

ICANN

**Moderator: Brenda Brewer
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Becky Burr: Okay. It's a couple minutes after the hour. We don't have an enormous turnout, but why don't we get started and maybe we'll need to finalize on the list.

Based on our call last week, I - yes, please record - start the recording, operator. Based on our call last week, I took the proposed mission commitments and core values language and I made the changes we discussed. I also went through the comments on this and tried to either note suggestions that made sense to me, identify questions that I think we need to discuss further.

The first changes in the mission statement were not ones that we talked about last week. And that's why they're in square brackets. These were actually suggested both by the Internet Architecture Board and were part of the post-(intelligible) comments, which the notion was that ICANN's role is not actually coordinating as much as it is supporting the develop - the policy development process.

So the suggestion directly from the Internet Architecture Board was to say that ICANN's mission is to support the policy development for - I should say support policy development for the Internet's core registries. The other - this language, the core registries language, was again directly from the IAB. Their point was that there are lots and lots of systems of unique identifiers.

And to be clear, we should be referring to core registries rather than systems of unique identifiers. Comments on this? This is really - I mean as I said it was two significant comments. The language about coordination is language that has been there for quite a while. James? You may be on mute, James.

James Gannon: Yes, sorry, I was on mute. And total little (unintelligible) and would it be appropriate to refer to them as IANA registries just for people who are not (unintelligible) with ICANN terminology so that when we're going through things that it's a clear distinction between the registries and the IANA registries?

Becky Burr: I don't know the answer to that question. I would have to defer to somebody a little bit more technical than I am. But we can - if it's a question we can raise. Other comments? David?

David McAuley: Becky, good morning. Sorry I was late to the call. Sorry, I just got in. And to compound that problem, I was away all weekend and offline including parts of Friday. I had a fairly important family event.

But I saw that you were speaking about the language that the IAB suggested. And I had some concerns about it, and I guess my comment right now is a question to say where are we in this morning's discussion. And I apologize again for being late, but I did have some concerns about that language.

Becky Burr: We have just started, and again as I was saying, there are two pieces to this. One is the notion of supporting policy development rather than coordinating. And that was a comment raised by both the IAB and by the New America Foundation commenters. And then there was this reference to core registries as opposed to systems of unique identifiers.

I put this in in square brackets because I have a particular view, but I thought we should discuss it. And so let's talk about the core registries issue, David, first if you want to go ahead on that.

David McAuley: Thank you. And as I said, I'm late to this, so my apologies again. But that first paragraph on the discussion draft that talks about - the IAB suggestion, believe me, I recognize quite clearly from my days at ISOC that all the people on the IAB are technically, and in many other respects, far more sophisticated at this than I am.

But I worry a little bit about the word of the use support. I think they're reading too little in the word coordinate myself. And the fact that that word has sort of stood the test of time in the bylaws. But the core registries - registries can be used in a number of ways, and it's not clear what they're - how they're using that term.

And so anyway, that was the flag that caught my attention this morning as I was trying to come up to speed on this. So that's my comment.

Becky Burr: Okay. Other comments on this? One other way to think about this is to retain all of the coordination language until we get to in this role with respect to domain names. ICANN's mission is to support the development and the implementation of policies. Avri. I think you may be on...

Avri Doria: Sorry, yes I had you on mute. Took a second to find the button. This is Avri speaking. Yes, the reason that I had written that as I looked at the distinction between the two words and the different meanings that they have and not thinking that someone was trying to minimize the meaning but to actually narrow it, the reason I suggested using both of them because they do have very different meanings. And it's important to say that it is there to support it.

Support means more than coordinate in terms of actually helping. Coordination is also important because there are - you know, there are the many stakeholder groups, we are working together and we do need the coordination. And to get that implemented and operationalized is another access coordinating activity.

So I actually have no problem with keeping them both to include both of them, meaning neither word adds onto anything ICANN is doing. It's just a descriptive. Thanks.

Becky Burr: Thank you, Avri. Okay. So the notion is that ICANN's role is to support and coordinate at the overall level, the global Internet's core registry system. David?

David McAuley: Thank you. And thanks Avri for that comment. I wanted to point out that my comment earlier was not with respect to the policy language. It was really the first paragraph.

Becky Burr: Okay.

David McAuley: But my reaction to Avri's comment just now is if you add a word, which may be fine, but I think when you do that you can't say it doesn't add anything to ICANN's - I forget the term that Avri used.

It seems to me that if you have language that exists from the past as going forward, and then you come in and add another word, it does - you know, a lawyer looking at it would say, "Well, they must have meant something." So it must - you know, it must add something, I would think.

Becky Burr: Okay. Greg?

Greg Shatan: Thanks, Becky. Greg Shatan for the record. I agree with David. If we're going to change language, it has to be meaningful. It's not just - lawyers would look for reasons that language has changed. So I am looking very serious to know why they felt this support is either better describes what ICANN in fact does or are they actually trying to change or evolve or leave out the mission in some fashion.

Is there something about coordinate that they don't like because to my mind it's either a change without substance, in which case you shouldn't make this change. Or it's a change with substance in which case we should really understand what the substance is that they are trying to aim at.

So I think that is - I don't think we should take changes just because the words don't seem offensive. Clearly there's a meaning that should be attached to it. And unless we're going to change that, the meaning of what is here, we shouldn't change the words. And if we don't understand what change we're making then we shouldn't make the change.

I think the same thing goes to the issue of smaller registries. I think the systems of unique identifiers is not a synonym for core registries. A lot of what we do ultimately may end up in registries. And I'm not sure what's meant by core registries versus other registries. But a lot of what we do

doesn't relate directly to registry management. So I would reject that change as well again, certainly until we understand what it means.

And based on what I think it means I would reject it. But of course if it means something different then I think I'd be glad to reconsider it. Thank you.

Becky Burr: Okay. I think Avri's description was that it's sort of more - well, I won't speak for Avri. She can - I think that she explained why she had proposed that. (Berry) has added Bruce Tonkin's e-mail on this subject, a link to that. And Bruce, if I can paraphrase his suggestion, is that in general he thinks coordinate is the right word. In the policy area, he might say facilitate the development and implementation of policy as opposed to the coordinate.

Any comments on that? Don't have a groundswell of support for changing the word either for support or support and coordinate. The core registry issue again, I just am not - I am not sufficiently technical to have a view on that. And if anybody on the list does - okay we don't - David?

David McAuley: Thank you, Becky. I like you am sufficiently - I'm not sufficiently technical enough to have a view, but I do have enough of a view to think maybe we should reserve it because I think it's quite possible that that word in that context means different things to different people that could be important.

Becky Burr: Okay. Avri, you see no problem with changing the word - support to coordinate.

Avri Doria: Sorry, sorry, that was a typo. I see no reason not to retain it. The other core is capital letters acronym, and I just don't see why people would confuse the two. And I would not change this one. Thanks. Sorry for the mistyping and dropping out the word.

Becky Burr: I do that all the time. As I said, this is one where I am not sufficiently comfortable with the technology to know what to do. So, you know, pending some - the sense of the call I'm getting is that we should retain the wording that's in the current bylaws right now.

Okay. Let's go down to in this role with respect domain names, ICANN's mission is to - now there are two things that are going on in here. There were a number of comments that said that the language was quite convoluted and repetitive.

So I tried to make it clearer and crisper. So the notion is that it coordinates or supports the development or facilitates the development and implementation of policies for which uniform and coordinated resolution is reasonably necessary and that are developed through a bottom-up, consensus based multi-stakeholder process designed to secure the stable and secure operation of the Internet's unique name system. Any comments on the revision? Malcolm?

Malcolm Hutton: Yes. To use slightly technical language, I'm a little worried that you've moved from the intersection effect to the union effect, if my meaning's clear.

Becky Burr: Yes your meaning is clear. I certainly did not mean to - it seems to me that for which uniform or coordinated resolution is reasonably necessary is a - you know, that's a fundamental. If you don't have that, you stop. And in addition, with respect to that criteria, the policies have to be developed through a bottom-up process.

Malcolm Hutton: Possibly an "and" after the semi-colon would solve that problem or avoid that problem.

Becky Burr: Okay. Thank you. We'll definitely do that. One question here is so current language is coordinate. We have a proposal to change it to support and a suggestion that if we're going to change it, we change it to facilitate. Views on that issue here? Malcolm and then Avri?

Malcolm Hutty: No, sorry. That's an old hand.

Becky Burr: Okay, Avri?

Avri Doria: I think whatever we do with the first one we should do with the second one. And we should keep or continue. I think it's one decision for all these instances.

Becky Burr: Okay.

Avri Doria: And as I said above, although I'm suggesting if we do anything we change it to both, I'm agreeing with those that have said, you know, there really is no movement on change there. And we're talking about bylaws existing language.

So I think we have to make sure that in this discussion - even though I want to change it or I'm happy to change it - ICANN's existing language has to have some priority. So I just wanted to bring that part in. But I think whatever we do to support and coordinate and one place, we should do everywhere.
Thanks.

Becky Burr: Okay. David?

David McAuley: Thank you. I would like to agree with Avri just said. I think that we need a uniform approach. I do think that the word support or the word facilitate is a

little bit more freighted than we may be giving it right now, and I think that this is something that we shouldn't present to the CCWG is what we recommend. I think this should be an open issue that should be considered by the whole group. Anyway, that's where I stand. Thanks.

Becky Burr: Okay Greg?

Greg Shatan: Thanks. Just briefly, I actually do not necessarily support the idea that the change should be made in all places if it's made in any places.

I think we should at least - again after understanding what the difference is and why somebody thought this change was something we should be taking our time on, and why it was substantive and substantial. We should look at each of these tasks and decide whether in fact ICANN is supporting and coordinating and facilitating or only doing some of those.

And also try to understand again if any of this was intended to be limiting language to ICANN's core mission in trying to stay (unintelligible) or separate it from things it is doing but some people think it shouldn't be doing or to be more accurate about things that it isn't doing but it looks like they are doing because it's here.

I mean, until we understand any of that, we can't understand whether it applies to any of these, but I wouldn't necessarily say it applies to all of these without analysis after we had the appropriate information to conduct that analysis. Thanks.

Becky Burr: Okay. My sense of the room is that without a lot - you know, without further discussion we're uncomfortable changing language that has been there for a while and seems to work and that in that context, the sort of existing language

has a little bit of a priority as Avri has said. I'm also hearing some support for the notion of discussing further - can I have a sense through chat for people who are comfortable just moving forward with the existing language?

Okay, and those who aren't, does anybody have a comment? Greg your hand is up. Is it an old hand or a new hand? Okay. All right, by existing I do mean current bylaw. Okay, all right, so current bylaw language is there. We can talk about on the list whether people feel strongly about further discussion about this in Paris.

Moving down to the limiting or the enumeration sentence, we have some proposed revision to the language that we wrote. Now all of the language that we wrote is brand new. I just took the - I just sort of accepted our proposed language, the language that was in the report, and then I redlined it against the suggestions.

There's a slight rewording that says ICANN shall have no power to ask other than in accordance with and it's reasonably necessary to achieve its mission, which struck me as a direct and an improvement in terms of wording. Comments on this? Okay. I see Greg's hand and then Steve's hand. Greg you must be...

Greg Shatan: Thanks. Greg Shatan again. Sorry, I was clicking mute button. The point - first I have a couple of concerns here. This reasonably necessary language, which also refers in the box that's at the bottom of the first page that we were looking at. And I actually object to it in both places, and I'm sorry I must have missed that we were skipping over the time when we should have commented on that paragraph about coordinating policies.

Becky Burr: Could I just say that is the current bylaws language in the paragraph above.

Greg Shatan: Uniform or - the one that says “for which uniform or coordinated resolutions”? That’s in blue.

Becky Burr: I just moved it up. You see it’s redlined below?

Greg Shatan: I see. Never mind, okay.

Becky Burr: And it is the current bylaws language.

Greg Shatan: Okay.

Becky Burr: I don’t know if that changes your mind, but...

Greg Shatan: I think it changes my mind to a certain extent, although here we’re adding that reasonably necessary language or text to the entire actions of ICANN with regard to mission and not just to the policy section, although most of what it does is policy. So maybe it doesn’t matter so much.

But if the question is whether this was deemed more limiting than the current language, and if that’s what we want, maybe we do. And the idea that it has no power to act, I think it’s kind of invalidating language which, you know, again in terms of legal reasoning I think would be, you know, used to say that this is actually - that did this could be proved to...

The other side of this power would be kind of void ab initio, which is probably a little bit stronger than the language that’s currently there. So maybe that’s, you know, overly technical distinction. But if we actually get to making these distinctions, that’s I think how it would play out. Thanks.

Becky Burr: All right, thank you. I actually do agree with you that the language is more limiting. Steve?

Steve DelBianco: Thanks Becky. Let me ask you a question first. Would this be one of those key phrases that we would rely upon as the standard of review when we hand over an IRP to a panel of experts where I'm challenging say - we as a community are challenging ICANN's actions, and we want to say that they've exceeded their scope, in this sentence, what the panelist would use to determine whether ICANN has exceeded its scope.

Becky Burr: Certainly one of the sentences.

Steve DelBianco: And therefore the word "reasonably necessary" - I realize it's in the current bylaws in a different section right now, but does the word "reasonably necessary" constrain or does it sort of give the IRP panelists virtual freedom to interpret what's reasonable any way they like? Is there another standard applied to what's reasonably necessary?

Becky Burr: So here's what I think the difference is, that one, basically if the revised language says everything you do ICANN needs to be sort of reasonably necessary to achieve your mission. The other language said you can't have another mission.

So it doesn't say your behavior in all cases must be reasonably necessary to achieve your mission. It just says you can't have another mission. The revised language - Malcolm you're saying that was intentional. Are you talking...

Malcolm Hutter: Yes, very briefly, I think your views language is great. I think it more clearly reflects our intention. It certainly more clearly reflects my comments, and I

believe it more clearly reflects many comments that we'll face. So I strongly support this.

Becky Burr: Okay. And the notion is Steve that reasonably necessary provides flexibility but not unbounded flexibility.

Steve DelBianco: Okay. Thank you. And the BC's comments - I'm with the BC - and we were concerned that the previous formulation would not permit ICANN to simply enforce a contract provision that a registry operator had voluntarily put into their contract.

If a highly sensitive string decided for whatever reason to put in safeguards of some kind, and they put it in the contract, we would want ICANN to be the enforcer of that provision. But ICANN isn't the one who put it there. The registry provider put it there.

And that's why the BC has mentioned at the very end of it contractual obligations that are not agreed by such parties. Now so help me understand it. With the new formulation, we're not getting into the spec-...

Becky Burr: Can I just interrupt you for one...

Steve DelBianco: Go right ahead.

Becky Burr: ...second? I don't know if the new formulation addresses the comment that the BCs had. And I have noted that for discussion on the right. And there was a number of several other commenters also had this concern about whether this could be read to prohibit contract enforcement.

To my mind, the answer to that is no, this doesn't talk about contract here. But I think we should discuss it.

Steve DelBianco: Well thank you for that Becky. And if you don't want to - you want to discuss it now or it's something we'll do in...

Becky Burr: Yes, now.

Steve DelBianco: So with respect to now, if ICANN is enforcing, if the compliance department is enforcing a (pick spec) that Dot Drug decided they wanted to have in their contract, somebody might say that's regulation of a service that's using unique identifiers.

And let's be sure that we leave an opening that if in fact a registry agrees to and puts it in, not that ICANN even asks us to, that it would be okay for ICANN to, well, regulate by enforcing compliance on an existing contract provision. And let's be sure the language wouldn't lock that out. Thank you.

Becky Burr: Malcolm?

Malcolm Hutter: My thinking is that this would govern the contract enforcement function just as it governs every other function. But I think it governs it in this way. If the provision in the contract is something that is not something that ICANN should be - is authorized to put into the contract in the first place, then the contract enforcement function is also precluded by this.

But if it's something that's entirely proper within ICANN's mission for ICANN to put in the contract, then the contract enforcement function follows as well as being entirely proper. So I think that's quite straightforward.

Steve DelBianco: Yes, that's not good. Yes. Well Malcolm it's Steve. That would argue against what the BC's concern was - BC and several others - because if a gTLD registry operator voluntarily wanted a provision in there, it's not ICANN putting it in. It's ICANN simply enforcing it. You don't see a distinction there, huh?

Malcolm Huty: What kind of provision are you thinking of going in there? I mean, if it's...

((Crosstalk))

Steve DelBianco: For example, let's suppose that Dot Drugs decided that it would only permit registrants that were licensed pharmaceutical distributors in their respective countries? Just on a whim, maybe they decided to do it to overcome objections. Maybe they decided to do it for whatever reason. Or Dot Bank decided Dot Bank would not allow anyone who wasn't a chartered financial institution.

When they put that in there - voluntarily put it in their contract - we, the global multi-stakeholder community, we want to count upon ICANN to enforce that as opposed to nobody enforcing it. So it got into the contract. ICANN didn't put it there, but now ICANN's in charge of compliance.

Malcolm Huty: Okay. Here's how I would think that this ought to be analyzed here. Something like that. It is part of ICANN's function to make it available gTLDs, yes. And to make those gTLDs available for - according to - with different strings for different purposes. And so for that purpose -- for that reason -- if someone were to say, "Dot Pharmacists must only be pharmacists," then it is part of the purpose of that domain to be available to distinguish between licensed pharmacists and people that aren't. I'm sure that people that are licensed - if you've got this domain you are a licensed pharmacist.

And then in - ICANN enforcing that would be an entirely proper purpose.

On the other hand, if ICANN was to come along later to some domain and say, "This isn't something that was part of the purpose and - original purpose of the domain" but ICANN for some general public policy reasons wants to introduce a requirement that no one who's ever been - I don't know -suspected in dealing in pharmaceuticals in an unlicensed fashion may have a domain name or something like that, then that would be an improper use of the same kind of thing.

So it's really about whether or not the provision that was introduced into the contracts -- voluntarily as you put it -- is part of the purpose that ICANN is having, which is in this case making available these GTLDs as opposed to the purpose of trying to prevent improper behavior that is entirely unrelated to GTLDs.

Becky Burr: And Greg?

Greg Shatan: Thanks, Greg Shatan again. A couple of things. First, you know, I'm looking at this language further -- and I'm sorry I didn't look at it further earlier -- I think we're losing something by taking out the language "ICANN (unintelligible) undertaking the other admissions not specifically authorized in these bylaws." The mission in the first statement is not I think only - it may be more restrictive in the sense that also it's not sustained as an absolute prohibition against mission creep as - in terms of the mission. Then this almost - by taking this language out, it almost makes it seem like we're okay with the mission kind of evolving.

But as long as ICANN doesn't go beyond what it'd have to do to achieve its mission, that it's - we're okay with that.

So I'm actually - I think we're losing something in terms of prohibition. And I'm not sure that these previous sentences really entirely a prohibition. The previous sentence I also think opens up a whole Pandora's box -- and I thought about this further, too -- that reasonably necessary language in terms of testing whether something is reasonably necessary versus just discretionary. I think that, you know, creates a - will create a new test or expand these in the existing tests as that was above.

Last, I was not think that anything that's relating to contractual compliance should be categorized as regulations. You know, regulation has to do with enforcing the standard -- again, all within the jurisdiction of the regulator -- whether they agree to it or not. You agree to being regulated in a country just by being a citizen or even by travelling in that country. So I think that anybody that attempts to say that it's enforcing a contractual section and saying its regulation is engaging in wordplay to achieve a result, but doesn't probably even believe what they're saying. Thanks.

Becky Burr: Okay. You just put that last piece more elegant - eloquently than I did. James?

James Gannon: Hi, James Gannon. I think I want to kind of the second half of Malcolm's remarks. I think a number of us do have genuine concerns around the ICANN's contractual compliance being used to enforce things that are not within ICANN's mission, even if they do come from a voluntary side of registry agreement. While we understand the ease-off behind the BC's comment, and where they're coming from, from a practical standpoint, I think that there is an absolute necessity to ensure that the contractual component of

ICANN -- just voluntarily in conjunction with a registry -- end up going outside of ICANN's mission.

And I think it is important from many people that I've talked at that within ICANN's overall mission and that we stay within those tight technical boundaries. So I would have concerns if we are looking at allowing ICANN's mission to stray where it's a voluntary agreement with a registry. That is (unintelligible).

Becky Burr: Thank you. Are there comments - Greg, I see your hand.

Greg Shatan: Yeah, I think a couple of things. First -- as I see - you know, talk about contracts of adhesion or items that have been, you know, inserted into a contract without the consent of the other party -- you know, we're starting to get into, you know, trying to re-read or re-write ICANN's contracts. When you have, you know, a so-called contract of adhesion or any section as you would say as that, you're essentially saying that we need to read that out of contract. And that you are contending that the other side actually didn't agree to it or wouldn't agree to it, but we're having it done to its head.

So I think where - this is now getting into a form of regulation and, you know, creating arguments. And I think that, you know, if - it's all starting to sound also a little too topical to me in terms of certain arguments that are, you know, going on about, you know, west - whether the URS and other things are added to renewal contracts for DAR travel and others are somehow consensus policy by force or some other sort of things. I'm - so I'm concerned that this is getting to close - a little to purpose built at this point.

And I think that the idea that anything that we can start monkeying around with what's in a contract that a party has agreed to in the ICANN contracts I

think opens up a whole can of worms. And putting it in the bylaws is basically I think, you know, ensuring that we - I'm not sure that we're necessarily putting it in the bylaws. So I think the idea that we're somehow going to use, you know, create new powers to challenge ICANN contracts in the bylaws, I find extremely troubling.

And I think that the other thing - it's not regulating to put things in a contract. So I think that, you know, we need to look long and hard at what we're saying here and if we want to have a review of ICANN contracting processes, we should do it but it shouldn't be in the context of redrafting the bylaws. Thanks.

Becky Burr: Steve?

Steve DelBianco: Thanks, Becky. In the chat you said that enforcing a contract is not regulation. And if that's the case I think the BC would be satisfied that a contract could include things and that ICANN could enforce them. But that's not the same formulation Greg has. And I'm not a lawyer, so I'm out of my depth here. But I just ask you to use one litmus test as we think this through.

If Dot Bank has sold itself and is only allowing charter financial institutions to the left of the dot and I as a registrant and a user -- a banking customer -- I rely upon that. And then two years later they decide to loosen the controls and allow just about anybody to be to the left of the dot, then banks that are registrants will want ICANN to enforce the promise that was made by the registry operator. They will want ICAN to safeguard the value of the registrations that they've invested in. And users will want that promise to be honored.

And it strikes me that a lot of these folks don't have a contract with ICANN and they don't have a contract with Dot Bank - I as the customer. I've got to

turn to some place to enforce that promise. And that is why it makes most sense to allow contracts to include things that the contract party wants to have in there. And that ICANN is the enforcer. And I hope that we can find a way to permit that. Thanks.

Becky Burr: So Malcolm and then I'm going to put myself in the queue. And then David.

Malcolm Hutter: Okay. I agree with everything Steve just said. And I believe this language permits that. But I don't believe that we need monkey with this language in a way that would ruin our scope of ICANN generally, simply to ensure that ICANN can enforce - can achieve its mission also through the use of contracts. And use this contract enforcement as an element of doing that. This is not about whether or not ICANN can enforce its contracts. Of course ICANN can enforce its contracts. And of course its contracts are an entirely proper means of carrying out its mission.

And of course -- as taking Steve's example -- being able to hold out - have a - create a top level domain like Dot Bank for these that guarantees that only properly authorized parties hold domains within it is - falls squarely within ICANN's mission. So there isn't a problem here.

I understand the point that BC is making that this is very important, but I don't think that there's any problem with the language about constraining it. What does worry me is if we were to change this language so as to say merely the fact that this is a contract enforcement issue brings it within the scope of ICANN's mission no matter what the requirements of the contract is that you're enforcing. That would be broadening out the mission essentially without limits. And that would be quite the wrong thing to do.

So I think the language is perfectly fine, but if there are - if there is really concern about this, then possibly we should look to some clarifying statements that elucidates to the avoidance of doubt that this isn't meant to prevent ICANN from enforcing its contracts with - and so as to achieve its mission as necessary to achieve its mission. Additionally -- rather than saying that in - on top of the mission -- it also can go around enforcing contracts saying this that or something else entirely irrelevant to ICANN's function, which would be wrong.

Becky Burr: Okay. Thank you. So I'm in the queue and I want to agree with everybody who says, you know, contracts are contracts. Contracts are not regulation. And ICANN can enforce - and nothing about this language limits ICANN's ability to enforce its contracts. My problem with adding the additional language is -- in addition to the fact that it's not necessary -- it seems very specific -- and I guess Greg used the word topical -- and sort of - it just doesn't seem like an appropriate bylaw provision. And I just used the word that I hate to use, which is appropriate. But it feels weirdly forced in the bylaws context and I agree strongly that contracts and regulations are not the same thing.

Malcolm, your hand's still up? Okay. Other comments on this? I mean, I want to be clear that we got a lot of comments. And I think that it's going to be important if we decide not to include this to say specifically that we talked about this and we do not believe that the language precludes ICANN from enforcing its contracts.

Steve DelBianco: Becky, very quickly in terms of the comments that we received, we received a number of comments on the business constituency and people related to that expressing concern that if there were a problem with this or lest there be a problem with that, that wouldn't be addressed, because they were concerned it should be able to enforce its contracts. But when referring to the public

comments received against that I would say that there were a very large number of comments that referred to keeping ICANN squarely within its mission and indeed many that expressly referred to the need not to allow that it's mechanisms in which the contract enforcement would be included to go beyond that into a regulatory space.

Now, I believe that these are entirely reconcilable -- as I've just said -- because I don't believe that contract enforcement needs to be a regulatory function, yeah? But it clearly could be if there were no limit to it. So when you say there were a lot of comments on this; yes, but on both sides of this question.

Becky Burr: Okay. Thanks. I agree. There were comments on both sides of this. So then there's - my sense is that, you know, with a clarifying statement, people are most comfortable not putting the specific contractual obligations language into the bylaws. I don't have a sense of where we ended up on the blue language versus the red language. Okay. I'm seeing I could live with either. Greg?

Greg Shatan: I would suggest that we have both, rather than either. Because I think they don't do the same thing. Or they - one is not just a variation on the other. I think we lose something with the red language out.

Becky Burr: Okay. I hear you on that. In other words that there's not a - sort of an affirmative constraint on mission creed?

Greg Shatan: Correct.

Becky Burr: Okay. So I'm - I think that we can figure out some way through this, because I think that the consensus is that we do not want to do anything that facilitates mission creed. So let me play with that language a little bit. Malcolm?

Malcolm Hutty: Yeah, quickly going back to the original comment that (unintelligible) license assessment -- that (unintelligible) comment -- what they were actually concerned about shall not undertake any mission not specifically authorized in the bylaws, yeah? And they wanted to take that and turn that into shall not undertake any mission other than this mission.

Becky Burr: Right.

Malcolm Hutty: Yeah? That was the key thing not to be lost there. So when Greg said do both, yes, but subject to that sort of caveat.

Becky Burr: Gotcha. Okay. The next set comes down to the balancing test that we talked about. And I got - I had the task of going away and thinking about how to word it. I came up with what I think is fairly simple language that I hope reflects what we talked about. So getting rid of that whole balancing tasks for commitment, the notion is the commitments reflect ICANN's fundamental compact with the global internet community and are intended to apply consistently and comprehensively to ICANN's activities.

And then the language - the specific ways in which core values apply may depend on a variety of factors. And then we keep the language in - the balancing language there. In any situation where a core value must be reconciled or - with another, the balancing must further an important public interest goal identified through the multi-stakeholder process. And that is within ICANN's mission. I think it should be a public interest goal within ICANN's mission that is identified through the multi-stakeholder process. So I would switch that on further thought.

Discussions on this revised test? It strips it down and gets rid of all of the language that sounded too U.S. centric, I think. And also reflects what I heard on our conversation the other day about - with respect to the core commitments; you know, they were complimentary to each other. Hearing no - I'm seeing no comments. Greg?

Greg Shatan: Sorry to bring the train to a halt for a second. A couple of things. You know, the language that you added and the way you changed kind of the first couple of boxes sort of looking at - you've kind of forced the commitments on the one hand and the core values on the other hand. So for instance, by changing them to core values and crossing out "fundamental commitments and" you've kind of taken away - you've made kind of different tests for commitments and for core values where it seems like there were -- at least in this paragraph -- only kind of a common test or limitation. So I'm wondering what your - why you did that and what you were achieving there.

Becky Burr: So first of all, there has always been a distinction between commitments and core values in terms of the test. With respect to the commitments, we - the language that we had initially put in there was essentially the strict scrutiny test. And then the language with respect to reconciling core values was sort of the intermediate scrutiny test.

And so what we've done -- and this is what I think my marching orders were - - was to say, "The commitments are so fundamental and basic that really there's no need to compromise or reconcile those. That's what ICANN should be, you know, operating within the four corners of the box created by those commitments.

With respect to core values, we can see some times where, you know, one may need to be reconciled or, you know, balanced with another. So it was deliberate, but I think that's exactly what was - so that's - what was - that is what was here before. Other than the fact that I permitted strict scrutiny balancing before. And I think it's worth noting that the commitments are ICANN has to operate it consistent with its bylaws, it has to preserve and enhance stability, maintain its capacity and ability to coordinate, respect creativity and innovation, and employ open multi-stakeholder process and not discriminate and remain accountable.

So when I - I mean, I spent some - a lot of time looking at the commitments and I think that there should be a need to compromise or reconcile on those. With that - respect to others I think there can be other issues. So Greg, I think your hand's back up.

Greg Shatan: Yeah. And look, first of all I want to thank you for going through that. I think that was both very well-reasoned, well stated, and very helpful in understanding what you've accomplished here. And I agree with your concept. So I think that's great. And again, very helpful to me.

I would only note kind of at the very end -- and I'm not sure if we've kind of gotten to that box in the back -- where one core value must be reconciled with another. The change to an important public interest. I support the language in bullets. But I just took some time to look at the document; it was submitted that is a compilation of views of members of the GAC. That came across, you know, last night or last evening. And I think it's very important for us to note that the GAC seems to be hanging on language relating to the public interest to support kind of GAC power. And the addition of the blue language here I think read against what the GAC said there is going to cause conniption fits eventually.

So I think that's - if it doesn't cause consternation that's great. But I think the idea that - and I think the GAC is actually incorrect in many ways in its attempts to talk about public interest as being tantamount to public policy. Because I think that's not really the case with a public interest corporation, which is what ICANN is in the United States. Not just a public benefit corporation but a public corporation formed in the public interest.

But I think that it's very likely to find public interest goals by those defined in our multi-stakeholder process. I expect some action around this. So we'll see what happens. Thanks.

Becky Burr: Okay. Thank you. I confess I have not read the GAC document and I will do that. I mean, I think that what we're going to have to do is sort of talk about this. Because I can sort of imagine it is an issue of concern for the GAC. I mean, the point is that the GAC is part of the multi-stakeholder process. And the GAC does have an important role in identifying the public interest.

The question is just whether, you know, it can be imposed outside of the multi-stakeholder process. That's the way I read the language. And maybe that's a little bit less - maybe that's a better way of discussing it with the GAC. I'd be interested in the GAC member's views. But I - as is said, I haven't read the GAC paper and I will do that right after this call.

Okay, so with the slight modification of reversing the within ICANN's mission and identified through the bottom multi-stakeholder process, does anybody else want to speak to this language or are we relatively comfortable proceeding with the language as revised? Okay. This is not a consensus call or anything, so people can reconsider, but I think we'll move on.

Okay. The next statement is the first - is the first commitment. Just on these comments, the government of Spain had a significant concern about the fact that in the formulations the reference to local law had dropped out. I -- like one of our experts -- I had suggested domestic law. That was a matter - that remained a matter concerned to the government of Spain. And I certainly am comfortable with the notion that the - that ICANN has to operate consistent with applicable local law. So that's why I have changed that. I don't think it's a substantive change. Do people have concerns about that?

Okay. Somebody suggested including an indicative list of applicable treaties, but I think that is something that work party three is thinking about. Scrolling down to maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, inter-operable internet. I just want to point out that when I was reading this, this does seem to be a pretty large catch-all in the sense that, you know, we have seen ICANN from time to time say, "Oh, we can't do that because it's going to, you know, it's going to split the root." So I just wanted just to note that for our - you know, for our thinking as we go through this process.

In the next place - it's employ an open, transparent, bottom-up, sector led (unintelligible) input from the - and here is the language about private sector led also comes up. It's - government of Spain proposed removing this. The RIR said that they read this to be consistent with government participation, which I certainly do as well. We did have some people suggesting that we should affirmatively clarify that the private sector doesn't just mean business.

And we had one commentator who wanted to clarify that experts should not have a conflict of interest, which is why I have in square brackets the unbiased expert advice there. I have to say I think unbiased is - sort of goes without

saying, but I also don't object to putting it in. Any comments on that? Okay.
Moving along - oh, I've got Greg and Avri up.

Greg Shatan: Thanks. I guess this is one of these situations where - when we're adding language it needs to mean something. We need to be sure of what it means. So in terms - I'm not sure why we're adding unbiased. I mean, in the sense that this is just going to be used I think to challenge any experts, so I mean, is that the intention or is it - do we feel like there have been biased experts in the past and we're trying to - this is a course correction? I guess that must be the case or else it wouldn't be here. So I just (unintelligible)...

Becky Burr: Well, yeah -- as I said -- I think that, you know, the conflict of interest stuff is a given. And so I don't see the need to add it. Avri?

Avri Doria: Yes, thanks, Avri speaking. I largely agree with what was just said. I mean -- first of all the word biased -- there are so many biases and every expert comes with a bias about how they do their particular work and their subject matter. So to say "I'm biased" is difficult. What we're really trying to say is "non-partisan." I don't recommend that we put that in. I think you're right that that meaning of unbiased, the non-partisan meaning goes without saying. And - but I do agree with Greg that it's said it becomes something challenge experts on. But if we put in anything we need something more specific than "unbiased." Thanks.

Becky Burr: Thank you. David?

David McAuley: Thank you. Briefly I'm with Avri and Greg and I think if - I don't like the term "unbiased." I do like "experts that may have bias." What we need is disclosure of any bias rather than not being biased. And so I'll just put myself together with Avri and Greg. Thank you.

Becky Burr: Thanks. James?

James Gannon: Yes I'd like to add on to the previous two. If we add unbiased then it's a risk around some expert (unintelligible) ICANN should be promoting. For example are we going to dismiss those senior engineer (unintelligible) because there's a potential conflict of interest when they're making a strong, well-informed decision? And unless there's a serious, serious need to add a qualifier I don't think we need it. I think it's (unintelligible) it's inherent in the system.

Becky Burr: Okay. I'm hearing a ground flow, a radical agreement for removing the word "unbiased." Greg?

Greg Shatan: I made a suggestion in the chat. Although I'm also happy with us removing "unbiased" to changing the word to "independence" rather than "unbiased." And I think it doesn't have quite the same accusatory statement and I think that, you know, we've been using the term "independent" to refer to our counsel with the implicit understanding among all of us that what we missed was also unbiased. But I think that might be a word that's a little more neutral on its face and at least keep kind of house experts from, you know, ruling the roost. Thanks.

Becky Burr: Okay. James?

James Gannon: James. I understand where Greg is coming from but "independence" could be construed in a similar manner, that they must be independent from any contractor priority or any interested party within the DNS space. So I think if - as we went into it "independence" would possibly draw...

Becky Burr: Okay. Greg? Your hand's still up?

Greg Shatan: Old hand. Sorry.

Becky Burr: Okay. All right it's gone. I think that's the decision where we came out.

Going down to core values, "the seeking and supporting broad informed participation." The NCSG proposed some revised language that I quite liked. And I have included it. So it is "seeking and supporting broad and informed participation reflecting the diversity and decision making to ensure that the bottom multi-stakeholder developed policy development process is used to ascertain the global public interests, and that those processes are accountable and transparent."

So this is the NCSG that I thought was good. I think Greg note regarding the GAC issues related to public interest or - let's note those for the record and understand that we need to be clear that the bottom up multi-stakeholder process includes the GAC and includes - reflects the GAC particular stake in public interest as well.

Moving along. In the next two comments the UK government and USDIB suggested taking out "to the extent feasible and appropriate." And it does seem to me that we could do that given the fact that we have provided balancing language above. Again, you know, it is changing language that is there and so, you know, somebody will ask us why we did it and whether we intended this to become, you know, more absolute. But I - views on this? Take it in, leave it out?

David McAuley: (Unintelligible).

Becky Burr: David, we're hearing you think aloud.

David McAuley: Sorry.

Becky Burr: That's okay. It's very entertaining. But I just thought you should know just in case.

David McAuley: Thank you, Becky.

Becky Burr: Greg?

Greg Shatan: Sorry. I admit that I was still reading over the previous language and didn't catch up to what we're currently discussing, so can you...

Becky Burr: The question is just several people suggested that "to the extent feasible and appropriate" and "where feasible and appropriate" which are the current language -and don't ask me why they're slightly different but it was unnecessary and that it made it sound too sort of soft and mushy. And that - and then I went on further to say that since we have a balancing test that applies to the core values I think that we could take this language out without creating unnecessary constraints on ICANN. On the other hand it is taking out existing language.

So Greg, is your hand old?

Greg Shatan: I guess I would just respond to that. Again we're taking out existing language. Unless we think that we strengthen the balancing test I think this would be viewed as kind of narrowing the balancing test somewhat. At least somebody who's trying to (unintelligible) as to why this language is coming out, you know, I guess in effect our intent in essence is to strengthen the core values

and be a little bit more rigid about them. I think that would be - the result of taking them out would be to convey the idea that we should be more rigid since the balancing test was here before. And maybe that's not a bad thing but I think that would be kind of the read intent of that. Thanks.

Becky Burr: Okay. Steve?

Steve DelBianco: Hey thanks Becky. Yes the word "feasible" I can't understand why it's in there. It's something infeasible. It's not able to be done. So I don't think that adds anything. And then you're right: this is all about a balancing test so the word "appropriate" is actually inherent in the notion that we would be balancing all of this against the mission core values and using the balancing test. So I would say that "feasible and appropriate" could disappear from both of those paragraphs. Thank you.

Becky Burr: David?

David McAuley: Thanks. I should've taken my hand down but Steve basically said what I was going to say.

Becky Burr: Okay. Great. James?

James Gannon: I think with the qualifiers that we've put in in the balancing statement that we should wherever possible be removing kind of mushy language, which I believe this is. So I definitely support removing it now that we have a strong balancing test in place. I think it'll strengthen these two if we remove it.

Becky Burr: Okay. Other comments?

All right. So I think we do pass the Greg Shatan test that we're doing this intentionally. And we'll move along here.

Now for some reason this - the new language that we agreed on appears in teeny tiny text but it says, "ensuring that any expansion of the top level domain space will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns and right to protection." So that's just sort of implementing paragraph 336 into the language. Any discussion on that?

Okay. Greg?

Greg Shatan: Thanks. I'm still looking at the end of the box above that. There's the language that enhances consumer trust...

((Crosstalk))

Becky Burr: Oh. Okay. Let me explain that. So first of all that is - was an add to our - to the by-laws language that was noted as a partial implementation of paragraph 336 so that when I added paragraph 336 in below that - then I went back to the formulation that the community had to - had - were familiar with. I think this is from that affirmation of commitment if I'm not mistaken.

Man: That's right.

Becky Burr: And so rather than have the sort of consumer protection goals listed twice in a way that might be confusing and also it was an add to the existing language. That's why I took it out. Greg?

Greg Shatan: Thanks. I think that takes care of it. I just wonder if we're the words "consumer trust and choice" aren't quite the same as "consumer protection and competition."

Overall, I think that the implementation in the (unintelligible) language is better than the addition. I'm just wondering if we need a reference as specifically the "consumer trust and choice" because those I think are languages - that's language that comes up - or has come up elsewhere and is used in the AOC reviews I believe, the CCT review.

So I don't know if we need it somewhere in particular or if it's (health ware) and we don't need it here. I'm just a little bit - I don't have all the language of ICANN, you know, arrayed around my head like Geordi LaForge. So that's - not sure if we're losing something here or if we're - we're definitely gaining something. I just don't know if we're losing anything. Maybe the answer is no in which case that's fine to - as the team (unintelligible) language and, you know, strike out the (unintelligible).

Becky Burr: Okay. Putting on my FTC hat I would say that we are not losing anything. But that's just my view. Steve?

Steve DelBianco: Yes the affirmation of commitment had a review in it, review of the new gTLD program. And it starts with a paragraph that explains ICANN's commitment as it expands the new gTLD space. And that commitment is the tiny text in italics that Becky has reproduced here. So that's the commitment that ICANN made in the affirmation that we're bringing over.

The words "consumer trust and choice" are actually part of the review that is done and in the chat I've pasted part of that text from the review. So the affirmation of commitment's committed ICANN broadly to this consumer

protection, security, stability, resiliency. And then once every five years when the review is done or one year after new gTLDs are introduced, the actual review does look at consumer trust, consumer choice and competition.

So we have both because we're...

Becky Burr: Right.

Steve DelBianco: ...bringing both into the by-laws. One is in the reviews section and one is in the commitment section here. We didn't lose anything.

Becky Burr: Great. Thank you.

Greg Shatan: Thank you. That's helpful.

Becky Burr: James? Your hand just went away. I take it...

James Gannon: Yes no Steve said what I was going to say about staffing and reviews and such.

Becky Burr: Perfect. Okay going down to "while remaining rooted in the private sector "recognizing governments and public authorities are responsible for public policy," as I - in our previous discussion somebody had taken issue with the governments are responsible for public policy, and I pointed out that those are - that is the existing by-laws language. We had a - we agreed I think that we wanted to put in the mission specifically as a consistency feature.

Both Spain and Brazil are concerned about the "consistent with the mission" and "remaining rooted in the private sector" language. And (Yan) raised a question about whether there was tension between the acting in accordance

with the by-laws and mission and applicable law where it operates. One person suggested adding this language in square brackets: “but within their jurisdiction and the GAC” rather than “governments and public authorities.”

My view on this is that, you know, we’ve had the conversation about remaining rooted in the private sector. And this specifically does include governments and public authorities and I think that they’re responsible for public policy within their jurisdiction as again something that I would take as a given. And so my instinct is not to change the language but I am open for comments. James?

James Gannon: And so I have one comment on the “within their jurisdictions” but it’s outside of my knowledge. But for the changing “governments and public authorities” to “the GAC” I think I’d support that on the basis that it’s the GAC that gives formal advice to the Board. So we don’t have public authorities coming in and giving formal advice in an independent capacity. It is the GAC that gives public policy advice to ICANN on a matter

So I think that should be the reason why it’s a core changing as to the GAC as opposed to governments and public authorities because I think although it’s the existing language I think the GAC further reflects the actual (unintelligible).

Becky Burr: Thank you. Avri?

Avri Doria: Thanks. Avri speaking. I very much support the inclusion of “within their jurisdiction” because there really is often a confusion I think about the general principle of (unintelligible) within a jurisdiction, public policy within a jurisdiction. So I’m very much in favor of adding that. I think it adds an important thing that is forgotten.

In terms of the “governments and public authorities” versus “the GAC” I tend to want to remain with the current language in that the GAC is one of those voices when they’ve reached consensus, but I do not think that ICANN can afford to say that they’re not going to take new consideration of, you know, the public advice of governments and public authorities. We’ve often been in situations where we wanted, you know, whether it was, you know, law enforcement or data protection, we’ve wanted them and we’ve wanted to take that advice into account.

So I would not want to take that out and especially if we have constrained it with the jurisdictional notice that, you know, when one country gives advice about its data protection and it’s talking about the public policy within its jurisdiction. Thanks.

Becky Burr: Thank you. Steve?

Steve DelBianco: I agree with Avri that it is not a good thing to substitute GAC for governments and public authorities. Law enforcement, OECD and other public authorities often comment directly as Avri said. And in the sentence above we actually list governments and public authorities. So I would just simply stick with that phrase and not make it all bottled into the GAC.

And the second: within their jurisdiction I’ve come to appreciate that a country claims that it’s its jurisdiction if somebody across the world is doing something affecting their citizens. So it could be that a faraway Web site is defrauding its citizens or abusing its trademarks or intellectual property. And countries will reach jurisdiction based on how it affects their citizens and because of that I don’t know what the meaning of “within its jurisdiction” really is. Does it really limit anything? And will we - what is the upside of

adding those words? How will it help make things clearer in the by-laws?

Thank you.

Becky Burr: Thank you. Greg?

Greg Shatan: Thanks. Greg again. I think this is, you know, again a situation where reading the GAC - the position with GAC members have in that paper it will be very interesting. I think that adding "within their jurisdiction" probably also grammatically incorrect. It should probably be "within each government's respective jurisdiction" or something like that or it - first off that creates a direct conflict with the Tunis Agenda. So this will certainly create some heated discussion.

And while I'm no fan of the Tunis Agenda in terms of this unequal balancing I think the idea that - I think this is kind of limiting of the - what government responsibility is for - and I see Avri's notes on the chat. And I think this may be creatively ambiguous in this TA, in the Tunis Agenda but I think this language here is maybe more creative but less ambiguous.

So in that sense I think it is at least drawing a distinction with the governmental role in public policy. And I agree 100% with everything said before about not making the change to the GAC versus government and public...

Becky Burr: Thank you.

Greg Shatan: ...authority.

Becky Burr: We're at the 90-minute mark. We're actually at the 91-minute mark. I think we're really close to being done with this document. So if people can hang in there for a few more minutes it would be very useful.

I see Avri is inserting in the chat some more reasons why we might want to include "within their jurisdiction." Other comments? Avri?

Avri Doria: Yes. Hi thanks. Yes, I mean, in answer to Greg's question what is (unintelligible)? One of the ambiguities we have within our advice government is each government speaks with the force of its sovereignty within its jurisdiction. And there is really a confusion then in terms of to what (unintelligible) does that apply to ICANN dealing in a global environment?

And it's important to consider - it's important to give it due consideration but it has to be understood within its context. And one of the things that we often get confused on is that local sovereignty notion versus it being a global directive.

So that's one of the reasons why I think it's really important to make that distinction. And that helps us in terms of being able to get more advice and be able to understand it within its context. Thanks.

Becky Burr: Thank you. Okay I'm seeing Greg say that it passes his intentionality test under the circumstances. Malcolm is agreeing with Avri. I think it is well noted by all that we will have to explain what we mean here as this is likely to be an issue with the GAC. So we will have to explain that.

Other voices on this issue? David?

David McAuley: I - thanks Becky. It's David for the - David McAuley. I agree with all that's said but I think it would be nice to drop an example here. And one example that would sort of illuminate the "within their jurisdiction" and also why we shouldn't have the words "the GAC" is the data retention obligation in the register - in the RAA. The Article 29 working party in Europe spoke for I think 29 nations by saying, you know, we need a uniform waver. And I thought it was a legitimate request and I think that was a good - it wasn't - I don't think it was honored but I think it was a good example of why the suggestions of leaving the language without "the GAC" and "within their jurisdiction" may be a good idea.

Becky Burr: Great.

Greg Shatan: Thank you.

Becky Burr: That's an excellent suggestion. We can include that in the notes I assume. Others?

Okay. The final language was our non-capture language which I had just had as a placeholder. (Yan) told - no (Lee) (unintelligible) actually provided suggested language: "striving to ensure that the interest of one or more groups are not advanced at the undue expense of others." Any comments on that as a construct? Avri?

Avri Doria: No issue with it. Oh Avri speaking. Hi. No issue with it as a construct. I question - and more because I don't understand "undue expense" and the question of how does one determine what is, you know, it's not quite the same as reasonable because we've talked about reasonable standards in many cases. The notion of it being undue I guess is certainly less familiar to me. And is it sufficient to say "at the expense of others" because that's I think what we

want, you know, but I wanted to bring that up. So have problems with “undue expense” and prefer just “expense” unless I can understand why “undue” adds content. Thanks.

Becky Burr: Thank you. Greg?

Greg Shatan: Hi. Greg Shatan again for the record. I think the problem is that without “undue” - with that word “undue” in there (unintelligible) maybe the word “striving” helps. But without the word “undue” there’s a chance here of gridlock because there are always balancing concerns of - that do, you know, whether - and I don’t think they can - we’re going to be able to come up with decisions that kind of (unintelligible) in essence (unintelligible). I’m not sure that “expense” is the right word because we’re not really talking about anything fiscal or financial here.

But clearly there’s going to be some cases where judgments are made and some people are going to be happier than - or some groups may be happier than others. I think if - maybe we’ll - maybe “striving” is good enough to kind of soften this language to avoid paralysis. So I think that, you know, sometimes we want to create (unintelligible).

So the, you know, I think the point here is just kind of to create the right atmosphere but without creating something that paralyzes. And I’m also going to take the over-under on how many times it will be cited in IRPs in the future. I would say 100% of the time.

Becky Burr: Okay. James?

James Gannon: I’m going to flip Greg's point around slightly. I don’t we should be trying to lessen the verb. I think “striving” seems to be quite an aspirational verb. It’s

something that we kind of - we attempt to do but you might not actually every do it. So I'd prefer to see a stronger verb and less undue expense language and "striving" is possibly a little bit too weak of a word for my liking personally.

Becky Burr: Okay. Steve has raised in the chat "do we really need this clause at all?" We had that discussion and I think that there was some strong feeling that we did need an express statement regarding capture. Greg?

Greg Shatan: Yes. I just don't think that - it does not really go to the issue of capture. This seems to be going to the issue of, you know, trying to balance every decision and capture is much more extreme than this. And if we want something that's going to deal with capture as opposed to balance, this isn't it.

You know, I would tend to be concerned about having language and I suggest if we bracket it, personally. But and not personally in a sense that I think that maybe Malcolm and Steve would at least agree with that. So, you know, I think this is - it's an open concern of - I guess part of it depends on who's actually being (unintelligible) We're not going to floor (unintelligible) ever. Well that's not going to happen. Thanks.

Becky Burr: Okay thank you. Malcolm has put into the language "striving to achieve a reasonable balance between the interests of different stakeholders in the pursuit of its mission." And we have one expression of support. I'll tell you what - okay. We have two.

Okay. I'm going to - I'm just writing it down. Okay. All righty.

That brings us to the end of this. I think we have really done an incredible job of paying attention to every single comment that we got here, really debating

the comments. And so, you know, if there is a model of taking public comments seriously this process has definitely been it.

That does mean that we have not gotten to the reconsideration issues which are a little simpler and the fundamental by-laws issues which are also a little simpler, or the IRP. On those issues the IRP is on the agenda in Paris. I will strive to get out a document that I think we can work from in Paris to make that go a little bit easier.

So unless there are any other comments, I'm going to say thank you everybody for hanging in there with me this morning and we will see everybody in Paris who's going to be there.

Avri Doria: Travel well and see you on the next call.

Becky Burr: Thanks.

Avri Doria: Good luck on the 16th.

Becky Burr: All right.

END