

MATHIEU WEILL: While we get the recording started, can I ask everyone not speaking to mute their mics, so that we get clear audio with no echo? Excellent.

Welcome to this second informational webinar on the Cross Community Working Group on Enhancing ICANN's Accountability proposal. My name is Mathieu Weill. I am the ccNSO appointed co-chair of the cross-community working group. I am very happy to be in this position today to introduce this webinar where a number of the key participants of the CCWG will introduce the various recommendations. There are 12 of these, like the 12 Labors of Hercules, if you will. We will go through a number of them, focusing on the latest changes since the second report of our group. We can move to the next slide.

As you know, the CCWG Accountability was created as part of the NTIA stewardship transition efforts to provide recommendations that enhance ICANN's accountability. It's the track that's on top of the graph that you see on the slide in the Adobe room. But it actually started later when it became clear that there was a need once the NTIA backstop would not be in place anymore through the IANA contract that [inaudible] accountability backstop would be required to ensure trust into the overall ICANN system.

So we started out work actually a little less than a year ago and it is important to remember that the CCWG proposal, we go to the ICANN board before being forwarded to the NTIA. And it is the last meeting piece of the puzzle for the overall transition package. And there is an important linkage between the CWG stewardship efforts who provided

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recommendations related to the naming function of the IANA contract and the CCWG accountability proposals and we'll come back later to this linkage and how the recommendations address the conditions that were set out by the CWG stewardship.

So that's part of the overall transition plan. And if we go to the next slide, you will see that the work of the CCWG has been divided in two work streams from the beginning. Actually, that's part of our charter. The recommendations we are introducing today as part of the draft report that has been published in last Monday, on November 30th are the work stream 1 recommendations.

So these recommendations are the ones that must be in place or committed to before – within the timeframe of the IANA stewardship transition. So our group has been consistent in considering what must be in place or committed to within this timeframe is all the essential pieces of accountability that will enable the work stream 2 work to be credible enough to be implemented if the community finds consensus. Even if there was some resistance in the ICANN structure. But these are really... The work stream 1 proposals are really the essential pieces of accountability that needs to be in place basically in the next few months before the IANA contract can expire.

If we go to the next slide, it is a description of what our proposals are about. There is a rather short proposal – core proposal – which has all the details on all the essentials, I should say, on the 12 recommendations. And each of the recommendations is provided with a detailed annex, including a summary of the recommendation but also

with a lot of documentation about the [inaudible] and the choices that were made by our group and how we got there and so on and so forth.

Then you also have a number of appendixes to document across this that's been taken on so far, how we're meeting the NTIA criteria as well as the CWG criteria. And we have translations in the usual languages that are going to be provided soon. And I'd like to draw your attention to the fact that if you look at the core proposal, it will look quite familiar to those of you who dived into the formal update that we published on November the 15th after Dublin so that we can – and that's not by accident. That's because this formal update was designed to help everyone get familiarized with our progress and our proposals. There should be not much surprise to those of you who really looked at this document a couple of weeks ago.

So everything is obviously online and on the links that you have on the screen right now, and that's our reference document.

That's going to be it for the housekeeping announcements. We're going now to turn to presentations from the various leaders who worked on the recommendations themselves. If you have questions, you can put them in the chat. Staff is going to collect them and we'll get to more of a question and answer session at the end of the presentation. But if you have questions, you can put them as we speak in the chat so that we do not lose any of your questions in the course of this webinar.

With that, I will now turn to Jordan Carter for... I will introduce one last slide and then turn to Jordan. This next slide is really the essence of the

proposal that we are doing and it's really about four building blocks. This four building blocks concept was introduced as early as the Singapore meeting in the spring, and really we've been working around this from the start and it's been very consistent.

There's the principles of ICANN embodied in the bylaws where we are providing some changes about fundamental bylaws as well as incorporating a number of mechanisms from the Affirmation of Commitments and that's really the [inaudible] part of the proposals.

Significant improvement to the independent appeals and review mechanisms, we'll come back to them later.

The ICANN Board of Directors which is really at the front and center at the ICANN system and will remain so by being in charge of managing ICANN's operations and taking responsibility for all the executive powers.

And finally, one of the key introductions from our work is the empowerment of the ICANN community, the empowered ICANN community, with its different powers has been obviously a subject of intense work in our group. And that's precisely what Jordan Carter is going to be introducing now in more details.

Jordan, if you please can take over, the floor is yours.

JORDAN CARTER:

Thank you, Mathieu. Just checking that people can hear me. At least I can. Okay. Hi, everyone. My name is Jordan Carter. I'm from the .NZ

ccTLD and I've been the rapporteur for work party 1 in the Accountability CWG that dealt with the community empowerment topics. I'm going to take you through three or four slides that look at what those powers are.

So if we could move to the next slide in the webinar, slide six. I think as Mathieu mentioned, there are seven new community powers that are provided by this accountability package. Most of them will be familiar to you if you've been following the earlier work of the CCWG. The first five of these powers are the same as were mentioned in our previous proposal and they have been generated through consultations with the community over the past 18 months on how you would improve ICANN's accountability, what the specific powers are that would help to do that.

They are to be able to reject a budget or a strategic and operating plan for ICANN to be able to reject changes to the standard bylaws of ICANN, to approve changes to new fundamental bylaws, the core parts of the ICANN constitution, if you like, that should not be able to be changed without a very wide degree of community consensus.

The fourth power is the ability to remove an individual director from the ICANN board, and that's an example we'll work through in a couple of minutes.

The fifth one is to remove the entire ICANN board, to recall the whole board at once.

The other two powers are to use... These are ones that did not appear in the second draft proposal earlier this year, but they are to launch a community independent review process as required. So the community could use the IRP, which we'll be talking about later in the webinar, to deal with a situation where it felt that ICANN wasn't following the bylaws.

Finally, there's a new community power associated with the stewardship transition to have a role in the ICANN board decisions that relate to IANA functions reviews and the question of the separation of the IANA functions if required.

I'm holding my mic as close as I can. I can also hear an echo myself, so that means someone else isn't muted. If you are not speaking, that is if you're not me, please put your microphone on mute to help us all. Thank you.

So those are the new seven community powers proposed, five of which you've seen before. The other two have kind of been implicitly around, but they are now clearly listed here.

So if we could move to the next slide. In the use of these powers, one of the core discussions in Dublin was the desire on the part of the CCWG to say the approach to using these powers should be a problem-solving one, an issue resolution one. That is, if there's a problem, a conflict of use between the community and the board or the community and the ICANN corporation, the use of these powers should be part of a

consultation and engagement process that sees issues resolved as simply as quickly as possible.

So on this slide, you see a description on that. For the use of any of the community powers, several steps of escalation would apply.

The first point is a lot of the consultation processes that ICANN does voluntarily – for example, in the case of the operating plan and budget or before bylaw changes are ratified by the board – they will be made mandatory so that there's definitely community consultation and engagement before any decisions start to be made.

But if there is a disagreement after that process, before you could use a community power, there is a [inaudible] escalation process. That involves, first of all, if an SO or an AC wishes to use one of the powers, they seek support of another SO or AC to hold a conference call. And on that conference call, that's the first round bubble with five blue dots in there at the bottom left of that escalation picture on slide seven.

There's a discussion there about whether the issues are serious enough to warrant a full community dialogue in a community forum or whether the issue can be resolved through an informal conversation. That might solve things or people might say, "No, no, we need to have a community forum. We need to have a full public meeting, probably online, possibly face-to-face, but near an ICANN meeting, to get all of the SOs and ACs, any community participants who are interested to seriously consider whether this community power should be used."

So a forum is a big public thing. At the end of it, you'd expect a summary of the discussion and for SOs and ACs to go away think about the information that's been put on the table.

It's only after a forum is held that the SOs and ACs go away to deliberate internally and to decide whether to exercise one of the community powers or not.

That compares with a much more abbreviated process in the second draft proposal. The point is to encourage dialogue and discussion between the SOs and ACs in the community so that these are not just individual random views of a particular SO or AC, but are tested to see whether the concerns are shared across the community. And to make sure as well that there are enough stages in the escalation process so there's an opportunity for things to be resolved informally.

So that's the escalating [inaudible]. In the end, [if] a community power is exercised... So say the community does decide to block the implementation of a standard bylaws change. If the ICANN board or the company doesn't follow that instruction, there are some enforcement mechanisms available through the IRP, or in the end, possibly through the courts.

That's the [engage, escalate, and enforce] slides. Can we move to the next slide, please?

A key concern that was raised and feedback on the second draft proposal was about the idea of voting. People were strongly supportive of ICANN's multi-stakeholder decision-making process, the consensus-

driven processes that we used for a whole bunch of things. The second draft proposal had a voting mechanism in place and we got a lot of feedback about that not being a desirable way to go.

So the community working in the CCWG evolved a new decision-making approach in Dublin, which was a kind of rough measured consensus between the SOs and ACs involved in making decisions from the use of these community powers.

The first [inaudible]. It's a move from a voting model to a consensus model. What that essentially means, as you can see in this table in front of you, that to the last column, if there's consensus to use a community power, the threshold is the number of SOs or ACs that support using that power and a limit to the number of objections that can be lodged. So generally it's one objection.

The principle of this is that there should be broad community consensus to use a power, but that no single SO or AC should be able to prevent a power being used. No one should be able to block. No single SO or AC should be able to block these powers.

So these thresholds are not very differential. The tightest requirement, the highest threshold, applied to the [fifth power], the recall of the entire Board of Directors, and a couple of others there – the budget power, the fundamental bylaws power, and the IANA functions review power are all related to the same threshold of board SO/AC report. [inaudible] objecting.

So those thresholds are designed to, again, it's not a voting system. Each SO or AC deliberates internally, and then can express a view about whether to support the use of the community power whether they object to it or they have the right to just not say. It may be an issue that isn't of interest to a particular SO or AC and they don't need to comment.

In the counting of support or objection for these powers, the SOs are ACs involved are [five]. It's the ccNSO, the GNSO, the ASO, and the GAC and the ALAC. Those are the five SOs and ACs that would have decisional rights in respect of these thresholds and the use of the powers. Could we move on to the next slide, please?

To exercise these powers, there needed to be some way to make decisions. So the empowered community has the ability to do that. The first two drafts, the accountability proposal has used a membership model. The last proposal had a single member model.

A few concerns were raised about this. Members in the [inaudible] have a range of powers that weren't contemplated by the CCWG that were beyond what was legally required to implement the community powers we just talked through. That was raising some concerns. It would require a little bit of a structural change to ICANN to incorporate members in some way.

So the CCWG spend quite a lot of time at Dublin just really focusing on its requirements – [inaudible] needs in the minimum sense to deliver on the accountability powers that it's proposed.

So it decided to shift what the legal vehicle of the empowering community is from a member to what is called a designator in California law. The legal entity is unincorporated association. That's not a change. It's a counting [inaudible], if you like. It allows, for the expression of the community's views, through the SOs and ACs exercising decisions and the thresholds we just discussed to [inaudible] and to do those community powers, and if necessary to enforce it in the courts. So the courts... The designator has absolutely got the power to appoint and to remove ICANN directors and can be absolutely granted the power to have a say in any changes that the bylaws or the Articles of Incorporation.

So that, to us, provided the key enforceability. And by enforceability in this case, we mean that if the [inaudible] worked, if the IRP hasn't [inaudible] the community can enforce those bylaws or appointment and remove the directors in the court if required. It's a last stop [reserve] power.

So we move [inaudible] the requirements that were needed. And keep in mind that this empowered community is not a new committee. It's not a new body. It's not a new power center in ICANN. It is the accumulation of the decisions of each of the SOs and ACs. Our view is that model of designator has fewer risks and unintended consequences than the membership model could have had. So that's why the CCWG has settled on it. Could we move, please, to the last slide or next slide?

The removal of an SO or AC-appointed director is just a case study to work through, if you like, to identify a specific example of how that

escalation process works. It's also because it's slightly different and it's an additional set of steps and that's because each SO and AC that appoints directors – the three SOs and the ALAC – has the individual right to remove that director. In other words, it's down to the SO and AC to make the final decision. But they have to do that in consultation with and in dialogue with the community.

So you can see the steps on the slide. The chair of the SO or AC that appointed that director will hold a private call with them if there's been a trigger to say there's a problem and hopefully that will resolve whatever the issue is, or if it's not an issue that can be solved, a director may choose to resign at that point. But after that point, the community forum will issue a call for comments. SOs and ACs will offer comments and can give advice. They can offer views if they want to on the question of what will happen to this individual director. And the SO or AC will get access to that. Then they will be able to use the powers [inaudible]. They'll be able to make the decision within the SO or AC to remove the director if they choose to or not. And of course, as usual, they would appoint a replacement director. And if they remove the one that they had previously appointed.

That's a little bit different, because instead of the decision being made by the whole community, through the empowered community mechanism, and the decision is being made by the SO or AC.

So, Mathieu, I believe that's my presentation. I can't recall whether you said we're taking questions now or at the end, but I'm happy either way. I haven't been able to read the chat while it's been going. I apologize for

that, but I'll try and scroll back now and see if there are any questions I can easily answer. Mathieu, back to you.

MATHIEU WEILL: We make sure we don't miss it, but we'll go through the presentation and have a more detailed question and answer session at the end. For the next slide, which is going to be about the power to reject ICANN's budget or strategic and operating plan, I would turn to Jonathan Zuck. Jonathan? Jonathan, are you not hearing me?

JONATHAN ZUCK: I am now.

MATHIEU WEILL: You are hearing me now?

JONATHAN ZUCK: Absolutely. Okay. I didn't do anything different. As many of you know, the last two drafts of this proposal have included a community power to veto the ICANN budget strategic operating plan. So part of what has come as a result of this draft are a few changes both in terms of how we're talking about it and the way to address some of the concerns.

One of the issues was drawing a real distinction between the five-year strategic plan and budget and the annual operating plan and budget and dealing with those separately, because the stakes in terms of how the organization be impacted by a veto are different between the two.

So a more straightforward veto – in other words, go back to the drawing board - is more appropriate for the five-year strategic plan and budget than it is to the annual operating plan and budget. That's one distinction that's now currently made in the current proposal.

The two primary issues that [inaudible] as part of the public comment period had to do with the impact on the organization. In other words, how the organization would operate under a veto. And the other has to do with making sure that there's a good process to interact with the board, etc., in order to resolve the issue once the community had achieved some consensus.

One of the issues that was raised in some of the previous suggestions that involved operate a continuing resolution of last year's budget, for example. Or operate on last year's budget plus 10%, etc. There's a real mismatch between last year's budget and this year's budget.

For example, there could have been a program last year which [inaudible] completed and continue to have money allocated to that project the following year doesn't make sense.

So what evolved out of a discussion about those specific objections was the notion of a caretaker budget. So the current proposal contains a notion that in the context of an annual operating plan and budget, a veto would result in ICANN operating on what's come to be known as a caretaker budget. And while sometimes this defies some definition, and that definition is under implementation right now in coordination with the CFO of ICANN, Xavier, the basic idea behind a caretaker budget is

the minimum budget for ICANN to operate under such that it keeps its employees, maintains its contractual obligation, continues to have its meetings, etc.

So it's coming up with the budget that has everybody's favorite program on hold, but has all of the basic operations of the organization still functioning and doesn't put ICANN in any kind of legal difficulties by violating a contract or creating an extreme cost by undoing a contract and having to ramp it back up again.

So that document about that description of a caretaker budget is currently going on with Xavier, and if people are interested in seeing that, there will be an open discussion about what that caretaker budget looks like.

The idea is it will be a kind of framework handed to some future CFO to use to determine at the time of a veto what a caretaker budget looks like.

The other thing that is different from the second draft of the proposal is there's a much sharper distinction drawn between the IANA functions budget and the regular ICANN budget. So the use of this power to reject the ICANN budget wouldn't have any impact on the IANA budget and the rejection of the IANA budget would have no impact on the ICANN budget.

In fact, the notion of a caretaker budget allows a framework in which the IANA functions portion of the budget is a part of that caretaker budget and is never threatened by the budget veto.

The rest of the proposal is the same. The issue will have had to come up during the comment period, and it will go through the same engagement and escalation process as the other community powers, but the regime under which ICANN will live and still the issue is resolved is this new notion of a caretaker budget.

So that's what's new. We will have a document to share in the next day or two which is an implementation document about what a typical caretaker budget might look like. Feel free to reach out if that's something you want your attention drawn to when that document becomes available. I'm happy to take questions at the end of the presentation as well.

MATHIEU WEILL:

Thank you very much, Jonathan. That's really the oversight – the outlook – of the community powers section. And we will now move to the enhancements to the independent appeals and review process starting with the independent review process. And I am now turning to Becky Burr for a quick introduction of these enhancements. Becky? Becky, your line may be muted. Can we unmute Becky?

BECKY BURR:

Hello?

MATHIEU WEILL:

Yes, Becky. I can hear you now.

BECKY BURR:

Okay, great. Thanks very much. The independent review process enhancement have remained fairly consistent through this process. The notion here is that any person or entity that is materially affected by an action or inaction that ICANN takes that violates the bylaws, the Articles of Incorporation, or otherwise exceeds ICANN's mission could be subject to appeal to a standing panel of internationally skilled and diverse panelists. It would be a standing panel and the reason for that is the community felt it was quite important to have judges who were familiar with ICANN and familiar with the DNS and who would provide consistent decision-making overtime and provide guidance in the form of precedent to guide actions [prospectively], therefore reducing the need to resort to independent review mechanisms, dispute resolution mechanisms.

The other objectives of the community were to make the process more accessible and affordable, including in particular in those areas where the community as a whole wanted to exercise this right collectively as one of its powers.

Finally, of course, the goal was to ensure that there were sufficient checks along the way to reduce frivolous resorts to this process and to resolve disputes as early as possible in the process. So there is provided mediation attempts and the like.

The selection process for the seven-member panel, which actually could be a larger panel if that was what was required, is that the community

acting with the support of experts would call for expressions of interest and go out and affirmatively seek qualified candidates possessing legal expertise from around the world.

The community itself would make the selection of the seven-member panelists and the panelists would be submitted to ICANN for confirmation. So the community selects them and ICANN board would confirm them.

Once the seven-member panel is sitting, then a dispute as it arises would be – was accepted as meeting the standards for standing would go for resolution to a three-member panel. So three of the seven members would form a decisional panel, would hear – would receive – briefings and inputs from the complainants and from ICANN in response and issue a binding decision.

The decisions are intended to be binding to the maximum extent permitted by law. They do not, however, tell the ICANN board what to do. They would, for example, say, “In this case, ICANN, your action violated bylaw X,” and it would be up to the ICANN board to figure out how to resolve that in a manner that was consistent with the bylaws and the Articles of Incorporation.

We do provide that certain decisions could be appealed to the full panel. So [inaudible] panel issued a decision under certain circumstances, the outcome could be appealed to the full panel.

There are some carve-outs here, delegations, and revocations of ccTLDs are not within the scope of the IRP. Likewise, disputes regarding numbering and protocol parameters are not within the scope of the IRP.

Obviously in order to have this independent but experienced judiciary, there will need to be rules, and processes, and procedures for operation for the independent review panel and those will be drafted in and submitted to the community for further discussion by a subcommittee of the CCWG consisting of volunteers with relevant expertise and also with lawyers and ICANN staff, ICANN lawyers, as well. That is part of a process that will be kicked off very shortly to start drafting for the specific processes for the independent review panel.

MATHIEU WEILL:

Thank you, Becky. Now I'm going to turn to Cheryl Langdon-Orr for an overview. Once we've concluded on this enhancement of the IRP and the community powers of how the proposals actually meet to see the [inaudible] dependencies. Cheryl, would you like to give us this overview, please?

CHERYL LANGDON-ORR:

Thank you very much, Mathieu. I've been so quiet for so long, I had to clear my throat. I do apologize for this.

As you know, this report is all focused on the work stream 1 activities which is the mechanism to enhance ICANN's accountability that must be

in place or committed to within the timeframe of the IANA stewardship transition.

The cross-community working group on IANA stewardship transition also identified a group of particular dependencies with our work, and these are listed in the slide. I just want to take you through these and refer you to some more detailed [spaces] in our document that you can get more fulsome information from.

The first one is the community rights regarding development and consideration of the ICANN budget. And as you've heard from Jonathan Zuck, we believe that the community powers that we've put into place and the recommendations we've made does in fact meet this particular need.

The second one is the community rights regarding the ability to appoint or remove directors to the ICANN board and indeed to recall the entire board. And as you've heard as well, we have got mechanisms and community powers in place with recommendations in this document that we believe allows an empowered community to deal with that situation as well.

The next one, which is particularly important, is the incorporation of specific outcomes and recommendations from the CWG Stewardship activities to be incorporated into the ICANN bylaws. Specifically, the IANA function review, the Customer Standing Committee, and the separation process. This has, in fact, been done and specifically, for the next point, all of those specific mechanism are in fact to be – are

recommended, sorry – to be fundamental bylaws, which as you’ve heard from Jordan, takes an entirely different and much higher benchmark level to make any future changes to. So we think we’ve got that dependency looked after as well.

Finally, as you’ve just heard from Becky, we should also be able to make sure that the IANA functions are – sorry. Let me start that sentence again. That an independent review panel is applicable to IANA functions and most specifically that it’s accessible by managers of top-level domains.

We believe that, in fact, we have with these recommendations in this third report met all these particular dependencies. And for the specifics and details on that, I would recommend that you look at an expert team. An expert team of our document is specific to the particulars of the CWG stewardship requirement of our accountability work, and like all of the annexes, each one of these looks at the particular recommendations, looks to give a detailed explanation of that recommendation, outline any changes from the second draft, and mentions any particular stress tests that may relate to relevant recommendations. It also specifically looks at how any recommendation does meet the CWG stewardship requirements. In this case, we’re talking about primarily things like recommendations 3, 4, and 7, for example.

I would also recommend that we look again at annex 14. Annex 15 is the section of our document which looks towards how we believe we have met NTIA’s criteria for the IANA stewardship transition, and that gives

you a great deal of particulars to look at, looking through both of those particular annexes. And, of course, I have to recommend that you also read stress test in annex 15 as well.

With that, I think I'm wrapped up with CWG dependencies, excepting to say that as you can read in this document, we believe that we have met the criteria and the dependencies and that the work stream 1 work is in good condition. Back to you, Mathieu.

MATHIEU WEILL:

Thank you very much, Cheryl. So that was a very important point in the work stream 1 definition to meet the CWG dependencies. We'll now turn to a few other aspects of our proposals starting with Becky Burr back for a description of the mission, commitment, and core value changes.

Before turning to Becky, I'd like to remind everyone that this draft is recommendations on the requirement level. The language is not final in terms of legal language. All of it still has to be translated into bylaws by lawyers, which obviously will take place into implementation work under supervision of the cross-community working group.

So it's very important to be reminded of because, especially in this mission, commitment, and core value discussion that Becky is going to be describing right now. Becky, back to you.

BECKY BURR:

Thank you. Can you hear me?

MATHIEU WEILL: Yes.

BECKY BURR: Great. So one of the things that we heard very clearly and repeatedly early on in this process was that it was important to ensure that ICANN was accountable to stay within its mission and to limit its actions to actions that were within its mission statement. ICANN's bylaws currently have a mission statement and they have core values. In our work of the CCWG, we do not propose to change ICANN's mission in anyway. Rather, the intent is to clarify ICANN's mission, to reflect the realities of slightly different roles that ICANN plays with respect to names on the one hand where its role is coordination of policy development, and on the protocol parameters where its role is largely supportive of other groups involved in that process. And to ensure that ICANN's mission is enumerated, which is to say ICANN has specific powers that are conferred on it, and to the extent that powers are not conferred, ICANN does not have the power to do that.

The mission, commitments, and core values reflect the fundamental mission of ICANN and the fundamental principles under which ICANN operates. This includes provisions from the Affirmation of Commitments. It includes a commitment to [inaudible] policy in a non-discriminatory fashion. It involves providing all of the things that are in the current bylaws with respect to preserving security, stability, and openness of the Internet.

It also contains an expressed prohibition on regulation of services that use the Internet and the content that those services carry, but there is language in the report that makes clear that ICANN is entitled to enter into an enforced contract in service of its mission. We have had some recent discussion about how to make sure that ICANN is able to enforce contracts within its mission statement. So that is in the mission, commitments, and core values.

As Mathieu said, the language in the proposal is not final bylaws language. That will be drafted by lawyers working with the CCWG. Rather, the language is really intended to be direction to the drafting attorneys for this process.

The most important thing, of course, is this is [inaudible] commitments, and core values from a significant part of the standard against which ICANN's behavior is measured when somebody, an entity, or the community alleges that ICANN has acted in a manner that exceeds its mission or is inconsistent with its bylaws for purposes of the independent review process.

MATHIEU WEILL:

Thank you very much, Becky. To follow-up in this bylaw section regarding the key commitments, there was significant discussion in our group about the human rights, how ICANN bylaws would take into account human rights. I am now pleased to introduced Leon Sanchez, my fellow co-chair appointed by ALAC for a quick overview of this part of the proposal. Leon?

LEON SANCHEZ: Thank you very much, Mathieu. Can you hear me well? I have some audio issues in the morning, and I hope this has been solved. Can you hear me well?

MATHIEU WEILL: Yes, perfectly.

LEON SANCHEZ: Perfect. Thank you very much. Human rights respect within ICANN's mission and in [security] is an issue that has been widely discussed within the working group. We had a working party [inaudible] to actually discuss and come to a proposal that would address the concerns that were raised through the first public comment period, the first [inaudible] throughout of course the different meetings that we held in the CCWG.

So what we are proposing as a result of the work held in this working party and also approved so far by the CCWG is to include a bylaw that would address this concern, and you can read this proposed bylaw at the bottom of the slide in your screen. It reads, "Within its mission and within 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 [inaudible] may be required by applicable law. In particular, it does not create any additional obligation

to ICANN to respond to or consider any complaint, request, or demands seeking the enforcement of human rights by ICANN.”

This is the proposed text that will of course be run through external lawyers. They have already looked at this proposed language, but I assume that it is subject of course to final crafting. So this might not be the final text that we will be including in the bylaws, but it should of course look very much alike what we have just read.

Recognizing that there are of course a number of issues that need to be further fleshed out in regards to ICANN’s commitment to respect human rights, we have included as part of work stream 2 to create a group that will develop a Framework of Interpretation that will help implement these bylaws in the future.

So we have said in the annex and in the detailed proposed that is published for, of course, a chartering organization support and for public comment. All the details on how this work would be carried out and the timeframe, which is also a very important issue that has been stressed not only by the members of the working party but also by the larger CCWG members and participants.

We have a limited timeframe to develop this Framework of Interpretation that will allow us to fully implement this proposed bylaw in order to [inaudible] ICANN to respect internationally recognized human rights.

We have had questions on the [why not] referring to a particular human rights instrument in these proposed bylaws and this was widely

discussed in the working group and within the CCWG as well. You can read all the details and the rationale to not [do this] at this stage but to wait until we go under work stream 2 work to, as I said, flesh out the details on which would be the instrument that we would be referring to.

I'd like to hand the floor back over to my co-chair, Mathieu.

MATHIEU WEILL:

Thank you very much, Leon. We're coming to the last couple of recommendations to be discussed, and I will now turn to Steve DelBianco for introducing these last couple of slides. Steve?

STEVE DELBIANCO:

Thank you. So slide 16 deals with recommendation 10 from our third draft report. Recommendation 10 on enhancing the accountability of or SOs and ACs.

It ought to be obvious by now that the AC and SO structure in ICANN's bylaws is critical to the proposal. And it's essential that the ACs and SOs themselves be representative of the communities that they're intended to represent, that they be inclusive and open to new entrants and that they avoid capture.

This was brought to a head by stress test 31 and then 33 and 34, both of which was suggested by NTIA after our first draft report. Those were stress tests that asked us about adequate accountability of the ACs and SOs to the communities that they represent.

The result of that analysis was the recommendation you have on the slide before you, which is modifications to the section of ICANN's bylaws that describe the structural reviews of the ACs and SOs and we want to amend those bylaws requirements so that those reviews include reviews of the AC and SOs accountability mechanisms to the represented communities that they were intended to represent. And that would include representativeness, inclusiveness, and openness and avoidance of capture.

Those recommendations would be incorporated in work stream 1 and be part of the structural reviews that are done on each AC and SO.

We can now move to the next slide, slide 17, which is regarding recommend 11. Recommendation 11 deals with stress test 18. This was surfaced well over a year ago as the stress test that identified a scenario where ICANN's board could be required to try and find a mutually acceptable solution if [they] disagreed with Government Advisory Committee advice in a situation where members of the Government Advisory Committee had divergent views. In other words, if the advice from the GAC was not a consensus of the GAC, we would be forcing ICANN's board to arbitrate among sovereign governments with divergent views. We all agreed it was an untenable position to put ICANN's board in that role.

The answer to stress test 18 was harder than the easy task we had of identifying stress test 18. The answer of it went back and forth over the last 11 months as to how to ensure that the board not be forced to

arbitrate among divergent views but still give the GAC the kind of flexibility that it wanted to [amend] its own operating procedures.

I think that last Thursday after much back and forth we arrived at a relatively breakthrough consensus that's represented on the screen in front of you, plus one other item that I'll [inaudible].

On the screen in front of you are the proposed amendments to Article 11 which describes ICANN's board obligations at dealing with advice that comes over from the GAC. Please understand this has nothing to do with imposing obligations or limitations on the GAC. It simply tells ICANN's board what it must do when GAC advice comes over.

The new sentence here is the third sentence beginning with the words, "Any Government Advisory Committee advice that's approved by a full GAC consensus and describes it the way it is today which is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."

That actually memorializes the process that the GAC uses today when it creates its advice. And if the advice comes over at that level of consensus, then the board of ICANN would be required to go to two-third majority to reject that advice. In today's bylaws, it's majority. And then the GAC and the ICANN board would try to find a mutually acceptable solution.

Now, when we came up with this breakthrough that was an additional paragraph that we put into there and it didn't fit on the slide, but I'll go ahead and paste it into the chat right now – and this is a paragraph that

describes an understanding that the GAC itself, like any advisory committee or SO has the autonomy to refine what its own internal operating procedures are. It may decide inside the GAC. That's up to them. They may decide that they wish to restrict or constrain the way countries raised formal objections. They're free to do that. And they might well do so in a way that the formal objections cannot be sustained after a period of time without some support from at least one other country. That's up to the GAC. We make no attempt to tell the GAC what it may or may not do there. We are only instructing our Board of Directors to say that when you receive advice that was adopted in the GAC in the absence of a formal objection, well, then these obligations kick in.

I'll also add that all of the advisory committees are covered by Article 11, Section 1 and there we're going to add a line requiring that advisory committee formal advice needs to be clear and supported by a clear rationale. That would apply to all ACs including the GAC.

That's it for stress test 18. I'm glad, since it was quite an ordeal to get to this point. Back to you, Mathieu.

MATHIEU WEILL:

Thank you, Steve. That leads to the last slide of this presentation, which is the timeline which you will see on your screen shortly. This timeline is reminding us that we had issued a formal update on November 15th including most of the proposals that we are now – that we have since then finalized. This detailed report with [inaudible] and appendixes is

open for public comment for 21 days, so until December 21st. We are asking the chartering organizations to provide us with feedback to consider the 12 recommendations and provide us their feedback, their endorsement or absence of endorsement within that same timeframe, so that if there's public comment that shows the need for material change or if at least one of the chartering organizations does not accept a recommendation, we would then still have time for supplemental draft report that would be submitted, turned over, quite quickly in July in time for a final approval by January 22nd.

But what's important to remember at this point is that these recommendations are up for chartering organizations' consideration right now and we really encourage every stakeholder to channel their feedback [inaudible] group, but also in a privileged manner to their chartering organizations. And I know chartering organizations are getting organized to discuss this.

That's the timeline. Going to the work stream 2, we've discussed several times that this is only the work stream 1 recommendations and we want to make sure it's very clear that work stream 2 is going to happen and it's hopefully getting nearer. Work stream 2 is at this point in the report the subject of a specific recommend. The recommendation is to introduce a transitional bylaw in order to strengthen the ability for these recommendations to be considered by the ICANN board. We're also providing some clarification about the items that will be discussed in work stream 2. These items are the enhancement of diversity within ICANN, furthering the enhancement SO/AC accountability, enhancements on transparency. And there are several fields in terms of

transparency that are identified already. There's been [inaudible] discussions on that. The Framework of Interpretation on human rights has been discussed already. Jurisdiction is going to be discussed and especially the jurisdiction which is taken into consideration [inaudible] dispute and settlements in the contracts that ICANN puts up. And [inaudible] was mentioning obviously is part of the recommendation. We would hope that work stream 2 might be able to kick off in Marrakech meeting and have a duration of the same order of magnitude of work stream 1, so roughly a year. So if you add some implementation to that and [inaudible] be a bit faster on that, that would be by the end of 2016.

That's going to be it for the long presentation. I will now go for the various questions that we have received and I will try and get – make sure that we can answer at least one question per person who's asking so that we cover concerns from as broad a group as possible. Starting with in the chat, in the notepad. You have the notepad in the AC room.

There's a question from Ken [Staubs] about... My understanding is that it's in the IRP enhancements. Ken is asking whether the aggrieved party must be in fact a sponsoring organization. Unless Becky contradicts me, I think the answer is no. The aggrieved party is any materially affected party by the specific decision. It is not restricted to sponsoring organizations.

And just like today, the IRP can be used by any party that fits in the current rules, but it's quite a broad range. The idea is the IRP can be accessible to any stakeholder who is affected by a decision from ICANN.

Becky, anything you would like to add on this?

BECKY BURR:

No, I think that's correct. The community IRP is a supplement to the existing IRP system, the functionality of that, although enhanced and the standard is modified to reflect the substantive standard, but commercial... The same kinds of parties who are materially affected can bring an IRP with or without the support of the community.

MATHIEU WEILL:

Thank you, Becky. Then we had Ann asking whether there's any legal protection for SO/ACs [inaudible] when exercising director removal.

It's a question we've discussed a lot and we've had several [inaudible] from our independent lawyers about liability of SOs, ACs, officers of an unincorporated association. And I think [inaudible] have made clear that unless a specific action by a specific person is really out of the existing process, this risk is felt to be very minimal. And we can certainly point to the relevant material later. I think that's quite a legal question that could also be double checked in the implementation phase.

Then we had a question from [inaudible] about seven-day time limit, which is applied in the process to several SOs and ACs. You raised a concern about that it could be impractical considering the size and diversity of SOs and ACs, and then might lead to the impossibility to exercise community powers.

I think, Jordan, you tried to answer that question in the chat. Would you like to recap this, take this point on, Jordan, if you're with us?

JORDAN CARTER: Sorry, Mathieu, I am with you. There was someone arriving in the office and I missed the question that you were asking me.

MATHIEU WEILL: The question is [Chuck's] question regarding the seven-day time limit applied to the SOs and ACs.

JORDAN CARTER: Yeah. So I think that's an important question because some of those timelines, if they're not met, lead to a [mess] of the power. In other words, if the deadlines for some of the decisions aren't met, the powers use expires. So one of the things we need SOs and ACs to do in considering the reports is to pay careful attention to those timelines. We need to know if they're completely unworkable or not, and whether they're too ambitious.

The problem that we need to [nix], if you like, is that on the one hand we need to have the use of the community powers in a workable timeframe. It can't take six months to use one of them. And on the other hand, we have to be reasonable and realistic about SO/AC decision-making timeframes.

What's in the report is our current proposal – the feedback in the case that the timeframes are too tight, we will probably need to lengthen them. If we need to lengthen them a lot, we'll need to look at the number of steps involved. So please do urge everyone that you know who's looking at this to think about the timeframe question.

MATHIEU WEILL:

Thank you, Jordan. As usual, [for delays], this might also be ways to play with deadlines by anticipating or conditional awareness raising so that in terms of implementation, we're going to have work on this definitely to avoid too long delays, but also impractical delays.

We're coming to questions that have been raised by... Second questions, I'd say. Let's take one question from the room first and then I'll go back to the notepad. That's Kavouss as well. Kavouss, would you like to raise a question? Can we have Kavouss's mic opened? Kavouss, we can't hear you right now. While we try to fix Kavouss's mic, I suggest we take the next question in the notepad, which was from Ken [Staubs] asking in the slide on human rights how the term [applicant] [inaudible] was defined and what domicile is used for this definition. I think there were some answers in the chat, but Leon, if you're still on, would you like to take that question?

LEON SANCHEZ:

I'm sorry, Mathieu, what question was that? I was [inaudible].

MATHIEU WEILL: The question is in the human rights, how is the term applicable [load] defined and what is the domicile that's used for this definition?

LEON SANCHEZ: Well, so far, this is something that needs to be [fleshed] out as part of work stream 2. And the domicile as it stands today is of course California, and that would give us guidance of course as to what would happen in between the time that the bylaw is actually amended and the time that the Framework of Interpretations is developed. I don't think that's a complete answer to the question, but that's what I can provide at this moment.

MATHIEU WEILL: Thank you, Leon. Certainly we will do a [inaudible] after that where you'll find all these answers. The next question was from Kavouss, actually. I don't know, Kavouss, if you're back. Yes, I can hear you now, please.

KAVOUSS ARASTEH: I have raised five questions and I have put them under the title "questions" and this is quite clear the wording [inaudible] question. I would like that you answer those questions. I do not wish to raise them again in the [inaudible] statement. You have the questions before you and please reply to those questions. Thank you.

MATHIEU WEILL: Thank you, Kavouss. Indeed, the next question was from you in the notepad, and that was what happens if less than, I guess, 50% of the chartering organizations support the entire proposal already of the recommendations.

Our charter is quite clear on that. Unless we get support on the draft report from – get consensus from the chartering organization, then we would have to take into account the comments sent back from the chartering organizations because they have to indicate why they would not support. Then issue a supplementary draft report for chartering organization consideration and that is on the timeline [inaudible] part. That is what would happen if not everyone is endorsing the recommendation.

I would like to ask... While I go to the next question, I'd like to ask staff if we can make sure we haven't missed any of Kavouss's question. I haven't been able to follow the chat all the way through.

KAVOUSS ARASTEH: Yes, you have missed four of them. I have raised four or five questions. They are there. I don't know why they are not [inaudible]. One question was that people mentioned that the website that you put for the comments is not clear, is not accessible. It was in the mailing list of the CCWG. I request that you kindly clarify that point.

The second issue was that ICANN is organizing a new [code]. I would like to know what is the purpose of those [codes], whether they are going to have a new question be raised, whether they are going to have a new

arrangement, what is the situation and whether there should be some conflicting announcement of the ICANN [inaudible] full rights to raise whatever they think necessary [inaudible] that they have participated in the activities and the concerns have been already met and we don't expect that a new person other than explaining how the recommendation will be implemented. I'd like to know what is the purpose of this [code], whether they're competing with the CCWG, whether they're not.

And the question was about the GAC advice. Steve DelBianco [inaudible] stress test 18, that he was the architect. And I raised the question this morning that it would put GAC in a very difficult position that [inaudible] captured or at the mercy of one single organization or government that may block everything and do not allow that GAC has any consensus [going to] ICANN. That will be a very unfortunate situation and CCWG is responsible to having the GAC situation and [inaudible] governments.

And there are two other questions I need answered. If you don't have time, you need to do it afterwards in a written way for the information of everybody. and I thank you very much.

MATHIEU WEILL:

Thank you, Kavouss. I'm not sure I've captured everything, but indeed we will answer in writing after that. I would say that we have a full range of outreach calls being organized – these webinars, but also SO or AC specific calls and there's no competition with the CCWG in any way,

so probably the GAC may organize a couple of calls on that, and that's hopefully in synch.

You raised a point about the survey link which appeared not to be working for you. We are double-checking, but it was working when we tried last time. So certainly we might reach out to you to double check whether there's any specific condition that makes it impossible to work. And as you said, GAC advice was part of the stress test 18 discussions and I think once we get a clear writing of your question, I can certainly answer in more details. But it is clear that the group was very careful to protect the consensus nature of GAC advice and that was agreed and part of the [Dublin] input from the GAC as well.

Once again, Kavouss, we will answer your questions in writing.

Turning to the other questions – and I'm seeing questions from people who I haven't responded to so far, including Mark Carvell, who raised a question and that's going to be for Leon. The question from Mark was the rationale for the last sentence of the rights bylaw change. Probably we should go back to the slide on human rights to answer this question, Leon, if you're willing to.

LEON SANCHEZ: Yes, Mathieu. I'm still here.

MATHIEU WEILL: Did you get the question?

LEON SANCHEZ:

Yes. The last question is in particular [inaudible] create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of human rights by ICANN.

The rationale for this is of course detailed in the annex that deals with human rights working party results and this means or this was put here in order to avoid [broadening] ICANN's mission. What we don't want is to have ICANN become the police for anything. So this is why we included this last sentence, that having ICANN commit to respect human rights does not actually create any additional obligations for ICANN in order to turn ICANN into a police in human rights. I hope that answers your question, Mark.

MATHIEU WEILL:

Thank you very much, Leon. We have a question from Ann. I guess that's on stress test 18, because the question is how does the provision regarding the two-thirds rejection threshold relate to the provision applicable to board action on GNSO policy advice or GNSO policy advice and GAC advice conflict.

I'm afraid that's a bit confusing to me, Ann, at this point, so we would probably take that offline with you to make sure we understand the question correctly. I don't want to get any misleading information at this point.

I'm now willing to get any other [inaudible] the chat. A question from Avri. There was not the right question marks around it, but it was whether it was a definition of the consensus threshold that was required for taking court action in case the escalation process would not be sufficient.

I don't know if Jordan is still around and able to answer that question. I've seen him exchange with Avri on that. Please, Jordan.

JORDAN CARTER:

Thank you. Just very, very briefly. Jordan Carter here, .NZ, WP1 rapporteur. Avri, it's an issue that we haven't worked through in detail because the prospect of court action is so remote, right at the end of the process beyond IRP enforcement. But it is an implementation detail that we need to settle and to discuss the principles that drive how that decision gets made. So I think it's work that the CCWG does still need to do, but that's a [inaudible] issue.

MATHIEU WEILL:

Thank you, Jordan. We have five minutes until the end of this call, so if there are any other questions to be raised, please raise your hand in the room or type it.

Okay. So just a couple of concluding remarks here, and we may even close with a few minutes earlier. Number one is please provide your... Review the documents there. We've made a big effort to make them as readable as possible, engaging and clear. Any questions you may have

can be directed to us and we will certainly try to respond in a timely manner.

Secondly, we will issue after the two webinars responses in writing. We will try to do that with a quick turnaround as well, so that it can be beneficial to all.

And please engage with your chartering organization if you're an ICANN stakeholder to ensure this clarity about how their consideration of the 12 recommendations is going to take place and that your voice can be heard in that process.

The public comment [forum] is also available. We will try and fix any issues that have been reported in the chat, but I think it's also a useful tool if you feel you need to.

So that's going to be my final remarks. I'd like to thank all the rapporteurs and my fellow co-chairs and the ICANN support staff for organizing this webinar and providing these clear descriptions of the recommendations. Thank you all for your questions and your attention and your interest in this report. We know it has been long expected and it's certainly an important change going forward into the way ICANN accountability works. You can rest assured that we are very committed to listening to the feedback that we will receive in the next few weeks about this. Thank you very much for attending this webinar. Thank you, all, and enjoy the rest of your day or have a good night, wherever you are in the world. Thank you very much.

[END OF TRANSCRIPTION]
