THOMAS RICKERT: So I just got confirmation that the recording has started. Good morning, good afternoon, good evening. Welcome to the first webinar on updating on the Work Stream 1 recommendations on the third draft proposal of the CCWG Accountability. My name is Thomas Rickert, I'm representing ECO, an Internet industry association based in Germany and I'm the GNSO-appointed co-chair to the CCWG.

My two fellow co-chairs are Mathieu Weill of AFNIC, appointed by the ccNSO; and Leon Sanchez, based in Mexico, who is ALAC-appointed co-chair. We also have rapporteur [inaudible] working group with us, who have been ably chairing sub-teams that have been working on various aspects of our recommendations. And the way we're going to go about with this webinar is as follows.

We will focus very much on the differences between the second and the third report that we've published. You will remember that our CCWG work has started pretty much a year ago and we have issued two reports already. We have had two public comment periods for those reports, and following an iterative process, we have preserved pretty much all of the aspects of our first and second report that got broad community support.

So between the first and the second report, we only updated those areas to come up with new ideas where the community has raised concerns. Same between the second and the third report. So for those who are interested in the genesis of our recommendations, I would recommend that you go back to the earlier reports or that you read this

report, including its appendices because that will have a lot of detailed information to help you understand what we did over the last year.

In fact, this webinar shall pretty much focus on the latest news. So in case you have followed the process, you will not be bothered with things that you already know, but we will only speak to the [inaudible], particularly the changes that we made to our recommendations since the Dublin ICANN meeting.

This webinar is available in multiple languages, so we have English in the AC room. We have Spanish, French, Chinese, Arabic, Russian, and Portuguese. We know that it is a challenge for you to follow the translation, although we have excellent interpreters at our fingertips that are helping us, but should you think that we are speaking too fast, if you have difficulties understanding, please make yourself heard or send a note to the chat section in the remote participation room so that we are [known] that we need to slow down.

We recommend that we go through the slide deck first in one go so that you can get an overview of what we've done, and then we would then open it up for questions. I understand that the remote participation room has its audio enabled so you can connect through the audio and ask questions, and you can also ask questions in the chat.

Experience has shown that participants of calls and webinars are also posting other comments into the chat. We would kindly ask you to mark your question with a "Q" at the beginning, and we will take note of the questions and answer them one by one.

We're going to conduct this webinar sharing responsibility for different sections of our report, so you will have extra speakers on the respective subject matters. So without any further ado with respect to the formalities and the housekeeping for this call, I would like to invite my co-chair, Leon Sanchez, to show you through the first couple of slides of the slide deck.

LEON SANCHEZ: Thank you very much, Thomas. I just want to be sure that you can hear me okay. Is the volume on my microphone acceptable?

THOMAS RICKERT: Yes, we can hear you all right.

LEON SANCHEZ: Excellent. Thank you very much. So as Thomas kindly explained to us, we are reporting on the [inaudible] made from our second draft report and this is [inaudible] going to be our third draft report. Before that, I would like to walk you through an overview and some background of the overall process for those of you that have joined the process at this stage, which is a little bit late in the process. But we feel that is important that we have all the information and background so you can be better informed in case you need to do any kind of [decisions].

So over the last year, as a matter of work of this working group and the whole community, the ICANN community, the ICANN community members have developed [inaudible] enhancements to ICANN's

accountability to the global Internet community. The draft proposal of Work Stream 1, and I'm going to speak about what we [inaudible] Work Stream 1 in a couple of slides more, [inaudible] chartering organizations to consider these proposals and towards their support or their concerns on the proposals. And, of course, also, public consultation for the larger community to express whether they support or they have concerns with these Work Stream 1 proposals.

So as you can see, of course, a diagram on the overall process from the NTIA announcement and criteria that were set on March 2014, and, of course, ICANN being the coordinator of all of these efforts with the two parallel tracks that divide into the [inaudible] to the ICG process and the accountability process. And we will be focusing, of course, on the accountability track. And we are, at this stage, at the point of having formed our third draft proposal, which hopefully will be approved by the chartering organizations and then forwarded to the ICANN Board. So can we move to the next slide, please?

So the background for this is that IANA stewardship transition process of community [inaudible] concerns on [replacing] the [inaudible] US government has played historically in this relationship with ICANN. So for this, the community expressed, as I said, some concerns, and decided that there should be some enhancements to ICANN accountability to replace this historically [inaudible] of the US government has placed in this relationship.

So as a result of these concerns, a Cross-Community Working Group on Enhancing ICANN Accountability was convened with the goal of having a

delivery to deliver a proposal that would enhance ICANN's accountability towards all its stakeholders.

And for this, the CCWG on Accountability divided this work into works teams. [inaudible] one being, of course, Work Stream 1, which has focused on building mechanisms that enhance ICANN's accountability that [inaudible] or committed to within the timeframe of the IANA stewardship transition. This means before the transition happens.

And the second Work Stream is focused on addressing accountability topics, which for timeline for developing solutions and [inaudible] the IANA stewardship transition, which means, of course, after the transition takes place.

So what we tried to do in the group is to set [inaudible] issues that need to be in place or committed to before the transition takes place, and also make sure that those criteria, those issues that will be worked as a part of Work Stream 2 are also guaranteed to actually happen. So these are two tracks that we have been working on and what we are asking – okay, so I think that my volume is not the best but I will try to improve the quality of sound.

So as I said, what we're trying to get approval by the chartering organizations is the proposal of Work Stream 1 that we have published for comment and, of course, hopefully approval. So if we move to the next slide, please.

What we published on November the 30th is our draft proposal of Work Stream 1 recommendations and to walk you through a quick overview

of the subject. We have a core proposal that is composed of 57 pages, then we have also [inaudible] annexes of the proposed recommendations, which include, of course, a summary for a better understanding [inaudible] handling of the proposal. And as Thomas explained, we also have ten appendixes, and it is very important that everyone will be actually taking a position or supporting or expecting any concerns on this Work Stream 1 recommendations proposal [inaudible] the whole package of the core proposal, the [inaudible] and the ten appendixes.

We have made emphasis on the changes between the second and the third proposal, so [inaudible] to walk through the changes if you have followed the proposals from the beginning, but we are also offering the detailed annexes and the appendixes as a matter of having the whole process documented in this draft proposal.

We will also be providing translations of these documents in Arabic, Spanish, French, Russian, Chinese, and Portuguese. And in this light, you can see also [inaudible], which take you to those websites in which these translations will be available and also the public comment survey, which will be closing on December the 21st.

This slide deck will also be available when we finish the webinar, so you can access it earlier [inaudible]. If we can please go to the next slide.

So [inaudible] work the CCWG identified for [inaudible] that would be the cornerstone for each proposal. So these four building blocks are the

building blocks that will actually perform the different mechanisms required to enhance ICANN's accountability.

The first [inaudible], which would be embodied by the bylaws, and in this [inaudible] proposal of these bylaws, there would be, of course, some changes to the existing bylaws, and while the changes in some of the bylaws would be becoming fundamental bylaws. We're also proposing to add new mechanisms, some incorporation of the Affirmation of Commitments and [inaudible] of Community Reviews. We are also looking at incorporating bylaws on human rights, as we will be walking through that issue, a later slide in the webinar.

And the second building block is the independent appeals and review mechanism. We have designed the working party in charge of enhancing the IRP at this time, a new and improved independent review process that is also part of this proposal and is actually, I will call it [inaudible] for this whole process.

Then the third building block is the ICANN Board of Directors, which if you compare to a state structure, it would be the executive power. And then if you compare this as well to a state structure, which you would have the fourth building block, which is the empowered ICANN community, which would be, of course, the people.

And this community would be now empowered with different powers, which I will be explaining in the next slide. And these four building blocks, as I said, form the different mechanisms that the group

considered that were required to improve ICANN's accountability. So if you could please move to the next slide.

So one of the core aspects of the work of the CCWG and the proposal that we are trying to get approval from the chartering organizations is ensuring the community [inaudible] in ICANN decision making and these [inaudible] and these seven new community powers.

So for these, of course, the CCWG has proposed a set, as I said, of seven community powers designed to empower the community and to hold ICANN accountable for the organization's [inaudible], which could be the mission, the commitments, and the core values.

And you can see here the set of seven powers, being one of them rejecting the budget or strategy operating plan, which would be, of course, explained in detail some slides later. And then we have also the power to reject changes to ICANN's standard bylaws. The power to approve changes to fundamental bylaws – and this is an important difference between actually rejecting changes to standard bylaws as opposed to approving [inaudible] bylaws because when we say approved changes to fundamental bylaws that would require an affirmative decision and affirmative action by the community to actually approve changes to any fundamental bylaws. And this, of course, involves a different process than just rejecting standard bylaw changes.

Then we also have the power to remove individual ICANN Board directors, and we have also the power to recall the entire ICANN Board. And, of course, to launch the community Independent Review Process,

and reject the ICANN Board decisions relating to IANA functions [reviews].

And at this stage, it is important to note that the powers as well as the launch of the Separation Cross-Community Working Group, as required by one of the dependencies established by the CWG – the CWG is, of course, the Cross-Community Working Group on Designing Transitional Proposal for the domain name community, can be, of course, by [inaudible] the community Independent Review Process or the power to recall the entire Board.

So we will be explaining the whole escalation path and the different options that the community would have to actually walk through escalation path and ultimately come to and, of course, [inaudible]of each of these powers.

So [inaudible] I would like to turn back to my co-chair, Thomas, for the next slides.

THOMAS RICKERT: Thank you very much, Leon. Thanks for the presentation. I am actually stepping in for Jordan Carter, who is the rapporteur for one of our sub-teams, and I'm trying to work in his footprints, which is not going to be easy. We are now going to discuss what we call the EEE approach – Engage, Escalate, Enforce. So if we could please move to slide number seven.

And before we go through the contents of the slide, I think I should preface this by giving you a little bit of background why we did this. First, there was some misunderstanding in the community when we discussed empowering the community, i.e. giving the community certain powers. This was misunderstood by many as the ICANN community being part of the decision making whenever the ICANN Board takes decisions.

This is far from the truth. ICANN, including its board, will, in most instances, operate as they do today. There is only a limited number of community powers that Leon mentioned when explaining the last slide to you, where the community has a say.

As you will remember, the purpose of this exercise is to make sure that in the transition environment, we replace the US Government back stop functionality and the power that is currently held by the US Government will be given to what we call an empowered community.

So first takeaway message is there's only a limited number of powers where the community can chime in. Secondly, not in all cases where the community has a say – budget, strategic plan, Board removal, changes to the bylaws – not in all these instances the community will have to escalate straight away.

The opposite is the case. We hope that the community will rarely, if not at no time, be forced to use an enforceability mechanism, and we try to capture the notion of this whole process in the EEE approach – Engage, Escalate, Enforce.

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We understand – and this is the second point – that some in the community have misunderstood our recommendations as being such where we pull out the big hammer and beat the Board whenever it comes to budget decisions or other decisions that are on the list of community powers. This is not true, as well.

We are hoping that an engagement process between the Board and the community will, in most cases, avoid friction between the Board and the community's wishes. However, we are discussing primarily the hopefully unlikely cases where escalation, or ultimately enforcement, might be needed.

But let's not forget that, for example, when it comes to crafting a budget or when it comes to suggesting bylaw changes, there is a consultation and engagement process between the Board and the community, which we're now making mandatory. These consultation processes have been held by the Board already, so it's current practice, but this work, it was voluntary. So we're making this or we're suggesting to make this mandatory and only in the unlikely case that the Board takes a decision that the community is not happy with, we would then enter into what we see on this screen, i.e. the escalation phase.

This slide looks complicated and you can surely read through it and see for yourself. But I will try to explain in plain language and simplify a little bit what's happening here.

So the Board takes a decision, and the community doesn't like it or parts of the community or individuals don't like it. What they would do is if

you are individually not happy with the Board's decisions, you try to find an SO or an AC that shares your view that the Board decision was wrong. And if you find an SO or AC that supports your objection, then a conference call will be triggered.

This is to keep the administrative burden very [inaudible] to allow for the community via the SOs and ACs to consult remotely at low cost and short notice whether an objection gets traction in the community or not.

Since there is sufficient traction for the objection in the conference call – and what traction means we're going to discuss on the next slide – then we would move to the next phase, and that would be the community forum, where the community comes together in a face-to-face meeting where all the pros and cons of the views are being exchanged, whether a community objection gets sufficient support inside the community or not.

So this is for transparency purposes, let's bring the conflicts out there, let's allow for everyone to raise their voice and chime in with their concerns or with their support for a specific Board decision or topic, and only in the case where the conflict is not resolved there, then the SOs and ACs will, according to their own processes, discuss this inside their own organizations and get back with a decision on whether a community power should be exercised or not.

So we're not changing the way the SOs and ACs are operating, but we will just establish whether there is sufficient support for a community

power to be involved or whether there is more than the acceptable level of objection to that. And if there is sufficient support in the absence of more than one objection, then a community decision is being made.

And you will have noticed that I did not use the word "voting" because we are actually not voting. This was one of the criticisms in the previous report, so we've now moved to consensus-based decision making. So we're looking whether there is consensus inside the community and we qualify this consensus by the presence of a certain level of support inside the SOs and ACs in the absence of more than one objection for a community power to be invoked.

And this decision by the community will then be communicated to the Board, and if the Board wants to fix it, if the Board takes action and rectifies in the view of the community the decision that it has previously made, then further escalation and enforcement is not needed. Only in the unlikely case where the Board does not wish to honor the community decision on a community power, there will be an enforcement phase where either the Board can be removed or an Independent Review Process can be started. Let's move to the next slide, please.

This next slide actually shows you the level of support required for exercising the community powers and the maximum level of objection that can be existent. Can we move to the next slide, please? Thank you so much.

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So on this page, you see all the seven community powers and you might ask yourself, "Why do we have seven? We only spoke about five during earlier presentations." And the reason actually is that we wanted to make explicitly clear that the community IRP is a community power and that only the power to reject ICANN Board decisions relating to IANA reviews is also a community power.

So what you find on this slide is actually the level of support that's required and you can attach this to the escalation letter that we've discussed previously. So for example, when it comes to reject changes to ICANN regular bylaws, which is community power number three, you would need two SOs or ACs to support the blocking in order to initiate the conference call.

Subsequently, you would need two SOs and ACs to convene a community forum. And then after the community forum has been held and after the SOs and ACs have formed their own view, according to their own processes, we would then need three SOs or ACs to support the rejection of a regular bylaw change and there must not be more than one objection.

So if there are only one or two organizations supporting the rejection, the motion has failed. Also, if we have more than one objection, the community power cannot be exercised. And you will see that those thresholds vary, depending on the community power concerned. I'm not going to read that out to you individually, but I should note that we have powers to reject, in most cases, the two particularities.

One is with respect to approval of fundamental bylaw changes. You will remember that we have come up with the notion of fundamental bylaws in order to make them more robust against change.

So while standard bylaws can be rejected after a Board decision has been made on the change, for fundamental bylaws, it is actually a pro decision process where you need both the Board deciding whether 75% majority on the bylaw change and you need the approval from the community.

Also, with respect to removing individual Board members, there is a particularity insofar as we go through the escalation path, but ultimately, it's going to be the SO/AC's decision whether or not to remove a director.

Let's move to slide number nine, please. With our second report, we have introduced an enforcement vehicle, a legal vehicle, that is required to make community powers enforceable, which we call the sole member model, where we pooled all the SOs and ACs and made them form the one and only member that ICANN would have.

There was uncertainty, or at least there were diverging views on whether we could sufficiently robustly limit the exercising of statutory membership rights. And we felt, as a group, that these [doubts] might lead to instability and concern with ICANN's governance. So there are certain membership rights according to Californian statutory law, which members have, and which were not foreseen to be given to the sole member.

And also, we felt that we would have different component parts of the single member that would jointly exercise the community powers, but there was uncertainty whether individual parts of the community could sort of hijack the process and individually exercise statutory powers granted under Californian law, which is why we reconsidered and now came up with the idea of an empowered community by virtue of the legal vehicle of a sole designator.

Legal experts confirm that ICANN already has a designator structure, but we're going to change it by, again, pooling the SOs and ACs to form a single designator, which jointly exercises the community powers if the threshold met that I spoke to on the previous slide.

So we have the component parts of the community forming the sole designator, and this sole designator takes the form of an unincorporated association under Californian law that's going to be established by bylaw language so there's no additional administrative [hassle] nor do we need directors or additional formalities, but we would enshrine in the bylaws that the sole designator has certain powers and that's pretty much everything that we need to do.

And as you can see individualization, currently, we have ALAC, ASO, GNSO, ccNSO, and the GAC forming the empowered community. And this empowered community has the legal power to appoint and remove individual directors and to recall the entire Board. And I should say that those component parts of the ICANN community who already place individuals on the ICANN Board will continue to do so, but legally, this will be done through the legal vehicle of the sole designator.

And compared to the member model, we would have had more enforceable – directly enforceable – rights with the sole member, but in this case, we have the power to legally enforce director removal, which is for the Board member removal, a direct enforceable power, and for other powers that we have on the list, it would be indirectly enforceable because the Board would be threatened to be dismissed in case they do not honor either a community decision or the decision of a binding Independent Review Process.

Let's move to the tenth slide, please. Now on this slide, you see the process of Board member removal. This was an area that needed quite some debate after the second report because some felt that individual directors should not just be removed. They were afraid that the process that we had previously designed would lead to a situation where individual directors would just parrot the wishes of their respective communities, fearing that otherwise they would be dismissed.

So we have now established a process that shed more light on the process and brings potential disputes out to the public. And this escalation contains elements such as the chair of the appointing SO and AC, having a call with the director, that the director is notified that there are concerns about the director's behavior. Then there would be the community forum where the dispute between the director and the SO/AC and the wider community will be brought out to the public so that the director can speak to his own view on the dispute, and also the SOs and ACs can chime in and share their view.

Now ultimately, the decision will be made by the respective designating SO or AC, but the community views will be taken into account and a rationale needs to be provided, as well, so that everyone is clear on why there was an issue with the director.

I think I should pause here. That's the update on the individual Board member removal, which we've now tweaked to the satisfaction of those that have criticized the process earlier.

The last bit on the community powers will be the revised process to reject the ICANN budget and strategic and operating plan. And Jonathan Zuck, a participant of our group who has led on that initiative, will show you through that community power. Over to you, Jonathan.

JONATHAN ZUCK: Thanks, Thomas. So there is a distinction that was made, eventually, between the five-year strategic and operating plans and the one-year budget and operating plans, and they're slightly different in those two cases. Because the five-year plan is more vaguely worded and is already more a product of discussion and has lower stakes associated, if you will, with a veto. And so a straight budget veto is more appropriate for the five-year plan than it is for the current year operating plan and budget.

It was also discussed that there's very little distinction, if you will, between the operating plan and the annual budget and so the veto is expressed as really a veto of both of those things.

So the idea here is that, in addition, you have to the normal escalation path, there's a separate petition required for each budget or plan being challenged. The petitioning SO or AC is required to provide a rationale. The reason – and it's important that that rationale have come up in the previous public comment period associated with the budget.

So one of the things is not throwing things in at the end, but this is a topic that came up during the comment budget. And after the escalation takes place, if an annual budget is rejected after this whole escalation process, then a caretaker budget will be enacted.

So there is a process happening right now to define what that caretaker budget looks like. Xavier, the CFO, is engaged to develop a kind of framework, if you will, for a future CFO to determine what a caretaker budget would look like. But basically, it's meant to be the budget necessary for ICANN to continue its normal operations, pay its employees, hold its meetings, etc. But everything that is not necessary (existing contracts, etc.) would be put on hold under a caretaker budget.

So this is an across the board reduction in the ICANN budget for the year, so it's a very serious situation for the organization and for the community, and so the use of this power would be a very serious situation, but ICANN would not fail in its contracts or lose employees, etc., as a result of it. It's just meant to create discomfort, not chaos, if you will.

The IANA functions budget is considered as a separate budget and there would be two distinct processes associated with it. Use of the power to

reject the ICANN budget would not impact the IANA budget, and rejecting the IANA budget would have no impact on the ICANN budget. So that's basically the idea.

There are a number of discussions that took place about what should happen in the case of a budget veto. In previous plans, there was the notion that the last year's budget would go forward, but that didn't make sense because there might be projects that have already been completed, for example, and so to continue to fund them wouldn't make sense.

So the idea of a caretaker budget is an alternative of making sure that ICANN meets its obligations as a corporation, stays within the law, it doesn't do things unduly rash associated with its employees, but that there is in fact a pause button moving forward so that the issues that are raised by the community are in fact addressed by the staff and Board.

I'm happy to take any questions.

THOMAS RICKERT: Thanks, so much, Jonathan. That was an excellent overview. I would suggest that we continue with the overviews of the remaining aspects of the proposal and then take questions on all areas. The next topic we're going to discuss is the enhanced Independent Review Process, which has been called the Crown Jewel of the ICANN Accountability Framework, and I'd like to invite Becky Burr, who's been chairing this

BECKY BURR: Hello.

THOMAS RICKERT: Hi, Becky. You can be heard.

BECKY BURR: Okay. Great. Sorry.

THOMAS RICKERT: Go ahead.

BECKY BURR: Thank you very much. The Independent Review Process is indeed an important aspect of accountability. We heard from the community that insofar as it was legally possible, there was a desire that the outcome of the IRP be binding on ICANN. We also heard that there was that it was important to make this both more accessible and affordable, particularly for a community independent review, which as we discussed earlier, is one of the new powers of the community.

                               But the first step is that a party who believes – and that could be either an individual or an entity, but believed it has been materially affected by

an action or inaction of ICANN that violates ICANN bylaws or Articles of Incorporation would bring a claim.

The claim would be assessed or we would have a standing judicial or arbitral panel consisting of seven members from around the world with experience in different legal and judicial systems. And the reason for going with a standing panel is to develop expertise in ICANN-specific matters and to avoid some of the more random decisions and also to ensure consistency across decisions and begin to provide precedent to guide ICANN going forward.

That seven-member panel would be selected by the community based on clearly spelled-out qualifications. It would be – it's intended to be diverse both geographically but also importantly diverse in terms of legal culture.

It would be confirmed – the panelist would be confirmed by the Board of Directors. And, as I said, at least seven, but there is flexibility to go up or down depending on need going forward.

Decisions would be taken by three-member panels, if they are formed, and those three-member panels would issue binding decisions. Under certain circumstances where a panel has made a clear mistake, both decisions of the panel could be appealed to the full seven-member panel.

There are a number of details designed to limit frivolous claims and, importantly, with respect to the community IRP, ICANN would be responsible for bearing the full cost of the procedure.

This work, there are a number of details yet to be worked out in terms of the operating procedures, so CCWG is in the process of forming a special working group that will work closely with experts, with lawyers, and with ICANN's legal staff to begin drafting those specific operating procedures.

THOMAS RICKERT: Thanks very much, Becky. Becky, did you want to add anything?

BECKY BURR: No, I'm done.

THOMAS RICKERT: Okay. Thank you so much. We're now going to discuss the CWG dependencies. As you might remember, the chartering organizations' approval of the CWG recommendations was conditional on our group offering certain deliverables, if you wish, and these deliverables and dependencies are going to be represented to you by Cheryl Langdon-Orr. Cheryl, over to you.

CHERYL LANGDON-ORR: Thank you, Thomas. And as you can see on this slide, the particular dependencies identified by the Cross-Community Working Group on the Stewardship Transition of IANA, they're listed here and we believe – the CCWG on Accountability believes – it has outlined in this new draft that

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we have, in fact, met in a satisfactory manner each of these dependencies.

First of all is the community rights regarding the development and consideration of the ICANN budget, and you've heard about this in some detail with Jonathan in an earlier slide. We also have the community right regarding the ability to appoint and remove directors and Thomas went through that with you earlier with the individual directors and recalling the entire Board and the mechanisms that are in place for that as part of the community powers.

Also, and most importantly, the very specific ability to have ICANN bylaws incorporated into the ICANN bylaws the IANA function review, the Customer Standing Committee, and the separation process, which are specific outcomes of the CWG Stewardship work.

And in fact, further, those will become fundamental bylaws and third in the description of the powers that [inaudible] to alter a fundamental bylaw has a much higher set of benchmarks and standards to reach before such change to a fundamental bylaw can go ahead. So we feel that [inaudible] secure there, having met the CWG requirements.

And finally, as you've just heard from Becky about the Independent Review Panel, another one of the dependencies was that Independent Review Panel (the IRP) should be made applicable to IANA functions and be accessible to the managers of top-level domains.

To go into detail on all this, I'm going to draw your attention to the particular section within our document. Each of our particular

recommendations, each of the key recommendations, has associated with it a particular appendix, and the appendix that you particularly need to look toward the CWG Stewardship requirements is called Annex 13. It's just a couple of pages in length, but it goes into specific detail and explanation on the recommendation and also outlines any changes from second draft proposal on these recommendations, as well as mentioning any particular stress tests relating to the recommendation and how any of it meets particular CWG requirements.

I'd also suggest that you should look to Annex 14. Annex 14 is the one that will be outlined in the particular detail how our work has met NTIA's criteria for the IANA stewardship transition. And again, we have outlined in quite particular and specific detail how we believe that this work has met all of those requirements.

And with this, I think I'll stop now but reassure you all, particularly those of you who've not been deeply entrenched in all of this discussion and deliberation that is in our view that we have, in fact, [with this group] met the CWG Stewardship dependency. Thank you.

THOMAS RICKERT: Thank you very much, Cheryl. We're now going to discuss ICANN's mission, commitments, and core values. And you will remember that at the very beginning of this webinar, Leon Sanchez has explained to you the four building blocks, one of which being the principles. So this is basically the constitution, if you compare ICANN to a state, and the constitution is particularly important because that's the part that the

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independent judiciary looks at when it determines whether the executive – in this case, the ICANN Board – has appropriately acted within the constitutional framework.

And Becky Burr, again, is a responsible rapporteur for this and she will now guide you through the changes that we've discussed.

BECKY BURR: Thank you. This was one of the first pieces of the work that we undertook recognizing that it was important to get this constitutional document right. ICANN's bylaws currently do contain a mission statement and a set of core values, and so we built on that language, those sections, in there. We did not undertake to change ICANN's mission in any way, but to clarify it and update it. And to clarify it for the purpose of ensuring that ICANN act strictly in accordance with its mission and only as reasonably appropriate to achieve its mission.

So we made this a limited and enumerated powers, so ICANN has the powers that are stated in the bylaws, and it does not have other powers, but obviously, ICANN can enter into contracts, for example, and [inaudible] in service of its mission.

We also clarified the mission to clearly set forth ICANN's different roles with respect to names, numbers, root servers, and protocol port and parameters, whereas with respect to names, ICANN [plays] a coordinating role with respect to some of the more technical areas, ICANN's role is really more supportive.

And we also importantly have clarified that ICANN's mission does not include regulation of services that use the domain name system or the content that those services carry or provide. And this is really just embodying the limits on ICANN's mission that are generally accepted but are now articulated in ICANN's mission, commitments, and core values.

And as Thomas mentioned, this is a critical piece of work because when ICANN, when a person or a party makes a claim to the Independent Review that ICANN has violated its bylaw or exceeded the scope of its mission, it is particularly with mission, it is this document that the members of the Independent Review Panel will look to, to evaluate and to judge ICANN's action or inaction. Thanks.

THOMAS RICKERT: Thanks very much, Becky. Well done. We're now going to discuss the question of human rights and, actually, we're on the verge of having human rights explicitly mentioned in ICANN's legal documentation for the first time in its history, and Leon Sanchez is going to discuss with you how we're going to do that.

LEON SANCHEZ: Thank you very much, Thomas. And through the process of the work of the CCWG, the issue on respect to human rights by ICANN was widely discussed and, of course, we tasked a working group, a working party with the task of reviewing how ICANN could actually incorporate human rights respect and commitment to respect human rights to its bylaws,

and the working party made a lot of work in a very short time. And the outcome of this is that bylaws being proposed for adoption in [inaudible] incorporated into ICANN bylaws [inaudible] for the first time in history that actually commits ICANN to respect human rights.

And [inaudible] read the proposed bylaw text at the bottom of the slide, [inaudible] within its mission – I mean, its operations. ICANN will respect internationally recognized human rights. This commitment does not in any way create an obligation for ICANN or any entity having a relationship with ICANN to protect or enforce human rights, which is what may be required by applicable law.

In particular, this does not create any additional obligations for ICANN to respond to or consider any complaint, request, or demand [inaudible] reinforcement of human rights by ICANN. So this would not burden ICANN's mission. This would not deviate ICANN's mission, but it actually offers a commitment – and a very serious commitment – for ICANN to respect human rights, of course, within its mission.

Another piece of this proposal and another way of addressing this issue on human rights is that we are also proposing that a Framework of Interpretation is developed so that these bylaws that we are proposing to add to ICANN bylaws will be, of course, implemented after this Framework of Interpretation that would be developed as part of Work Stream 2.

So now I'd like to turn to Steve DelBianco for the next [inaudible] enhancing accountability on SOs and ACs. Steve.

STEVE DELBIANCO: Thank you, Leon. So we turn now to slide 16, which is regarding recommendation number ten from our third draft proposal. In recommendation ten are some slight adjustments to ICANN's bylaws. In the section, it describes the structured reviews of the underlying ACs and SOs that organize ICANN's community.

This recommendation arose from three stress tests that were conducted – numbers 31, 33, and 34, two of which were suggested by NTIA – and is recognizing that the ACs and SOs are critical to our proposal, so it's essential that the ACs and SOs be accountable to the respective communities that they represent.

What those stress tests identify is that we had to guard against risks of capture of an AC and SO – capture of its decision making or its elections by a small contingent of its members, and we had to ensure that the ACs and SOs are representative of the population they are designed to represent, and also that they're inclusive and open so that new community members could enter an AC and SO, find it to be accessible to understand its rules, to gain entry to its processes and membership in the AC and SO. So we came up with a recommendation that in the existing bylaws, that those structural reviews be strengthened, specifically recognized, and the importance of evaluating of the representativeness and inclusiveness and protection from capture. Thank you.

THOMAS RICKERT: Thank you very much, Steve. Why don't you go ahead and also speak to stress test 18?

STEVE DELBIANCO: Thank you. The next slide, slide 17, regards recommendation 11 of our third draft proposal. And this arises from something a lot of you have probably heard about with stress test 18, and the easy part of stress test 18 was identifying a scenario, the very real scenario that the Government Advisory Committee (or GAC) could change its operating procedures, its decision making methods, such that it no longer used a strong, strong consensus requirement that it uses today.

And in that event, the ICANN Board would still be required to give the highest level of deference in the entire organization for advice that would come from that AC, the GAC. The risk identified is that that could put the Board of ICANN in the untenable position of having to negotiate with the GAC, if it chose not to accept the GAC's advice, in a situation where the governments themselves were divided in how they felt about the advice. That was seen as an untenable situation for ICANN's Board, so we seek to clarify the Board's obligation in dealing with advice that comes from the GAC in a way that is shown on the text in front of you.

It's really the third sentence in the text in front of you that would be the new part of ICANN's bylaws. The first two sentences are there now. I said earlier, it was easy to see the scenario under stress test 18 but it was not so easy to address that scenario and risk.

The good news is that, last week, we eventually landed on a rather elegant consensus solution, and that's represented in that third sentence you see there.

I can quickly summarize that the ideas that if the GAC advice was approved by a full GAC consensus, which is understood to be their current practice of adopting decisions by general agreement in the absence of any formal objection. Then that kind of advice would have a very high bar, ICANN's Board would require 2/3 vote to reject it, and upon that rejection, the GAC and the Board would try to find a mutually acceptable solution. That's not a requirement, but the requirement is that they try to find one.

So that particular edit to the bylaws would be worked into Work Stream 1. We did also say that Work Stream 1 includes a requirement that all Advisory Committee advice, not just the GAC, be clear and supported by a rationale when it's sent over to ICANN's Board. That's another change that would be made in response to stress test 18. Thank you.

THOMAS RICKERT: Thanks very much, Steve, and thanks for all of your and Cheryl [inaudible] hard work on the stress test. Certainly, stress test 18 is very visible because it's a topic of huge interest for many, but you've developed and worked on [inaudible] and this work is greatly valued and appreciated.

Let's now move to slide number 18 and let's briefly discuss the next steps and the timeline. You will see that we're now in the 21-day public

comment period, and in fact, the period is not – the public comment period as we usually know it, for two reasons. First of which is that we have issued a formal update, and the formal update that we published on November 15 is a document that sets out in plain language that I'd say 98% of what's in the draft proposal in terms of our accountability framework, so we gave the community more heads up with respect to our recommendations, then the 21 days also.

We've been building a lot of aspects that we had in our previous report and, finally, we are only looking at the incremental changes that we made. So we hope that you will agree with us that the 21-day public comment period suffices for the community to be able to digest what we're doing.

Now what's important to note is that according to our charter, which is the book containing the rules for the CCWG, we need the approval of five out of six chartering organizations to be able to pass on our recommendations to the Board. And this is foreseen to be taking place on the 22nd of January. In the meantime, we are trying to hear from the chartering organizations whether they have concerns with the recommendations.

Because in case there are concerns, we need to issue the supplemental report, and therefore, we needed to factor in the creation and circulation of an amended report and liaise with the chartering organizations in that respect.

So we are going to conduct the public comment period now primarily focusing on feedback from the chartering organizations for their approval. At the same time, taking very seriously what those who are not organized in SOs and ACs can offer feedback through those have to say on our recommendations.

So in case we find out that the community is not happy with our recommendations, we would then circle back with the SOs and ACs and potentially revisit some of the recommendations. But for the time being, we've planned for the feedback analysis to be conducted by the end of this year. We will then update our report based on the feedback and have the chartering organizations adopt (i.e. approve) our recommendations to then pass on the recommendations to the Board.

And let me take this opportunity to remind you that those of you who are within an SO and AC discuss with your respective groups and we would like to encourage you to offer feedback through those groups so that we don't get multiple comments from individuals as well as through their respective SOs and ACs. So this will help us making it easier to analyze the comments that we're receiving.

Next slide, please. And this is actually the last slide. We introduced or refreshed your memory on the notion of Work Stream 1 and Work Stream 2. So this report that we've outlined to you enshrines [inaudible] for Work Stream 1, i.e. for those areas, for those aspects that need to be either implemented or committed to prior to the transition.

Yet, there are other not less important issues that need to be worked on in order to really improve ICANN's accountability framework. And those you find individualization on slide number 19. So aspects such as working on diversity, SO/AC accountability, working on transparency, reviewing the DIDP process, for example, further working on implementation of human rights issues, responding to the question of jurisdiction. And on jurisdiction, you should note that this is a multifaceted issue, so we will not discuss relocating ICANN to Geneva or other ideas that have been heard during this process.

But we're looking at different aspects of, let's say, governing law for disputes, governing law for contract language, and the like. And we will also have an interim bylaw language that ensures that the Work Stream recommendations will actually be enacted as the Work Stream 1 recommendations would.

So our work will not stop after we submit the report, we have a lot of implementation work to be done. We're going to oversee the implementation and also we're going to work on Work Stream 2 recommendations in order to complete the holistic work on accountability.

And let me conclude by saying that when it comes to adopting our recommendation, we would expect the chartering organizations use either resolutions or formal advice letters to indicate their consideration of our recommendations. So we would appreciate as early as possible feedback not only from the community but from the chartering

organizations in particular whether they are able to support our set of recommendations.

And with this, we would like to open the queue for questions. There has been a question earlier by Jonathan Robinson, which I think has been answered by Jonathan Zuck on the budget community power.

The next question that we're having is from Phil Sheppard. I'm going to read it out to you. "Why the reference to internationally recognized in a place of most specific reference such as UDHR? The Universal Declaration of Human Rights." And Phil just confirms that this has already been answered, so that's good.

So we can then move to the next question from Susan Payne regarding stress number 18. "The recommendation includes a statement that the GAC has autonomy to refine its operating procedures to specify how objections are raised and considered, e.g. disallowing a single country to continue an objection. This in the bylaw change presumably, so where will this be captured? Although this is treated in the explanatory text as being limited to change of the operating procedures where a single government is abusing its position, there's no limit to the situation. What safeguard is there that in this [inaudible] the GAC could not effectively change the definition of formal objection?"

And I would like to turn to Steve, who's been chairing, as you know, the stress test working party, to offer a response to that. Steve?

STEVE DELBIANCO: Thank you. Thank you for the question, Susan. It is anticipated that the explanatory text could make it as a note to the bylaws, where it explains that the GAC itself, as you quite correctly indicated, could place a restrictions on how a country could exercise its formal objection or sustain a formal objection over a long period of time without any additional support.

Susan, those are individual AC and SO decision-making rules that are the prerogative of the AC and SO, so merely recognizing it in the bylaws. I don't believe, in any way, changes the situation that they can form their own rules. It's really a recognition of the fact that the GAC itself has some work to do at figuring out how it wants to register individual governments having a formal objection and how that formal objection sustains itself through the GAC's process of coming up with its advice.

Now having recognized that, I hope you'll understand that Article 11 in the bylaws is instructions to the Board of Directors of ICANN. It's not instruction to the GAC itself. So we are telling ICANN's Board in Article 11 that its obligation to come to 2/3 to project in its obligation to try and find a mutually acceptable solution would only apply in decisions that were adopted by general agreement in the absence of a formal objection.

So the Board itself will have the job of understanding whether a formal objection had been registered and understanding that the GAC itself might have restrictions on how it gets there.

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So I hope that that answers your question in that there is discretion on the part of our Board, but there's also independence on the part of the GAC in coming up with its own operating procedures.

THOMAS RICKERT: Thank you very much. Steve and Suzanne, I trust that you would let us know in case this has not satisfactorily answers your question. Do we have more questions? I do not see any further questions in the notes section. Let us pause for another few seconds to see whether we have more questions, and let me clarify that if you have questions on our work, don't feel constrained to the aspect that we explicitly spoke to., i.e. you can also ask questions with respect to aspects of our report that are not differences between the second and the third report.

KAVOUSS ARASTEH: Hello, Thomas. Thomas, can you hear me? Yeah, this is Kavouss Arasteh, I am on audio. I am not on Adobe. I listened with care to the explanation given by Steve. I understand that now GAC and its advice with the full risk in future, because one single government could always put a formal objection and does not allow to have any consensus in the GAC and no [inaudible] on the GAC [inaudible] could go to that board.

This is a very critical situation, has been worked out by a particular government pushing a particular group of people to provide this [inaudible]. I don't want to name any government, I don't want to name any person, but this has worked against the interest and public interest

of entire government of GAC because that situation would be very, very difficult in future to manage.

You put all responsibilities of GAC. You have to find a way how to avoid having that single objection. It is important for them to have that single objection. That single objection may continue to have. So we are at the mercy of one single government, no matter what government that would be. So it may be a case that they would not have any consensus applied because one single government could always veto that advice. That is very critical situation and the whole CCWG is responsible for the public order and the public policy because of this very damaging [inaudible]. Thank you.

THOMAS RICKERT: Thanks very much, Kavouss. Kavouss is a very active member of our working group and I understand this more to be a comment and a concern than a question. I should say that the CCWG has been working closely with governments that are presented or represented in the CCWG over months to come up with a balanced response to stress test 18, which is a requirement for the transition.

And as Steve mentioned, we only had a breakthrough with respect to language that was acceptable and got consensus in our group a few days back. So this is the solution that the CCWG came up with, which reflects the consensus position, which reflects the compromise that has been worked on for a long time. The compromises usually do not make everyone happy but we think that this is a solution that is workable.

And we should also say that the CCWG's role is not to impose certain decision making in the GAC, nor to prescribe how the GAC crafted operating principles. So we are very conscious and careful not to step over the line and try to get involved with issues that are actually government business and not our business. So I hope that these additional remarks help clarify how we got to where we are. Do we have more questions?

We would surely particularly appreciate questions from those who are not in the English audio stream. So if you could indicate that you have a question, you can put it in your local language into the chat, and we will have it translated.

KAVOUSS ARASTEH: Can I pose another question, please? Is it possible? Do we have time or not?

THOMAS RICKERT: Please do, Kavouss. The floor is yours. Yes.

KAVOUSS ARASTEH: My second question is that you have [rightly] mentioned that the chartering organizations need to [inaudible] they will with respect to this third report either individually or to the whole organization either on the whole report or the recommendation by recommendation.

Can you would not receive any reply from them within the time limit and then the question is what to do with that? How to deal with the issue? And what is your action with respect to this organization? I have not seen any formal arrangement as far as I know for instance, the GAC. I have not seen any arrangement that within the time limit they try to in either a resolution or in a consensus because it would be difficult for the GAC to have consensus or resolution in not in session. Some people [inaudible] they believe that, yes, it is possible. In my view, it is very improbable.

So in case that you would not receive supporting organization or little support or not full support, what do you do with the rest of the report that you will send to the Board? Thank you.

THOMAS RICKERT: Thank you for that important question, Kavouss. There are regular calls held by ICANN with participation of the SO/AC leaders as well as the transition facilitation calls, and we spoke to the timing on several of these calls, and while certainly there is no assurance that we can operate as planned, we get confirmation from the SO/AC leadership, from the chartering organizations that they are working hard to meet the targeted delivery date that we have discussed.

Also, let me reiterate that we need five out of six chartering organizations to support our recommendation, so even if there is one group that cannot speak to the recommendation in time, we would still be able to proceed. I think that's the best answer that I can give at this

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stage. We have one more question from Harold Arcos, and the question can likely be answered by Leon, [inaudible].

LEON SANCHEZ: Thank you very much, Thomas. To answer to Harold Arcos' question, I believe that what he's asking wouldn't be feasible to actually [include] into ICANN's bylaws because that would in some way deviate ICANN's mission.

But this is something that will certainly be fleshed as part of Work Stream 2. As I explained, when I was speaking about these commitments by ICANN to respect human rights within its mission and in its activities.

So I believe that including statements that ICANN would be doing everything possible to ensure that human rights of end users are not violated while using protocols, unique identifiers, among other resources, would in some way, or could in some way, go further than ICANN's mission.

So I don't think that I have a full answer for this question at this stage, Harold, and I apologize for that, but I encourage you to follow the work of the working group that will be formed as part of Work Stream and help us flesh out these concepts so that, of course, the concern that you are raising will be properly addressed. Thanks.

THOMAS RICKERT: Thank you very much, Leon. We have one more question from Pedro. And after that, we have to call it a day. We're reaching the end of this session. The question is, "Where is the five out of six approval threshold for chartering organizations? Is it in the CCWG charter? I could not find it there."

Pedro, it is enshrined in the charter, and I suggest that we offer the response to that, what can be found on the Accountability mailing list so that you have it documented.

We have two minutes left and I would like to take the opportunity to thank you for your interest. We have not expected to have that good outcome, and we are particularly delighted to see so many names that do not belong to the usual suspects of those that are already familiar with the process.

So we very much appreciate your interest in our work in this important process for ICANN and the global Internet community as such, and I would like to thank the interpreters for assisting us with the multilingual effort so ably. I'd like to thank our excellent staff.

This document that you see in front of you and that you can download has been enormous group effort, and there was a lot of pressure not only on the CCWG, but also on ICANN staff to get this done, and I would like to specifically thank staff and the professional writers that we engaged for this to make this happen.

I'd also like to thank the Board for playing a very active role in working on our recommendations. They are truly part of our CCWG and they've

really helped enormously with their commitment to come up with recommendations that are to everyone's liking.

Finally, let me point out the efforts of the GAC members, not only with respect to stress test 18, but also with respect to our overall work. The SOs and ACs or other SOs and ACs are quite used to working together, but we think that this work in the CCWG has been unprecedented, and the group, the CCWG is a very diverse group not only in terms of geography but also in terms of interest and the fact that you see cohesive recommendations after one year is unprecedented and a great achievement in itself and a true testimony of the multi-stakeholder model working.

Let me finally thank the CCWG members and participants. You've done an awesome job in getting us where we are, and with this, I would like to close this webinar. Thanks to all of the speakers and we're going to have another webinar at 20:00 UTC today. So if you haven't had enough of this, then come back, and you are much appreciated and you're most welcome to join again.

Thank you and have a great day. Have a great evening. Bye-bye.

[END OF TRANSCRIPTION]