

ICANN

**Moderator: Brenda Brewer
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8:00 am CT**

Becky Burr: Hello all it's Becky here I'm not in the Adobe room.

Thomas Rickert: Okay thank you Becky.

Edward McNicholas: Hi Edward McNicholas is on as well I'm not in the Adobe room either just on my cell phone.

Thomas Rickert: Okay we will note your attendance. So the recording has started.

Becky Burr: Like me and is probably stuck in Washington traffic somewhere.

Josh Hofheimer: Josh Hofheimer from Sidley is on as well. I'm trying to get into the Adobe room.

Thomas Rickert: Okay thank you. So I see that the recording is going on in the Adobe but can I have a confirmation that okay the recording has started. Brenda thank you very much for confirming that.

And as usual we would do the roll call based on the Adobe room. We've heard from a couple of individuals that they're just in the audio bridge so we're adding them to the list of attendees.

There is somebody typing so we can hear each and every of these hits so can you please mute your microphones that would be most appreciated.

This is the second out of three telephone conferences that we're going to conduct today or tomorrow wherever the date changes for participants. And before we dive into the next substantive discussion let me please recap briefly what we've discussed earlier today.

We went through the items that we have listed to be worked on in work stream number two. That would be Section 8 of the draft report and we have the list of items to be dealt with at that stage confirmed by the group.

There was only the suggestion to add two additional items to it. One of which was suggested by Avri on transparency and one more point was suggested by Sebastien.

And both of them have agreed to submit draft language, which is being done in the meantime but we do have language time from our (real) transparency and from Sebastien on diversity and we will discuss those and introduce those in the third telephone conference of this day.

After that we have discussed Sections 1 through 5 of the report and we have basically confirmed what's in the report in terms of substance. There was just one concern raised by (Robin) who suggested to propose some, the amendment to the language whereby ICANN remains to be accountable.

And that was felt not only by (Robin) but also by others to be a little bit too much of euphemism maybe I can put it that way. So we are awaiting this adjusted language and present it to the group.

But apart from that the contents of these five sections have been confirmed by the group. There were only concerns in terms of structure. So there was the proposal that we should reorganize the report so that it doesn't take like almost 20 pages around to read and to the document before the revelations are to be read.

And also there was the suggestion made by Kavouss that we should add a glossary to the report to make it easier to understand and we're working on that. And there's also been some discussion that we need very good summarizing documents to make it easier for the community to understand what we have been working on for the last roughly half year.

After we discussed that we went on discussing open questions with respect to the community with respect to the mechanisms and the first item was that we looked again into the - let me just check my notes here.

I skipped one point and that is the questions for the public comment. So basically we would suggest to keep the questions for the public comment period as easy to understand as possible and they will be very much to the point and very clear to ensure that we get the questions and answers that are reflective of the recommendations.

So we will ask the community to confirm that they agree with the requirements that we will establish and try to get confirmation of the recommendations that we have worked on asking for guidance where we have multiple options presented to the community and also in our communications

we need to make clear that what we put in front of the community is not yet a consensus position but that it is work in progress.

Afterwards we discussed the issue of weighing of votes. Yesterday we had concluded that we should present different options to the community. We had a little bit more discussion on that and the report has since been updated to reflect one option that seemed to get most traction.

And that would be an option whereby five groups would get five votes that would be ASO, GNSO and ccNSO, the GAC and ALAC and SSAC and us actually would get two votes each.

We have more variations to that that have been discussed and that get some traction and these would not be suppressed I'd say but they will also be presented to the community as options for the community to comment on.

Then we spoke a little bit about the different (legal) implementation models and that basically boiled down to the designator model and the membership model.

And it was felt that we need some more discussion on the liability question because when a membership organization is established then we would have the issue that some in this group have also been concerned about whether or not there is a liability risk of being sued if they are an unincorporated association under California law or under other jurisdiction.

So that has been discussed we got some clarity on that and it appears like the membership model is the reference for our work and it seemed to get substantial attraction in the group but the designator model is kept and it's

mentioned in the report with pros and cons so that the community can chime in on that.

I think that's pretty much it in terms of recap. We should, the group members be of the opinion that what we recapped is not accurately reflecting the state of our current discussion then please do make yourself heard.

And in the absence of those concerns I guess we can move to the next agenda item and that would be Mathieu discussing Section 6.7.1. Sorry I'm seeing two interventions Kavouss and Sebastien let's hear Kavouss first. Kavouss you might be on mute we can't hear you.

Kavouss Arasteh: Okay, can you hear me now?

Thomas Rickert: Yes we can hear you now.

Kavouss Arasteh: Okay during the last session we discussed about the questions and also we discussed about we could be asked questions. These are the two different things.

If we could be asked questions as a general rule guideline to the people that if they have such a question ABC whom and how they could raise it. The other question is about the option.

So we have a separate part called frequently asked questions. In ICG we have that in order to enhance the community to raise the question that how they could raise this questions, what are the areas they could raise the question and so on and so forth.

Just I am asking I am not requesting you to do some additional job. That job is just on the question that do we have or we don't have a section called frequently asked questions, thank you?

Thomas Rickert: Thanks Kavouss for pointing that out. We have gladly taken your suggestion you made in the last call and I think that we reached agreement that it's an excellent idea to have a communications channel where community members can ask questions about our recommendations and our report.

We will publish those including the answers that we gave so that a FAQ is starting updates on community questions. Next is Sebastien.

Sebastien Bachollet: Thank you (Thomas) it's Sebastien Bachollet. I was under the impression that Avri came back this morning with, on the chat about the current situation and (unintelligible) says that it's worded in the document.

And may I ask if the memberships delegate and the (unintelligible) were put into discussion or just two of them, thank you?

Thomas Rickert: Thanks Sebastien. I would need to double check maybe my fellow co-chair or the repertoire can help out but if I remember correctly I believe we are going to have the legal document which we saw four scenarios and even the substantive area of this is the membership organization.

So please co-chair if you can chime in and confirm if you can. So they seem to be shy, Sebastien we will double check and get back to you and give you an answer.

And before we do so let me turn to my Mathieu for chairing the next part of this meeting.

Mathieu Weill: Thank you (Thomas) this is Mathieu Weill speaking, hello again to everyone. This item is part of a section about how to incorporate the information of commitment into the ICANN bylaws.

And we have already been discussing yesterday the translation of some of the core values or commitments in the AOC into the mission and core and commitments of ICANN.

So we won't do that again today but I think it's good to have a quick recap of how we are planning to incorporate the ICANN commitments from the AOC to the bylaws.

And I will turn to Steve for a short introduction of what that states taking into account the discussion we had yesterday about headquarters and principle office, Steve.

Steve DelBianco: Thank you Mathieu. Everyone the Adobe chat document you can go to page 42, which is the beginning of 6.7. This is the second reading on this topic, we'll be able to do this intro very quickly and get to your questions.

The reason the affirmation of commitments and reviews are being brought into the bylaws sprung from stress test 14 which we first covered when we had gathered that Monday evening in Singapore.

And it was a recognition that without the IANA contract it presented an opportunity for ICANN to walk away from the affirmation of commitments with 120 days notice since there would be no tether requiring it to stay in the affirmation, which is a role that the IANA contract plays today.

So in that vein work party one went through the affirmation commitments and determined which particular commitment paragraphs were appropriate to bring into the bylaws trying to decide where to put them as well as trying to understand which ones were already there.

And then we then turned to the affirmation of commitments periodic reviews. So we're going to try to cover all that in about 30 minutes. So as I said before pages 42 and 43 give you some sense of trying to move things into the bylaws.

And we added a comment that if we're successful in bringing the key commitments of ICANN into the bylaws then the affirmation becomes unnecessary.

We don't have to require that it's unsaid or that both parties revoke it we can just set the table so that the affirmation becomes unnecessary. And this dovetails a little bit with what Sebastien raised on our prior call with regard to when ATRT, accountability and transparency review team number three.

When it begins it may well begin under the new bylaws version of the ATRT as opposed to the old affirmation of the commitments version. Great so 42 and 43 kick it off.

So if you go to page 44 you'll see the very first of the commitments. These are paragraphs 3, 4, 7 and 8 from the actual affirmation of commitments. So you have on the screen that we have the underlined and bold words which are going to be added.

And that is for the discussion of this group and questions that may want to be raised. I don't really believe there's much in the way of controversy here on this page.

If we go to the next page it's paragraph 4 where we have endeavored to add a clarification that ICANN's analogies would look at positive and negative effects on the public including financial and commercial nature.

Paragraph 7 and Kavouss I know you're listening so in paragraph 7 this is on page 46 I wanted to call your attention to the fact that last Tuesday Kavouss pointed out that using words like ICANN commits is appropriate in the affirmation but it doesn't make sense as a bylaws work.

And he's absolutely correct, I went through the entire bylaws and it doesn't say anything it's like ICANN commits. So there are two places on page 46 where affirmation of the commitments paragraph said commits to.

So we're going to change that to shall, so ICANN shall adhere to transparent and accountable budgeting processes. And in the bottom paragraph in addition ICANN shall provide a thoroughly (recent) explanation of decisions taken. So Kavouss I think that satisfies what you brought up the other day.

Next is paragraph 8 of the affirmation of commitments. Now we found it relatively easy to map a, 8a and 8c into the core values and if you will recall Becky Burr in the third call on day one brought up what we called the purple document right, the purple revisions to the bylaws core values.

And what Becky did was went through this table that we created in work party one and mapped any of the items that needed to go to core values into the revision of the purple document. So we did cover a good bit of that yesterday.

What I wanted to just do here is this notion of 8b, 8b in the affirmation of commitments was ICANN's commitment to remain a not for profit

corporation headquartered in the U.S. with offices around the world to meet the needs of the global community.

We concluded on Tuesday that is substantially covered by existing bylaws, Article 18 Section 1. And if you'll just look at the chat I just pasted bylaws Article 18 Section 1 the word offices is the heading.

Where it indicates that the principle office for the transaction and the business of ICANN shall be in the County of Los Angeles, State of California US of A and ICANN may also have office or offices within or outside the U.S. as it may from time establish.

So it's - this may have been Avri's intent all along when she questioned the need for 8b and if so apologies to Avri because I had thought we were trying to avoid bringing this up.

But it makes sense to bring this up for the political audiences that will definitely want to see an existing bylaws provision is simply being preserved and the affirmation is being brought into the bylaws wherever there was gaps.

In this case this particular paragraph doesn't need to be brought into the bylaws since it already exists in Article 18. So given that discussion the proposal would be that just underneath this text you see on page 47 underneath the discussion of what the ICANN CEO told Congress.

We would insert the bylaws provision of Article 18 Section 1 and indicate that it's not necessary then to repeat that in the bylaws. And then we have to turn to the discussion of whether that particular Article 18 Section 1 would go to fundamental bylaws, which would require positive community approval.

This was discussed during the third call on intensive day number one or leave it in the by laws in general noting that any change to bylaws even if they're not designated as fundamental are still subject to community veto.

I only had one final topic on this section and that is the word non-profit shows up in 8b. That is to say ICANN will remain a not for profit corporation. And I wanted to indicate that non-profit is only featured in the articles of incorporation for ICANN under Articles of Incorporation Item 3. I'll now paste that into the chat for those who haven't seen that before.

And I will ask the chairs during this upcoming discussion to be sure that we clarify whether our community veto of bylaws changes also applies to board proposed changes to the articles of incorporation. Because if we want to rely on something being in the articles as a way of fulfilling a commitment coming over from the affirmation then we're going to need to be sure that the community of the opportunity to block changes to the articles of corporation or possibly to give positive consent of changes.

So that's a walk through through the first section of preserving ICANN commitments from the affirmation. Before we turn to the AOC reviews let's take a queue on this. Mathieu do you want to manage the queue or shall I, your call?

Mathieu Weill: Yes I will do that thank you very much Steve. And I will turn to Greg for the first intervention.

Greg Shatan: Thank you it's Greg Shatan here. I have questions on both number 4 or what was number 4 in the AOC commitment and number 8. First, on number 4 the insertion of non-commercial impact I, where it previously said financial impact first I note that this is a specifier under a general commitment to make

reviews of positive and negative impact. So there is no, in a sense it doesn't add much.

The other issue is that I've been searching for a definition of non-commercial impact financial impact. I can find many definitions of - found over 3 million uses of it, you know, through Google plus a number of definitions.

Non-commercial impact seems to be used from time-to-time, 70,000 hits or so in New Marshall McLuhan and other social science text and the like but it seems to be a less used and more difficult to pin down concept.

So I note that we're kind of introducing something that's more likely to be ambiguous into this overall mix perhaps with no gain.

With regard to number 8 I think that the first off the articles of incorporation unless we make them super majority as well can be changed just as easily as the regular bylaws not the fundamental bylaws at least that's my understanding counsel can confirm or correct.

So it's really not a, it's not as fundamental. If we are going to take every piece of the affirmation of commitments and turned it into a fundamental bylaws but one we need to justify why we're taking that rather significant step.

Secondly, the articles of incorporation are stated as a matter of fact. I see Avri says Secretary of State get involved in the change of articles. I believe they're filed with the Secretary of State but generally speaking are not actively reviewed.

But back to the point here the articles of incorporation are a statement of fact that is a non-profit corporation. It's not a commitment an actively stated

commitment for the future whereas shall be or shall remain or affirms its commitment to remain are statements about the future and about something that is, you know, will continue to take place.

So that is a fundamental difference to me what's in the articles and what's in the bylaws.

Mathieu Weill: Thanks Greg.

Greg Shatan: So I think we just need to consider whether we are - we have to justify the steps we're taking if they are at variance with the steps we're taking with regard to the rest of the AOC. Thank you.

Mathieu Weill: Thank you Greg. I'm going to give a direct response to Steve with just a word that we need to make sure we don't get into wordsmithing too much on this as there will be plenty of time to fine tune the wordings.

But the point you are making on non-commercial is something we need to be aware of but I think the most substantial point you're raising is on number 8. So Steve if you have a direct response and then I'll move down to the queue to the other speakers.

Steve DelBianco: Yes with your second paragraph 4 Greg understands that that word non-commercial appears at the end of the phrase including. So the main point of that commitment is to do analysis of positive and negative effects if it's decisioned on the public.

And so the things that follow after that are really suggestive and I don't think we need to as you say wordsmith them. Let's put it out for comment and see what comes back.

And Greg I mean the point you made on paragraph 8 is pretty much the same point I make in is this a reliance upon the articles to capture the word non-profit presumes that we have community control to block a change to the articles.

And so I concur with you that we need some help from legal counsel as to what is the means of changing articles and whether a member structure or designator whatever it is we go with possesses the power to block changes to the articles in the same respect that it possesses the power to change the bylaws.

If we learn that we cannot control a change to the articles well then I think we would need to bring the non-profit phrase into the bylaws as a core value. That would be my response, thank you.

Mathieu Weill: Thank you Steve. I note (Ingrid's) comment in the chat that article amendments currently require two (cert) approval by directors and if there were members it would be two (cert) of members.

And what will be interesting to know is whether this is something that can be fine-tuned or whether this is legally unchangeable. But meanwhile I'm moving to Kavouss for the next question.

Kavouss Arasteh: (Session) - I suggestion that you take them one-by-one and try to resolve them in that kind of - I think the first one under discussion is whether or not we add non-commercial.

If you read the paragraph carefully it says ICANN will, which I have a problem with that, form and publish analysis of the positive and negative effect of its decision on the public including any financial or non-commercial.

If you put non-commercial means that ICANN with respect to the commercial should do something or should not do something because you refer to non-commercial.

My view is that we don't need to refer to the non-commercial otherwise commercial would be excluded from this paragraph and ICANN would have no obligation with respect to any action related to the commercial advice.

So perhaps we don't need this non-commercial and financial could (unintelligible) cover the situation and we don't need to introduce that.

That is the first one and the second point on this paragraph and a few other paragraphs. I have and I will have always difficulty to say ICANN will really perform if it is an obligation is not will, ICANN shall perform but not will perform.

It's a deterministic verb, shall (meet) obligations (unintelligible) so we could not say we'll do that. No one could guarantee that they will do that but shall is an obligation and we have to be very careful and in many, many constitutions, conventions as the one so far I have never seen the word the use of the word will.

Always they have either shall or optional word should but not will. So now I request you to treat the paragraph one-by-one, thank you.

Mathieu Weill: Thank you Kavouss this is a little fancy in treating them one-by-one once several are open for discussion. Regarding commercial, non-commercial addition so far I would, I am conscious of our time.

So far my suggestion would be to use brackets in the text to highlight the different options and move back to this item a bit later. I think the item we have in front of us with the headquarters and principle office requires a bit more of our attention now.

And so that would be my proposal for us to move forward mostly on the question that we have now on headquarters and principle office, which is an affirmation of commitment Article 8.

Greg you had a follow-up or is that an old hand? Old hand. Matthew, please.

Matthew Shears: Yes thank you Chair. I just wanted to comment additionally and follow-up on what Steve was saying earlier around that. The affirmation of commitments 4 and 7 actually do include some important trans-concepts of full transparency.

And as you'll see in the text there it is actually proposed that that be inserted into Article 3 on transparency in the bylaws. The paragraph number 4 actually is about impact assessments, which is not covered in the bylaws.

And paragraph 7 is more about the general transparency commitments which are not really covered in the bylaws as well. So I just wanted to clarify that that insertion to bylaws Article 3 on transparency, thanks.

Mathieu Weill: Thank you. Robin.

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

Mathieu Weill: Yes Robin.

Robin Gross: Okay so I just wanted to comment on the addition of the non-commercial text and why I think that's important to include in there. And pretty much, you

know, ICANN is always under so much criticism for being in a business club or a business organization that's set up for the domain name industry by the domain name industry.

And that all it considers are financial impacts, are commercial impacts. And so one of the reasons that ICANN often lacks legitimacy in the public global governance space is precisely because of this.

And here is an opportunity for ICANN to show the world that it recognizes that there are other impacts besides only commercial impacts that need to be taken into consideration.

And I'm perfectly happy to change the word non-commercial to non-financial so it would say including financial and non-financial because that is recognition that there are impacts on both sides of that equation that need to be taken into consideration. Thank you.

Mathieu Weill: Thank you for this proposal Robin. And I see Athina's hand is up, please Athina.

Athina Fragkouli: Yes can you hear me?

Mathieu Weill: Yes Athina we can hear you.

Athina Fragkouli: Can you hear me?

Mathieu Weill: Yes.

Athina Fragkouli: So I would like to talk about Section 8 and the jurisdictions. Is the right time or are we still discussing the non-commercial piece?

Mathieu Weill: If you agree to standby just a minute I just would like to check whether there is any objection to (Robin's) proposal of financial or non-financial.

Athina Fragkouli: Sure.

Mathieu Weill: If there's any objection, if there's no objection then we'll close this item and I see (James') hand is that a direct response to this? (James) he may be on mute.

Tijani Ben Jemaa: Yes, Mathieu. I do find that non-commercial is the wider than non-financial. So if there is no other way to overcome this problem, I will accept non-financial. But the best is non-commercial which is more - which is wider and the (unintelligible) is more expressive. Thank you.

Mathieu Weill: Thank you, Tijani Ben Jemaa:. I think we take that to heart in order to converge to attest to the public comment, I think, if everyone can make a step and agree that financial or non-financial is good enough for public comment. And I think that will be very useful and I suggest we'll move with that level of agreement.

So back to (Athina) for Number 8.

Athina Fragkouli: Thank you very much. I understood that the argument to have a jurisdiction usually - to have it - like, the fundamental - one of the fundamental sections of the bylaws is that's how we deal with all other affirmation of commitment in corporation. But looking into that, I see that all other affirmation of commitment in corporations are promoting, like, the transparency, security, other multi-stakeholder values, and so on - which I can - I understand, yes, it's our fundamental.

Now, Section C is about not just jurisdiction in general; it's about a very particular jurisdiction. And so if it were, like, more general and it was also promoting, like, multi-stakeholder's value like say (unintelligible) like a decision through a bottom-up process and so on. That - I could see how it can be fundamental, but having a very particular jurisdiction, I see this more as a (unintelligible) thing.

And I cannot see how this can be fundamental. (Unintelligible).

Mathieu Weill: Thank you, Athina. And I have Kavouss next in line.

Kavouss Arasteh: I think you have two issues to address. One is a option between headquarters and principles. I think in the customer (unintelligible), the headquarters has more (unintelligible) the principles. Perhaps we should seek advice from the legal counsel whether they could use headquarters in both areas and not having the principles.

This is Number 1. Number 2 -- whether or not this paragraph would be in the fundamental bylaw or another or traditional bylaw. I tend to agree with (Brad) that if we put everything from a position of commitment in the fundamental bylaw and not this one, at least may give some negative impression to other people - therefore the logic and for the rationale. Moreover, it could create sensitivity outside the CCWG - and you know what I mean.

So perhaps we should decide that - not to make the exception and put it in the fundamental bylaw. Nevertheless, we have (unintelligible) if at some time we want to change that headquarter being in (unintelligible) A or B. You could change it according to that principle but not selecting one out of many and put them in the traditional bylaw and everything else in the fundamental bylaw.

If these - if some sort of, let us say, unequal treatment which should have some rationale, I don't see any rationale behind that. Thank you.

Mathieu Weill: Thank you, Kavouss. (Pedro).

Pedro de Silva: Yes, thank you Mathieu. I wanted to express my support for what Athina has said. I think there is a fundamental difference between those other paragraphs of the affirmation of commitment that one specifically relating to the headquarter location. So - and I think that that specific one is quite a sensitive issue.

We have, let's say, throughout the - or amongst the community or the worldwide community, there is conflicting views about it. There are - especially in the U.S. - the U.S. government - there's division that this should be cast in stone and - but you have on the other side in other element stakeholder groups.

I can say, especially in Latin America, for example, stakeholders that are contrary to that. So I think this should be considered more carefully and, perhaps, be left more open in to be, you know, part of public comments period. Thank you.

Mathieu Weill: Thank you very much (Pedro. Steve and then Avri, you have to grade and try to recap so we can make progress. Thank you.

Steve DelBianco: Kavouss made the observation that literally all of the affirmation of commitments commitments are being brought into fundamental bylaws. And Kavouss, I wanted to collect a misconception there. And, if you'll recall, two of the four paragraphs we're bringing over -- paragraphs 4 and 5 -- when

they're being brought into the bylaws codes, they're being brought into Article 3 and Article 4 of the bylaws.

And those are currently not being proposed to fundamental. They don't go to core values and they're not proposed as fundamental right now. And one further point, Kavouss is that each of the reviews from the affirmation of commitments are being brought over into Article 4 of the bylaws.

And again, they would not be fundamental unless this CCWG makes an effort of designating particular sections in the bylaws as being fundamental. So your point was about the inconsistency raising a red flag, and I appreciate your political sensitivity to that because you're right; we don't want to raise political sensitivity that a certain part of the affirmation is going to get given second-class status.

That would be a mistake in signal to send into a politically-charged environment. So I'm with you on that but we don't have to worry about it standing out too prominently as long as we're very comfortable with the language that's in Article 18. Thank you.

Mathieu Weill: Thank you, Steve. I have Avri next.

Avri Doria: Hi, Avri speaking. Yes, I guess I just wanted to add my voice to those that say this does not need to be a fundamental bylaw. Even if the reviews from the AOC were imported in as fundamental - and I guess, speaking from a U.S. perspective - I would argue that it does not need to be.

First of all, it is already in the bylaws - has already been in the bylaws - that the statement is somewhat a strong arm and it is - to say that, you know, in the AOC, it was somewhat of a strong arm that really had nothing to do with the -

that except for saying we have to remain specifically accountable to the U.S. - which in that context made sense given that - the other agreement.

So I, very much - I think it's covered; I don't think we need to add extra weight to it. I think if it was ever a move to change that in any way, it would cause its own firestorm and wouldn't need to require a higher threshold. It would be something that was so well-discussed and worked over that it would be covered.

So I just wanted to add, perhaps, a U.S. voice to that please, let's not make it any stronger than it is. Thanks.

Mathieu Weill: Thank you, Avri. Just for the sake of avoiding confusion, I think what we're discussing now - and Kavouss was right; there were two questions. One is principle office of headquarter.

Probably, we'll defer this to values to get the best word. The second question is no longer whether we want to take 8B and write it into the bylaws because we have discovered this is already mentioned in the bylaws in the article - actually, in the articles about incorporation. So our question is no longer whether we take it on-board but only whether we give this particular clause a status of fundamental bylaw with special protection or the standard bylaw with existing protection but not a special protection.

This is just to make sure everyone's on the same page of - on what we're discussion and not at all a response to Avri whose point is well-taken. Greg, you're next in line. And after Josh, I think I'll try to recap so that we can move onto the next items. Greg.

Greg Shatan: Thank you. Greg Shatan here. First, I was actually a little surprised to hear from Steve - and maybe I heard this incorrectly - that the commitments in Section 3 of the AOC are not being brought in as fundamental bylaws since this is where we're stating that we're going to insure that decisions are made in the global public interest and respect the bottom-up multi-stakeholder nature of ICANN and that we're going to depend on mechanisms that enhance consumer trust and choice.

I would've thought those would be fundamental as well, but perhaps I've missed something or maybe we need to review more carefully what we are calling fundamental - Steve, you said 4N7. Okay, thank you for clarifying that.

So - just to be brief, I think that if we are going to decide to - not to adopt this piece from the articles - from the affirmation of commitment - we need to be clear that what we are - that we believe that the statement that is in Article 18 is the equivalent of that. And frankly, I would still argue that it should be a fundamental bylaw even if pieces of the articles of the affirmation of commitment are not - as been pointed out - it really is fundamental to the legal organization and standards of the organization which are based on California law.

Finally, I think - I don't want to put too fine a point on it - but this will be closely scrutinized. Thank you.

Mathieu Weill: Thank you, Greg. And we do have two more points to cover in the agenda. So for the remaining speakers, please be brief and I think we have now a good vision that there are diverging - or actually different views on this matters. So please focus on a few arguments that would be useful to get into the debate.

Thank you. So, Tijani Ben Jemaa;; you're next.

Tijani Ben Jemaa:: Thank you, Mathieu. Very briefly, I strongly agree with Avri. For the reasons she mentioned and for other reasons that I will not mention because you are in a hurry, Mathieu. Thank you.

Mathieu Weill: Thank you, Tijani Ben Jemaa:. This is much appreciated. Kavouss.

Kavouss Arasteh: If you cannot resolve it immediately, I have the following suggestion: we put it as (unintelligible) in the normal bylaw to put it as an alternative in the fundamental bylaw. You did it for the two other things, but here, you make it diverse.

Reference would be the normal bylaw because I see the tendency of many people in favor of retention of that in the traditional or normal bylaw. However, not to dismiss the possibility of the fundamental bylaw - to put it as alternative. So Reference would be traditional bylaw; our alternative would be fundamental bylaw, as we did this before.

I don't think that you could spend more time on that. Thank you.

Mathieu Weill: Thank you, Kavouss. A last word, Josh.

Josh Hofheimer: Thank you; this is Josh (unintelligible) speaking. I just wanted to observe that, you know, one of the exercises in the beginning and for everyone and with our engagement as well, you know, has been to increase and enhance accountability but also maintain stability of ICANN. And, you know, our - the lawyers have focused our analysis and the governance documents and the structures that have been considered in organizing ICANN around governance and accountability have all been focused on U.S. law and California state law.

And one of the key considerations that's going to this process is to empower the community to have more control. So it would seem - odd to me and would potentially raise cautionary flags if at the same time that all of this analysis were being undertaken, the recommendation or an outcome were to be that the community wants a lot of control through members or designators.

But one of the fundamental decisions of whether or not to move the principle place of business and the jurisdiction of organization of ICANN outside of the U.S. could be a decision that's left only to the board. And if it is kept as it is today, then that decision could be effectuated only with a 2/3 vote of the board. And it would - that would not seem to be, to me, a consistent with some of the drivers here.

So it would seem to me more appropriate to say that this kind of decision is momentous and to recognize that it is very momentous and should require both the approval of the board and the approval of the community so that it is not undertaken lightly or - which I know it would never be in practical terms - but to also avoid any perception by governments or other interest groups that a jurisdictional shift could be somehow engineered by a particular interest group.

Mathieu Weill: Thank you, Josh. We'll close this item without a clear agreement. And I'm sorry for that, but that happens. I think I'm sensing some confusion about what's exactly being proposed and I'm hearing Kavouss proposal which is certainly worth consideration.

So I would - we will take this item into Section 3 as one of the second-reading items we need to have. And we'll make our reasonable efforts to formalize exactly what the proposal would look like because I'm sensing some

confusion on this in several short instances. So I don't think we're ready and mature to do a temperature of the room or anything on the proposals.

So with that, I'm moving two the next section which is the AOC reviews. And who's sharing that one?

Leon Sanchez: I am, Mathieu.

Mathieu Weill: And so Leon, you have the floor for a very limited time; I apologize for that.

Leon Sanchez: Thank you very much. I'll try to go through this in as little time as we can. So on our typically, it's - the affirmation of commitment reviews. It's clear that the community has requested that those should be some positions of the bylaws so that we can carry out with affirmation of commitment reviews.

And there has been some texts proposed around how we can introduce this into the bylaws. As I said, I believe we have an overall agreement on what the AOC reviews should look into the bylaws after our first reading on Tuesday. So this would be, actually, our second reading.

I would like to hand it to Steve so you can take us through these AOC reviews provision.

Steve DelBianco: Thank you, Leon. If you could please go to page 48 - Section 6.7.2 -- the AOC reviews. This follows onto the AOC commitments - both of which sprung from stress test Number 14. IN the comments that were gathered over the summer and cataloged by Work Stream 1 - or I guess we recall yourselves Work Team 1 - we've made four suggestions what we want to do - why we would bring in the ACO reviews over from the AOC to the bylaws.

One was the ability to sunset old reviews and create new ones. The second was the community stakeholder group should appoint their own members to the review teams as opposed to relying up on ICANN's chair, or in a couple of cases, the GAAC chair. Number 3 - we said that the review team should have access to all ICANN internal documents.

And you'll see that show up as a new transparency mandate that picks up on the discussion we had a few hours ago. And the fourth is to require the board to approve and implement review team recommendations, including recommendations to previous reviews - so certainly a discussion whether you require the board to consider and implement or require the board to approve and implement.

These will go into bylaws Article 4 which is already the place where periodic reviews live today in the bylaws. And it would be a periodic review of ICANN execution of key commitments. And at the beginning of those, there are four reviews - not many of you are familiar with them - but at the beginning of Section 6.6.2, we would put in a handful of (chapeau) or headlining requirements that would apply to all four reviews.

So I'm going to turn very quickly to Avri Doria who proposed the first one because she was bringing over commitments agreed to by ICANN as part of the APRT2 that has not yet been implemented. So, Avri, you want to describe the very first item in the box on the bottom of page 48.

Avri Doria: Sure. This is Avri speaking. Very quickly - and the one thing I would change to what Steve has just said is that - we've done implementing them, but there haven't been that many years yet to see how well it's being implemented. The APRT2 basically made a recommendation that there needed to be an

accountability and transparency yearly report - a - basically an annual report on what was going on.

And there have been, you know, yearly periodic reviews from the - from ICANN about the progress being made in implementing all the changes that review teams. So what this is basically trying to do is put an - a bylaws requirement for such an annual report on the state of accountability and the state of the implementation of all of the review recommended items.

So - and it's basically taking an ATRT2 recommendation that was approved by the board and now passing it through, into a bylaw space. Thanks.

Steve DelBianco: Thank you, Avri. So with these four (chapeau) items that apply to all the reviews, maybe we only have enough time to begin the discussion of that. So speaking of the table at the bottom of page 48 and the top of page 49, these are changes and improvements that we're making at the community greater amounts of control and accountability in these four reviews.

So I see a few - and Leon, I think you're going to be managing it.

Mathieu Weill: Thank you very much for this, Steve. Thank you Avri, of course, for guiding us through this. I noticed that Josh is (unintelligible) or is (unintelligible) new (unintelligible). Thank you, Josh.

So next in the queue, I have Sebastien Bachollet. Sebastien, could you please take the floor.

Sebastien Bachollet: Thank you, Leon. Sebastien Bachollet for the record. On the proposed bylaw, I just want to remind you that I strongly think that we need to find a way to have enough diversity in any working group created. And the fact that

there is nobody - and once again, I don't care who will do that - who could be in charge of balancing what's came from the (unintelligible) committee and the supporting (unintelligible) as member to the working groups.

Our review teams here need to be implemented. If not, we will end up with only by chance to have enough diversity in those groups. And that's, for me, a very key and important point. We need to figure out how we will do that.
Thank you.

Leon Sanchez: Thank you very much, Sebastien. So we will take the next item of trying to fit - or trying to see how we can fit our diversity into the proposed spikes. And are there any other comments or questions at this stage? Okay, I see no other questions so since there are no objections at this stage - or should I call, maybe two (unintelligible)...

Steve DelBianco: Leon, this is Steve.

Leon Sanchez: Yes. Yes, Steve.

Steve DelBianco: (Unintelligible) I want to remind that all we've really covered on this second reading here has been the (chapeau) - the section that applies to all four reviews. If we dive into each of the reviews, it may take several minutes, each one, for members of the CCWG to give commentary on the changes we're making to the specific reviews, like ATRT, (unintelligible) resiliency).

So we should probably - to close this off with the (chapeau) that ends on page 49 but we still have to pick things up on page 50 on our next call.

Leon Sanchez: Yes, you're right Steve. And, well I would go for agreement on the (chapeau) as Steve just pointed out. And if there is no objection, I think we could just

have agreement that this is how we would present it to - for public comment. And or we keep it in mind that we should look into how we fit diversity into the text.

Do we have an agreement on that?

Steve DelBianco: You know, Leon, I asked you is someone going to send us language for the language for the diversity?

Leon Sanchez: I'm sorry, Steve. What was that?

Steve DelBianco: You mentioned adding diversity to the text but is someone going to propose that language or is it on us to come up with something?

Leon Sanchez: I would say since Sebastien Bachollet was the one that raised this issue. So if (unintelligible) were to be okay in proposing some wording so we can fit - or we can see how we fit diversity to the (chapeau), (unintelligible).

Okay, yes. So Sebastien will draft some wording with the words to including diversity. And I see (Alan Greenberg's) hand is up. So Alan, could you please take the floor?

Alan Greenberg: Yes, two points. Just for clarification, when we resume, we will be going onto the individual reviews.

Man: Yes.

Leon Sanchez: Yes, of course. This is going to be a discussion we need to have in our session later.

Alan Greenberg: Okay, thank you.

Leon Sanchez: So I think (unintelligible).

Alan Greenberg: Okay, my main point is on the diversity. We've said the individual groups must be able to select their own people. In that case, the only diversity statement you can make isn't - is when you request people to suggest - to select their people, consider diversity.

If you're going to look at diversity of the group as a whole, you cannot do that and give them free reign to pick their own people. So we need to decide which one is more important. Otherwise, there is no way to cover diversity except by asking pretty please, when you select people, consider diversity.

Leon Sanchez: Okay, thank. So on (unintelligible), we've reached the top of the hour. And I'd like to turn now to (Michael) (unintelligible) (Thomas) to go through bylaw changes as suggested by (unintelligible). So (Thomas), could you please take the floor?

Thomas Rickert: Yes, thank you, Leon. And I'm conscious of time. So I would suggest that the discussing Section 6.8, I think the bylaw changes suggested, regarding the stress tests, we would go about this in a fashion whereby we ask whether there is - you know, whether we can confirm what we already discussed.

And should there be no objection to confirming, then I think we can easily do that now. Should there be substantial discussion, I would sort of bring that discussion to a halt and for them to put that into the third meeting today. So without any further ado, Steve, can I ask you to give us - or tell us the very brief overview of where we are so that we can then seek confirmation from the group?

Woman: Go ahead, Steve.

Steve DelBianco: Thank you. The items we were talking about under Section 6.8 are two small and specific bylaws changes that were suggested by stress text. The 6.8 begins on page 53 in the frozen document.

So a very brief overview is that 6.8.1 is a recognition of something that was approved in an ATRT and it says that if formal advice comes from an advisory committee and the board simply sits on it and does nothing, that doesn't give us the ability to trigger our power of an independent reviewer reconsideration. So under the understanding we wanted to trigger our ability to do review and redress, we want to add a bylaws line to force the board to take a decision on formal advice from an advisory committee.

And we borrowed this line from the hard work that was done by ATRT2. And that's a one-line change to the bylaws that says the ICANN board will respond in a timely manner to formal advice from all advisory committees explaining what action it took and their rationale for doing so. So if the board decided to say no, we have the opportunity to challenge that decision.

And the other comes from stress test 18, which is ICANN's obligation to undertake (sic) negotiation with the GAAC to come up with a mutually-acceptable solution when the GAAC provides advice. And we've been over this a few times.

The one small changes to the bylaws where the board is obligated to work in a timely manner, we would add the phrase with respect to government advisory committee advice that is supported by consensus. So this doesn't interfere with what the GAAC does; it simply says that when the GAAC uses

consensus - its own definition - then its advice triggers the bylaws provision that applies today.

The GAAC arrived at advice that was not a consensus advice, there are lots of other obligations to consider it, but not an obligation to undertake a negotiation to find mutually-acceptable solution. So that's the summary. And (Thomas), back to you.

Thomas Rickert: Thank you very much Steve. So let's turn to the group and see whether there is any objection against these changes that - and again - that we've previously discussed. So let me hold for another few seconds. But doesn't seem to be any - any objection against these changes so that we can - then - we would deem them to be confront by the group in the second reading.

And with that, Mathieu, I hope that - and Leon - I hope that this is okay with you. We had plans for doing a brief recap. I would suggest we skip that in the absence of time and we will therefore cover the recap in the opening remarks for the next session.

Thank you very much for your patience and we've taken six minutes that have - longer than we had originally suggested, but I think you will join me in saying that this was a very important and fruitful discussion, so we're going to continue that in a few hours. Thank you everybody and bye-bye for now.

Man: Thank...

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