not a lot and they're not really significant. They're really just trying to be tailored and narrow to try to address some specific changes.

So what we've got here is we basically increased in the amount of time that a person has to file a reconsideration request - the deadline - extending that from 15 to 30 days. We've increased the standing of actions to those that include board staff actions or inactions that contradict ICANN's mission or core values before it was only policies. So the key insertion there is really the board staff actions and inactions that contradict ICANN's mission or core values.

We've added a bit of transparency requirements, improvements posting the rationale for why decisions are taken within a more timely fashion. Recordings and transcripts should be posted of the deliberative substantive discussions providing a rebuttal opportunity before the final recommendation is made, adding a hard deadline to the process for when the board issues its final determination to within 120 days from the request.

One important change would be that requests would no longer go through ICANN's lawyers for their first substantive evolution the way they currently are. Instead they would go to ICANN's buzz then for the first look who would make that initial recommendation to the board governance committee. And the final determination of all the requests would be made by the entire board

because the current practices only request about board action are made by the entire board.

So those are the major substantive changes. Also there's a proposal to look at the DIDP - the document information disclosure policy - and revise and improve that to accommodate for legitimate needs of requesters in order to obtain some internal documents that are relevant to sorting through the issues in their requests.

Okay so I think those are really the basic core changes in the process and it's up by the screen there now so if anyone has any questions or comments, they are welcome.

Leon Sanchez: Robin let me thank you for this concise and precise summary of the changes that have been made. I would like to open it for the group to object to the changes that have been made as well as to objections to what's in the template at all, you know. So we shouldn't use any comments that have previously not been made.

So it seems like we do have support for this document as it stands. I think Kavouss's hand is up. Kavouss please.

Kavouss Arasteh: Yes, I have no problem. The only thing - one small hesitation - what is the rationale for using or thinking in part of 1720 days taking into account the number of the ICANN's meeting in the year. Is 1720 days linked to something or it's just taken out entirely? I have no objections. It sounds very good and I have (unintelligible) but just clarification. Is there any logic to 920 days or not? Thank you.

Leon Sanchez: Thanks Kavouss. Robin would you mind clarifying this?

Robin Gross: Yes and I'm actually glad that Kavouss asked that question because that is a specific issue that I was kind of hoping we could get some feedback on. You know, I looked at what it says now about recommendations within 60 days and then, you know, trying to add on some kind of final deadline on there. So in a sense it was sort of picked from the air - the 120 days - and so that's why I would really like to get a better sense from people about how long is it taking them to get their decisions made and so this is a point that I think we need to get some data on to make sure that's the right number to put there.

Leon Sanchez: Thanks Robin and I guess that's exactly why we are opening it up for public comment to get more views from the community on what might be the appropriate values to be inserted into the recommendation. Before we move to (Machu), let me just clarify that I've now called for objections to this template. We will have to briefly talk about how to deal with the IDP chip at all in this phase of our work. (Machu) please. Okay so (Machu) is just typing in the chat that he was dropped from the call so we will get back to him once he is - once he is back in.

Robin mentioned that there has been discussions about touching the IDP on document disclosure with ICANN and then strengthening with that process. I would suggest that in the light of us trying to - having agreed that we would focus on what is relatively required prior to the transition in this phase of our work that we not drop the topic but that we agree on putting that into the work stream one pieces of work that we will revert to at a later stage.

So can I ask for - can I ask whether there's any objection to dealing with the IDP issue and work stream number two? So I don't see or hear any objection to that so I would suggest we note that as a result of this call and (Machu) has just indicated to me that he wanted to speak to exactly the DIPD so we will

not go back to him to hear his view but Alan has his hand raised so Alan please.

Alan Greenberg: Thank you very much. In all the discussions that we've had on reconsideration, the criticism of the current one that all it looks at is whether policies were followed and you've added core values and missions. If that's sufficient to the equivalent of what we have at times talked about to revalue the substantive decision whether the right decision was made. Is it sufficient to look at core values and mission or is there something else that we need to specify to enable a decision to be rethought as opposed to just seeing whether it dears to the - what's in the bylaws.

Leon Sanchez: Thanks Alan and since Robin has put a thought into that together with other members of the work party, Robin can I relay that question to you for answer?

Robin Gross: Sure, absolutely. And this is actually another issue that where the - it changed over the course of the last few months where we had initially opened it up much wider and set down such that any decision could pretty much be challenged by anyone who was harmed by it and that raised a lot of concern for about what does this mean for finality of being able to accept that an ICANN decision has been taken and we can build businesses around it and we can rely upon that and go forward and things aren't going to change.

So there was a considerable amount of pushback on the broadening of the scope and so this was sort of a reaction to that and trying to meet both of those sides of that concern to keep it to - or to only increase - expand it to the outside of the mission and core values.

But again if anyone has a suggestion for how we could broaden it a little bit further to encapsulate other things that might not fit within this current

structure that we're proposing but wouldn't necessarily drive a truck through the whole process, I think that would be really welcome. Thanks.

Ed McNicholas: May I have a follow-on?

Leon Sanchez: Please do.

Ed McNicholas: Yes, thank you Robin. I certainly appreciate that we - we've always been afraid that if we opened this too wide then it's an opportunity for anyone who doesn't like a decision to question it - perhaps adding that item.

On the other hand we have enough examples over the last number of years where large parts of the community felt that a bad decision was made. Have we tried to see whether this change would have changed any of those outcomes? In other words this may be a better reconsideration policy but is it really going to be addressing any of the concerns that we've had about our - about the outcomes that we've seen over the last number of years.

Robin Gross: Well this is where I think we really need to look to the community who a lot of people have gone through the reconsideration request process and can give us their feedback of, you know, would this particular proposal have fixed what they saw as being a flaw in the process. So I absolutely see this concern but I would like to get data on it to try to fix it.

Ed McNicholas: Thank you.

Leon Sanchez: Thanks Robin. We have two more hands raised and we have reached the top of the hour already so I would really like to encourage you to keep it brief. Kavouss.

Kavouss Arasteh: Yes, I think the aspect of Alan's question - when we discuss the (unintelligible) bylaw (George) and (Vicky) - they put a sentence at paragraph four saying that (unintelligible) comments in relation with the expansion of those four items listed above. Here we (unintelligible) think it could put some sort of incentive here to the public (unintelligible) CWG would be interested to proceed with comment with respect to the expansion of the scope of the CW application - just calling for that and not adding anything at this stage.

But leaving the room for some further comment to come specifically similar to the bylaw - fundamental bylaw - paragraph four of that section six, three, five or 653.

Leon Sanchez: Thank you Kavouss for this. In terms of next steps and bridge recap, my takeaway is that the document presented by Robin can be used on an as is basis but we're going to defer the DIP discussion to work stream number two. There were some more questions that have been discussed in the work party and I would suggest that, you know, we've highlighted some of those in our discussion that we try to capture the areas where Robin and team try to get more information in the text of the report to encourage the community to look at those items in particular and that will for sure also address the issue that (Ellen) has raised.

But for the time being I think that since we didn't have any objection towards being presented to the group twice, I suggest that we proceed on that basis. And with that I would like to hand it over to Mathieu for final remarks and we will not run too late with this call I guess.

Mathieu Weill: Thank you Thomas. I think we've reviewed very thoroughly the very aspects of work attitude during this call and the progress we've made is very, very significant so thank you all for your contributions. On the mission and core

values we know we have some fine tuning to do. We've also outlined that we have an open question on how we address the close on the headquarter or principle office. There's a bit of diligence to do on the legal implications on this and whether we want it as a fundamental bylaw or not with this being good progress made.

The fundamental bylaws section we - I think - made once again very good progress and are very close to agreement on this. On the independent review panel - I mean this is still the crown jewel of our portfolio. I am very pleased that we have some confirmation of legal feasibility which is quite good and I think we have outlined the key aspects of the IRP architecture so the core requirements are outlined and ready for public comment and of course there's still a lot of work to do on the detail and many details and many questions that are currently open with the group but the way I see it, we are on the right track towards an IRP and totally ready to go for public comments.

That's the same for the reconsideration process which is very well advanced. So all in all I think a very, very good day we've had and we will certainly resume tomorrow with some of the open questions as well as the remainder of the report but I'm confident we are going to be coming out of those three days with very significant progress to report to the community so I am hoping that all of you get some rest before we resume tomorrow for some of it over the course mainly today for others. But I would like to really thank you for your contributions during this first day of (unintelligible) and I hope to find you in the same spirit tomorrow.

So thank you everyone and maybe I will leave the last word to Leon (Nichole) and (Andre).

Leon Sanchez: Thank you very much for this Mathieu. I just - it's just a comment for those who will heroically stand on our legal sub team call that will begin just after we finish this. We need five minutes to clear the room to make some housekeeping of the room so please feel free to of course have a five minute break and then we could reconvene. It's five past the hour so we could reconvene at ten past the hour after staff is able to clean up the room for our legal sub team call and thank you everyone and see you soon.

Man: Thanks.

END