

ICANN

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

Becky Burr: Thanks everybody for all the hard work in Paris. I think that we got a lot done there and we have a lot more work to do but we got a really good start on it. My hope this morning is to finish off the discussions about the revisions to the mission commitments and core values. And in particular, I think the big questions that we have to discuss are one the human rights articulation as - that ICANN should respect human rights and two, the GAC concerns about the language and what is now commitment number eight.

So before we get to that, we had a question mark for coordinate versus support for development and implementation of policies with respect to the ICANN's naming function. Where we left it I believe there's that since we weren't changing the other language in the other parts of this that we would leave it as coordinate and that the coordinate part works fairly well up until now. But I want to make sure we have consensus on that. There's not an objection to leaving it as coordinate. Does anybody have an objection to doing that? Okay I don't see any hands. So I'm going to assume for the moment that that's consensus.

Okay. The question about ICANN's enumerated powers, ICANN shall not undertake any other mission or not specifically authorize in these bylaws and shall not - and shall have no power to act other than in accordance with and as

reasonably necessary to achieve its mission. I believe that Malcolm raised a concern on the list regarding this and so Malcolm would you like to speak to that?

Malcolm Hutty: Yes. Thank you. Okay this is quite simple. It's about the - in the use of in these bylaws in that sentence. The concern it was originally raised by the DPDK was that we set up a mission very clearly in this section of these bylaws. If you say shall not undertake any mission not specifically authorized in these bylaws, referring to the whole lot rather than to this specific section it could trigger a hunt through the whole of the bylaws looking for any implicit extensions of the mission beyond what it says in that section.

So rather than saying not specifically authorized in these bylaws, we need to be referring to shall not undertake any mission than - other than that authorized specifically in this section. Now I think actually the - if we just simply omit that blue text that's been added back in and go with the red text that we had before with a bit crossed out - still crossed out, then that's fine. ICANN shall have no power to act other than in accordance with and as reasonably necessary to achieve its mission. That's sufficient.

Becky Burr: Okay. So we have two proposed ways forward. One is just to say leave the blue text in but say specifically authorized in this section. And the other is to take the blue out. I believe that the language under the - the language in blue was proposed by DPDK I'm totally comfortable with replacing in this section. I think that's a really good add. I'm a little bit uncomfortable taking the language out because they thought it was important for the IRP. I see Jonathan's hand.

Jonathan Zuck: No just a quick comment. I guess - if Steve Crocker were here - if I could channel Steve Crocker he said that sometimes ICANN takes on relatively

innocuous things, time keeping, things like that. And so I'm not sure that searching the rest of the bylaws for other things that is a negative spin on something that might otherwise be the case. In other words, there might be some reasonable exceptions to this that are founded in the bylaws. So I mean I guess it's just worth taking a breath before, you know, making it overly restrictive. So that was just my thought that...

Becky Burr: Okay.

Jonathan Zuck: ...the bylaws are the bylaws. It's not just a section of the bylaws and if there's something else in the bylaws then ICANN ought to be able to do that.

Becky Burr: Right and I - and there is the administration on as reasonable necessary to achieve its mission. Malcolm?

Malcolm Hutty: I actually strongly disagree with Jonathan I think the idea of hunting out through the bylaws to discover what ICANN's mission is, is quite wrong. There was very strong support for the idea of clearly enumerated extensive permission within the public comment. If there is anything that ICANN should be doing that it does not follow - can't be found in what we've described, then what needs to change is not the statement that ICANN shouldn't be acting outside its mission but rather the content of the description of the mission.

Becky Burr: Okay. Jonathan does the as reasonably necessary to achieve its mission provide enough flexibility do you think for the timekeeping and other roles? I would certainly think that timekeeping...

Jonathan Zuck: I mean not literally it doesn't. Not literally it doesn't. So I mean I guess I don't know how to address that. I mean I'm inclined to agree with Malcolm and

again I think hunting through the bylaws is the wrong spin but I mean I just - I know that they've taken on some things that are innocuous and I don't know how to make that differentiation that are helpful...

Becky Burr: Can you give an example?

Jonathan Zuck: I mean I - any other language would be open up too wide a door. Helpful to its mission or something necessary to its mission would exclude some of those other functions that it's taken out that have been a service to the community.

Becky Burr: As such, can you help us with an example so we can talk through that?

Jonathan Zuck: Like the timekeeping function. It's not necessary to its mission at all.

Becky Burr: Okay. It's more necessary to achieve.

Jonathan Zuck: Oh quick while Malcolm's gone. No I'm just kidding.

Malcolm Hutty: Sorry you missed your chance.

Jonathan Zuck: No I mean I - so now I mean I - so I don't know how to account for those things without opening too wide a door right which is definitely not my intention.

Becky Burr: Right.

Jonathan Zuck: As I said, if Crocker were here as he was when we met in Washington that's when he brought this up if you remember Becky with our little mini intercessional meeting we had in D.C.

Becky Burr: Right.

Jonathan Zuck: I don't know how to accommodate it because it certainly wasn't something necessary to its mission.

Becky Burr: Yes reasonably necessary...

Jonathan Zuck: I think Malcolm was (unintelligible)

Becky Burr: David?

David McAuley: Thanks Becky I just - I had written in the chat that I thought Malcolm's point was a fair one and I do. And I certainly think as our legal principle it's a very well stated one. But I have to say I recall as Jonathan just reminded us Steve's example of the timekeeping thing. And it is sort of not consistent with the mission and yet it's there. And so if we adopt language that says it won't do anything outside its mission while we recognize that there's something it's doing that's not within its mission it could sort of undermine our whole effort.

So I'm like Jonathan This is a difficult one to solve. Even though it may seem minor, it's just we need to put our thinking caps on and come up with some way to address this. Because Steve did say, I mean that was the example he used, the timekeeping one, and said, you know, this is a legitimate effort but it's not within the mission.

Becky Burr: Well I don't understand why timekeeping is not within its mission. How, you know, just like having a two minute clock on speakers?

David McAuley: No. It was...

Becky Burr: Is it necessary?

David McAuley: ...an - it was an example. Help me Jonathan but I think it was an example about keeping records of time zones or something like that.

Jonathan Zuck: That's right. It was time zone database. It wasn't about meeting management.

Becky Burr: Oh. Oh I remember. Okay I recall that. I don't know how saying in these bylaws it helps so because I don't think that that time zone database would be addressed anywhere else in the.

Jonathan Zuck: And maybe it isn't. I - my guess is that there's some other more permission language that would allow it to be - that would allow it to have been done or maybe they just did it completely ignoring the bylaws when they accepted it and if that happened in the future then maybe the community would let that go, right. I mean maybe it's just a...

Malcolm Hutter: Yes Jonathan I suspect that's exactly what happened. But as a general principle I would say that the fact that we don't know, the fact that we can't tell whether it's authorized by the mission or by the bylaws or not it's not authorized within this mission. But it's - but not knowing whether it's authorized somewhere else and not being able to scope for that, that's a bad thing that we're seeking to correct. So it's very strong support for correcting that in the public comment.

So if we want to add, you know, to running time zone databases to the mission statement, then fine. I've got no problem with that. But we shouldn't be allowing ICANN to just - to make up new things that I can do without community authorization. The public comment on that was very, very clear and almost completely unanimous.

Becky Burr: Okay. Thanks, Malcolm.

Jonathan Zuck: How about language that...

Becky Burr: Wait, wait, wait guys. Wait, wait, wait, wait, wait...

Jonathan Zuck: Sorry.

Becky Burr: Let's stick to the queue please. Sorry I will recognize you again Jonathan after I recognize Greg

Greg Shatan: Thanks. I was enjoying the dialogue. In any case I think that there is a lot of hair splitting going on here. First it will be inappropriate in something as fundamental and high level as the bylaws to mention something as niggling as timekeeping. Secondly, I think, you know, Steve's point in the chat is - covers that and a lot of other things which is that it's a support task to help with ICANN's mission. It's used in achieving the mission and therefore it's done in accordance with and reasonably necessary to achieve the mission.

Reasonably necessary may get us in trouble at some point because then you start getting into the question of necessity as opposed to something less than necessary actions. That may set too high a bar. Do we have to ask whether this has to be done or whether it's just nice to have? So, you know, is it really necessary to have a gala. Well clearly not. But if it did, would somebody challenge that as being outside the scope if it's not reasonably necessary? You know, so that's the problem with reasonably necessary. You know, that is restrictive beyond the four corners of the mission. It restricts ICANN further than the mission does.

But anything that's used in the mission is certainly acting in accordance with the mission and that includes timekeeping. So I disagree with those who say that timekeeping is outside the mission and clearly there's no reason to start mentioning, you know, minor tasks like sorting the bathroom keys so that the men don't end up in the women's room by accident as outside the mission either. So I think we need to keep the bylaws at the level bylaws are supposed to be at and make sure that we are keeping ICANN within the fence but not unduly restricting them at the same time. Thanks.

Becky Burr: Okay. I'm going to recognize Jonathan and then Malcolm

Jonathan Zuck: Yes I guess to hear Fadi's justification of engaging with Brazil and the process that led to the Net Mundial conference and initiative, that was very craftily framed as with preserving ICANN's role that was in danger of being encroached upon by government if we didn't deal with this rising crisis of non-confidence or whatever else.

I mean I - in a way that giant thing was easily justified - more easily justified by the text that we have here now than taking on a limited technical function that was of great benefit to the community. So that's I guess my only caution. Maybe it's about putting a little language about the role of the community in approving things outside its mission or something like that is the way to address it. I don't know.

Becky Burr: Okay. Malcolm?

Malcolm Huty: For the - in terms of a role - an ability for the community to approve something, we have that - the ability to change the bylaws would - allows the community to expand the scope of the mission. But there was one specific thing I wanted to say Becky to you. I've gone back and checked the public

comment and specifically DPDK's public comment. I believe that you've misread it. That blue text is precisely what they were criticizing, not what they were proposing.

Becky Burr: So their language was the have no power other than to act in accordance with and as reasonably necessary to achieve its mission?

Malcolm Hutty: Actually the language that they propose is ICANN shall have no power to act other than in accordance within and to - as reasonably necessary to achieve its mission. Yes that was their language.

Becky Burr: Okay sorry. I did this the wrong way around.

Malcolm Hutty: And I support that language.

Becky Burr: Okay. So the proposal would be just to the one in red...

Malcolm Hutty: Drop the blue and go with the red. Yes.

Becky Burr: So other thoughts on that? Concerns? Questions? I think reasonably necessary is I don't know how it's interpreted by courts. It doesn't seem that limiting to me. Do we have a sense of the room what we should be doing here? Greg?

Greg Shatan: I think that, you know, reasonably necessary probably allows enough room for, you know, activities, you know, reasonable in court that as you know Becky is usually, you know, measured by what the reasonable person would...

Becky Burr: Right.

Greg Shatan: ...you know, who's possessed of an appropriate amount of knowledge of things. So, you know, necessary still concerns me a little bit because there are certainly things that are not necessary but they are desirable. So, you know, it's still I think a little restrictive, you know, beyond just undertaking nothing outside the mission. It also doesn't allow them to undertake anything within the mission that's not reasonably necessary to achieve it.

So I guess there's a question of how narrowly do we want to bind ICANN and are the things that they do that are not reasonably necessary but nonetheless desirable or appropriate. What about support for stakeholders? Is that reasonably necessary? They haven't done it so much, you know. I think it's reasonably necessary but, you know, it's hard to argue against the track record of not having done it.

So, you know, this is the kind of language that a lot of mischief can be made of. Maybe reasonably necessary or appropriate, reasonably necessary or desirable are some other possibilities. In either case, would they be authorized to act outside the mission?

Becky Burr: So the only way in which this would come up would be in an IRP, which would require either someone specifically harmed by a mission - by an action of ICANN that is not reasonably necessary to achieve its mission. And - or the community acting collectively. So I mean I think we had settled on the concept of has no power to act other than in accordance with it and reasonably necessary to achieve its mission.

I mean we could add something like necessary to achieve or further its mission. I think that's broadening up quite a bit. Thoughts? Ed Morris likes appropriate I see. And David McAuley is correct that or further is broadening.

I'm just trying to get a sense of the room here. Can we see - Greg, is your hand up again?

Greg Shatan: Yes. That's a new hand sorry. I think that broadening as long as we don't broaden it beyond mission is appropriate so to speak. So appropriate or further, reasonably necessary or appropriate I think is one and that's a phrase that kind of comes up a lot in these kind of documents. I also would say that it's not only in the case of an IRP that this comes up.

As Malcolm points out -and I don't think it's just rhetoric. It is the basic purpose to guide the corporations also would be used in - when any decision is made about whether something is appropriate, whether a policy can be adopted. You know, and that's not only when a policy is being challenged in an IRP.

It's when the ICANN board is considering whether it can adopt a policy or whether it can respond to a GAC communiqué or whether, you know, even in a working group we should be aware of what the mission is and be acting within it. And any propositions that we make that turn into recommendations should get slapped down by the Board as being outside the mission.

So this is - this should permeate the actions of ICANN. It's only in an IRP where it gets cited in a dispute but that does not mean - that's exactly the cause. It should have been dealt with and recognized all along. Thanks.

Becky Burr: Okay so we're getting some traction for as reasonably appropriate to achieve. It's to achieve or further its mission. Is that? I hate the word appropriate. I just have to tell you in a legal document because I don't know what it means but that's just me. And I don't think anybody wants to straightjacket ICANN on this but I need some more input from folks. I mean I would be comfortable

with as reasonably necessary to achieve or further its mission. Or as reasonably necessary in furtherance of its mission. David?

David McAuley: Thank you Becky I thought I should step in and say because of what I'd written in the chat I could easily support the red language that ICANN shall have no power to act etcetera. With respect to the reasonably necessary clause, I would support what you just suggested, the first one. That is as reasonably appropriate to achieve its mission. I think achieve its mission is better than further its mission because if the goal is to further its mission, I don't know that there's any end to that. Anyway, thank you. That's - so I could easily go along with the red language as reasonably appropriate to achieve its mission. Thank you.

Becky Burr: Okay. Thank you. Avri?

Avri Doria: Hi. Thanks Avri speaking. Yes I'm actually more comfortable with reasonably appropriate or appropriate than necessary. Defining necessity is actually and perhaps this is a philosophical position but defining necessity is really quite bad - quite difficult. So and I think achieving or furthering is fine. I think achieving is actually a good word to use. Thanks.

Becky Burr: Okay. So there's developing some consensus around as reasonably appropriate to achieve its mission. (Alan)? Or is that - I don't - I'm sorry. I was missing the hand. Can I just see green checks for those who would support changing it to as reasonably appropriate to achieve its mission? Okay. I - there's some people - anybody opposed to that? Okay. We will take that as a change that we'll make. Okay. Let's go back to the question of the - of human rights. So for commitment number one, does import the language of relevant principles of international law. And as Malcolm pointed out we do have an IRP which includes an expert's position on what that means to include Article 58 of the

International Court of Justice description of what that means which includes international conventions.

So with that in mind let's go ahead and discuss this. Avri?

Avri Doria: Thank you. Avri speaking. Okay so as I indicated in an email I sent is sure at the end of the day at the IRP level one point certain of you to take there was an obligation because.

What I think the comments argued and what I'm arguing it's that we have a more active obligation than that.

And that's while we're doing our work to make sure that it is not only consistent and that's the law but to understand the impacts.

And so that's why in trying to respond to the comments was trying to come up with phrasing that basically said acknowledging our commitments which yes we've got everywhere.

So acknowledging those commitments to ensure that we understand the impacts of what we do vis-à-vis those commitments.

And so that's more than just saying yes of course, you know, we're subject to the law but we also have to pay attention to what that means. And that does say a little bit more than the, you know, we could have a ruling against us for breaking it.

And I think that's where the comments were going is that the accountability that we have to have globally is to making sure that we don't impact it negatively...

Becky Burr: Thank you Avri.

Avri Doria: ...and involve. Okay thanks.

Becky Burr: Thanks Avri. David?

David McAuley: Thanks Becky I'm not by the way I mean I recognize that Avri's much better steeped in all this than I am by virtue of her experience and her approach to all of this. I think human rights is fundamentally important.

But let me just state that one of the difficulties of participating in a meeting like the Paris meeting remotely is I miss things. I may have missed some things.

But I thought that what the agreement had been with respect to a specific reference to human rights was that that would be a matter of - such as and diversity too would be a matter for Workstream 2 to develop and that we would remain with the reference that you have Becky to international law for Workstream 1.

And I thought that that made sense in light of a few things. One is it would be responsive to what Larry Strickling said in Buenos Aires for us to sort a stick to our knitting and to not go beyond what we need to get Workstream 1 done.

Secondly human rights is fundamentally important. But in managing a DNS system the DNS system I can see how some of those rights may bump up against each other and I think we need to be extremely careful.

I think human rights is so important that we need the time and space to do this right. And then finally I would say in my experience I don't see that ICANN is stumbling a lot on human rights maybe at all.

And I think in the Accountability Group we need to sort a step back every now and then and say yes we need to fix accountability but let's also recognize the ICANN makes many, many decisions and many of them are - most of them are right.

And so I just don't see a human rights issue on the surface. And I saw Avri's tweet this morning about the IETF and ISOC doing better on ethics. And she wished the ICANN was as good. And I can understand that.

But I just don't see a burning issue that would require us to face this issue right now. I think it needs the time and space to do it right and make sure that we don't create unintended consequences in managing the DNS system.

So with respect that's my position. Thank you.

Becky Burr: Okay, Greg?

Greg Shatan: Thanks, Greg Shatan for the record. I think this is the wrong place the wrong time the wrong group to consider this.

I also agree that human rights are fundamentally important. But I think we have a nuanced and a difficult job ahead of us in considering this.

I think that a group that's put together for this purpose and have the time and not a gun to his head to consider this and to consider the impact of what's being put in is what's needed to deal with this.

There is, you know, significant disagreement on what human rights are even - we're even talking about here all of them, some of them and in what context and why is this needed?

And frankly I've seen some, not all but some people advancing this in a way that, you know, seems to be more of a new and improved method to fight against intellectual property rights protection than anything else.

And when we talk about trying to find human rights issues that aren't somehow being brought in for reasons other than providing some sort of new and improved argument against intellectual property rights I didn't even get an answer to that question.

Now maybe there is an answer. Obviously nothing is complete in any of these calls.

But I think this is something where we need to proceed with deliberate and deliberation and not kind of at the, you know, almost a final reading here put in something which is clearly intended to have an impact and clearly it is intended to be meaningful but the meaning is not understood.

And frankly, you know, I think it's something that needs, you know, significant and specific study to deal with it. Thank you.

Becky Burr: Okay, Thomas?

Thomas Rickert: Thanks and hello everyone. It's very difficult to challenge a statement that is agreed on by everyone. So nobody would - I've heard no one saying that he or she is against human rights and it would be a stupid thing to say that.

I think what I'm trying to understand is how we best operationalize if we put language into the bylaws.

For almost every other section I know more or less concretely how that would affect the daily operations of ICANN.

And in the GNSO we've had discussions and Avri will remember this about including specific language on human rights. And that exercise at the time failed so we did not make explicit reference to that. Maybe the task was too big.

As a way forward what I would (unintelligible) attention to others then only being conscious of time and that we need to get things done is that we were have to review the tweaks that we're doing to ICANN's bylaws.

And I would really hate the situation in which we put human rights into the document and have to recognize at a later stage that we didn't really understand what it meant and what the impact on ICANN's operations in policymaking would be.

So maybe we can find language for the report that does not give the impression that this important topic is being put on the back burner.

But I think it requires further analysis maybe even a gap analysis of where human rights are already being, you know, taken into consideration and where not and then really operationalize so that human rights do not remain to be a lip service.

Again let me be very clear, if we find appropriate language fine. I'm just afraid we're putting something into this in a rush that we don't really understand the consequences of and that we can't really deliver on it.

And I would really like the enhanced accountability to fly, i.e., to be truly operationalized. Thank you.

Becky Burr: Okay and Ed? Ed you may be on mute. Okay Ed's hand is down.

Any other views on this? It's a really important topic and I don't want to cut off conversation prematurely.

I think that the proposal on the table is to specifically create a specific Workstream 2 task and to include language in the report that discusses the importance of human rights.

Perhaps it can include the Jack Goldsmith note that we say, you know, that we can get already implicit in the bylaws but that the group will consider an explicit reference in Workstream 2.

Okay anybody - oh David?

David McAuley: Thanks Becky I would agree with what he said with the exception of the explicit reference.

And let me just say I believe there's a Cross Community Work grouping on this - sorry, a Cross Community Workgroup or some such group working on this issue can currently and with our efforts on accountability.

And so rather than doing explicit reference to an IRP language and the IRP's currently are not binding -- and I say that because I haven't read that decision -- but in any event it seems to me it would be preferable to say if there were a reference to an outside sources we would coordinate with the other group that's working on this so that ICANN doesn't have two working groups bubbling up with different outcomes. Thank you.

Becky Burr: Okay thank you. I wasn't aware of that group. Thomas?

Thomas Rickert: Thanks Becky Avri just mentioned in the chat that she sort of accepts and will file a minority report.

I would try to or I would like to hear from Avri whether there isn't any common ground that we could find.

My last intervention was really aiming at adding quality to the term human rights rather than just putting it in that putting - taking it off the list and then moving on.

So my question is more to Avri than to the whole group whether it could be possible for us to include language making a good job in Workstream 2 and still sparing you Avri the effort of writing a minority statement on this because again, you know, this is not to put things off. It's just to ensure that we give it sufficient attention.

Becky Burr: Thank you, Thomas. Malcolm?

Malcolm Hutty: Thank you. I think the Workstream 1, Workstream 2 split again as I said it further subjects it's not about what's more important or more urgent or

anything like that. It's about what must be done now that you won't get if it's not done you will get at all.

Now I think Avri gave a very helpful description of why she's pushing for this to say that it's not sufficient to accept that we need to be bound by the human rights framework.

But we need to understand what that is so that we can implement it properly. And that seems a personally reasonable and proper thing to do.

But understanding what it is and how best to implement it sounds like an ongoing that we're probably going to have, you know, continued improvement in that area.

And this - that's the kind of thing that in my view falls properly under Workstream 2. The crucial thing that you need in Workstream 1 is acceptance of the principle so that there isn't a discussion later as to whether or not we should be seeking to be bound in that way or should be seeking to understand our responsibilities so that Avri will be able to turn around to us later and say this is a commitment that we've already made.

And I think the existing language already achieves that. So I think Avri's got the principal and can be assured that we will work on this later and that we will continually work to improve it.

So for those reasons I would say further language isn't needed and I support your proposal Becky.

Becky Burr: Thank you Malcolm. Greg?

Greg Shatan: Greg Shatan. I think, you know, in part I wanted to point out what I just pointed out in the chat there's just is a kind of a semi-informal ad hoc working party dealing with this but no formal Cross Community Working Group dealing with.

There's also a Human Rights Working Group within, solely within the GAC. I'm not sure if they call it a working group either.

So this is in terms of practically dealing with this work we're kind of at square one within ICANN. I think it needs to be dealt with within the normal channels within ICANN and not at this point.

So I think I'd probably just repeat myself if I said more but I think that we need to leave this to a more thorough process which I support.

Becky Burr: Okay thank you. Avri?

Avri Doria: Thank you. What I've been watching for years is always finding a way to push this issue down the road.

What is most important in responding to the comments we've got and not ignoring them is that we acknowledge that we have to deal with the impact of those on our ongoing work.

And we don't need to wait until two years from now to start understanding the impact on our work. It's something that we really need to do now.

And it is something that I do believe that we might have gotten out of NTIA if we started pushing on the boundaries of things that were against human rights. So I do believe it is something that is consistent with the loss of the backstop.

And so primarily what I think is essential is, you know, however we want to phrase our commitment to human rights, it's our commitment to understanding the impact of what we do.

And that yes is an ongoing responsibility. It's one that will never end. It won't end with Workstream 2. But what we need to do is accept that going forward we measure, we understand the impact of our work on human rights.

And so that was the gearing. And that was very much the essence of those two comments that I believe we have to be responsible to. Thanks.

Becky Burr: Thank you Avri. Again I'm a little - I'm not completely certain whether you would be comfortable with report language that basically says ICANN - ICANN's obligations under international law require it to apply with human rights provisions of international law.

And we believe that this is an urgent issue and that we create an ongoing formal working group to understand the commitments, understand the human rights impact of what we do and, you know, report on that.

Avri Doria: This is Avri. I don't. If it's not in the bylaws as soon as these proceedings are over the next time that someone brings up something that this has impact on human rights I'll get what I've always gotten and what we've got that's not in our mission, human rights isn't it our mission. And that will be the end of it.

So having it in a report is not a panacea. We have to accept that the responsibility of understanding the impact on our work.

So the report is nice but and obviously it's as strong as a minority statement. But a minority statement will basically say that we're unwilling to accept an ongoing responsibility for doing impact analyses of the impact of our work on human rights.

Thanks.

Becky Burr: Thank you Avri. Okay I see a very - and then and I think we remain quite divided on this. Greg?

Greg Shatan: I just want to say that I hope that what Avri said last would not be her minority statement because I think it grossly mischaracterizes what our intent is.

It's not that we're unwilling to accept something. It's that the - this is not the right time and place in this operation.

I would again reiterate my support for a Cross Community Working Group to deal with human rights issues which could ultimately deal with, you know, have a bylaw change.

I think that here we are now is not the place to do it. And, you know, painting anybody who doesn't agree as being kind of against human rights or, you know, trying to avoid sort of culpability with regard to human rights is precisely why, you know, the views of human rights is a loaded word, you know, creates a lot of friction.

And so I think the idea here is that we are trying to find a path towards a commitment relating to human rights but not without appropriate study. And

I'm saying that to put it off. I'm saying that to get into it and to really wrestle with it in the way that it needs to be wrestled with. It's not so simple.

But I don't think it should be pushed off at all. But that doesn't mean we need to do it in this group in this document in the bylaws right now in this transition. Thank you.

Becky Burr: Okay I'm going to propose that we move on with this discussion and have it again with the larger group later today when we meet on that call.

And hopefully, you know, we can put the sort of two options on the table and discuss it with the full group. Unless there's objections I just don't see us I - think Avri's concerns are very heartfelt which is the essence of non-consensus.

Okay, going down to the difficult language regarding the concerns of the GAC in Core Value 8. I have two thoughts on this that I'll just place on the table.

So the private sector I think several people have suggested that. And it turns out it is in the NetMundial thing that's they define oddly, they define private sector as being essentially business stakeholders and excluding civil society the technical community and academia so one approach here is to broaden this.

Now I think that, you know, other people have argued that this should be multi-stakeholder meaning including government. And I do think that we have to consider how changing that language affects our - the NTIA requirements.

The second issue is that the GAC objected to the limiting the due consideration to matters that are within ICANN's mission and consistent with its bylaws.

And as I was thinking about it I have to say the problem is not with duly considering GAC advice on anything whatsoever. The problem is really the people are identifying with the back and forth provision that is set out in the bylaws in Article 11.

SO one thought I had although I don't know if this will address the GAC's problems in any case would be to leave the language here it says they're duly taking into account public policy advice of governments and public authorities and then amend the language of Article 11 in a actually a quite a simple way.

Hold on I'm going to look at. So Article 11 I think J knows says the advice of the Governmental Advisory Committee on public policy matters shall be taken duly taken into account in the formulation adoption of policy in the event the ICANN board determines to take an action that is not consistent with the Governmental Advisory Committee's advice. It shall so inform the committee and state the reasons why it decided not to follow that advice.

And then put in a new phrase that says unless ICANN determines that the advice addresses a matter that exceeds its mission or violates its bylaws. The government advisor Kennedy and the ICANN board will be and try in good faith. So, the notion is there is an ongoing obligation to duly consider advice. There's an ongoing obligation to respond in writing but that the back and forth does not need to go on if ICANN says this exceeds - if we follow this advice it would exceed our mission.

Steve, I specifically want to ask you about this because I think stress test 18 requires a change to the article 11 language if I'm not mistaken, and then I'd love to hear from everybody else on the two proposals. I've put the language in the chat and unfortunately I can't (unintelligible) but the last sentence, unless I can determine that the advice addresses a manner that exceeds its mission or violates its bylaws. That is the phrase that I have added. Thoughts? Steve, please.

Steve DelBianco: (Unintelligible) stress test can identify that the GAC could change the method by which it arrived at advice and what they've used since time - since the beginning of time. And they would move away from consensus for their advice to simple majority voting. So, all that we did in response to stress test 18 was to add a clause to that very same sentence that you've modified and the clause was simply this.

It said where GAC advice was supported by consensus or where the GAC advice - for GAC advice that was supported by consensus, comma, and then we go on to articulate the obligation to try and find a mutually acceptable solution so that it would be a second qualifier in addition to the qualifier you're putting in there to suggest that that obligation only exists where the advice is not coming in conflict with the bylaws.

So I think they can both exist as qualifiers but let me ask you whether the subjects that you're adding about consistency with the bylaws, should that not stand alone after the (unintelligible) consider as a rationale for which ICANN could reject advice. So it becomes more explicit as opposed to just a qualifier when we try and find a mutually acceptable solution.

And I suggest that because the bylaw test is very explicit and it might be its own sentence in power (unintelligible) or to say no. Now, after they say no,

the next sentence says where that advice was supported by consensus of the GAC. We would undertake the obligation to try to find a mutually acceptable solution and a mutually acceptable solution would be something very different than the advice that would have violated the bylaws.

And I say this because all of this has to be available to us to use an IRP because if the Board lacks the will to say no to GAC advice, we have to challenge it, we as a community and a brief party and then the IRP panel has to be able to go right to this section of the bylaws and say it looks to me like this advice is in violation with the bylaws, the Board should have rejected it. Thank you.

Becky Burr: Thank you, Steve. Malcolm?

Malcolm Hutton: Yes, I think Becky that your proposal neatly addresses and succinctly addresses one of the two issues that was raised, namely that of GAC advice that was outside or inconsistent with the bylaws. But, there is also the other issue which is consensus advice. The special consideration that is given to GAC advice is given to advice that is public policy advice which is generally supported by governments. It is not given to public policy advice that just is one or a few governments happened I believe.

Yeah and I'm afraid that your proposal doesn't really address that, so I put something on the list a couple of hours ago which deals with it in the article where it's dealt with. It's a lot longer I'm afraid but I believe it's clearer and it certainly aims at avoiding creating the sense that we are trying to control how the GAC acts, what its procedure should be, or what advice it can give. And instead, what we are trying to do is clearly identify that some subset of that advice gets a special treatment and not others.

Becky Burr: Okay, so just for clarification I should have gone back and looked at the stress test 18 language and incorporated it in here, but I think you are right that we need both you know, the consensus and the mission and bylaws but I think actually we can put it in, school it, you know, slimly, we can modify this sentence and that's what I propose to try to do between now and the meeting this afternoon.

I don't know that it's going to address the GAC concern, but to me it does address the GAC concern that says you are not going to consider, you're not going to duly take into account our advice. Greg?

Greg Shatan: Thanks. Great chatting for the record. I think this language actually might be counterproductive because I think that if GAC gives some advice in good faith that colors outside the lines of it, and that does, you know, go beyond the mission of the bylaws in some fashion, that might be precisely the sort of thing that where a dialog about how to limit that advice so it's in the bylaws, both within the remit of ICANN could be helpful.

So, saying that we're not going to discuss that, we're not going to try to come up with a way to deal with something that's overreaching and try to bring it back within the remit seems to me like it could be counterproductive.

I know we're all you know, concerned about kind of you know, a hyperactive and under authorized GAC but I think this one actually may not be as useful for the things we want to deal with. My main concern is still with the idea of GAC advice coming by something less than full consensus or you know, certainly some sort of majority rule where a significant minority of governments disagree with the advice and yet ICANN is supposed to treat it with the same difference as if it's the voice of kind of all nations, at least without objection.

I think you know, maybe we're trying to come at it sideways or try to deal with another limitation but I don't like this limitation. I think it doesn't achieve what we want it to achieve, I think. I mean, clearly ICANN can't accept anything outside its mission and its bylaws but that doesn't mean they shouldn't talk about how the solution could be or how the advice could be revised so that it does so.

Becky Burr: Thank you. What about as an alternative, because I think Greg's point is well taken although part of my concern is about the timing. Just a straight statement, a direct statement that says ICANN cannot accept GAC advice on matters outside its mission or in violation of its bylaws, I refer space to in my comments in the chat.

So, what the suggestion is would be to drop the language from the core values and say that ICANN may not act on GAC advice, may not accept GAC advice on matters outside its mission or in violation of its bylaws to do, and Malcolm has the proposed (unintelligible) on that. Thoughts? Comments? Thundering silence. Can I see checks or Xs with respect to the approach on just including a very direct statement as Steve and Greg and I don't think Greg suggested it directly but I think the thrust of their comments was they cannot accept this advice. Is anybody for this or too early to tell what's - okay, Malcolm?

Malcolm Hutty: Becky, if we're going to go down that, the language needs to be quite precise. The advice that can't be accepted is advice to do something outside the mission or in conflict with the core values and bylaws. Some matters may be discussion of things but they are completely outside ICANN's area as to motivation but where the action is required is within the mission, they would nonetheless be a legitimate public policy advice.

So, for example, I think back to the sort of (unintelligible) disputes and certainly if that had been discussed at the proper time, mainly when the handbook was being written, it would have been entirely proper at that time for the GAC to have said we believe that this class of words should be reserved, such as geographical features or something like that.

Whether or not that's - it's desirable to do that is outside ICANN's mission but the action that's required, mainly reserving that class of words, that class of strings, is entirely within ICANN's mission and therefore it would have been entirely proper advice to give at the appropriate time.

Becky Burr: Okay, I take that as a friendly amendment to act, to take action, one work in action, matters or it's not on matters, it's to take action.

Malcolm Hutty: It's not on matters. It's to take action in consistent with (unintelligible) and bylaws.

Becky Burr: That exceeds the INR.

Malcolm Hutty: To exceed the mission or would otherwise violate the bylaws.

Becky Burr: Okay, thoughts on that? The crowd is very silent here. I do think you know, we should try as hard as we can to understand the GAC's concerns and address it to the extent that we can. So, since nobody is saying anything, can I have a show of checks or Xs on proposing this language to the group later tonight? And I guess there's a - I didn't know there's a step, as far as step to it.

Okay, people are not very willing to commit but I think people are reserving. Is there anybody opposed to doing this, to moving this revised language to the discussion this afternoon as a possible way forward? Okay, all right, all we

can do is try to find a compromise that works and this is the best I could come up with and friendly amendments made it better.

So, Fin Petersen from Denmark asks whether we need this kind of language and I expect that the Board will always take decision within the bylaws. From my perspective, I think that the Board would benefit from having a very clear mandate and this is consistent with the overall goal of ensuring that ICANN stays within its mission and complies with its bylaws.

I don't think - I mean, I think that this is one thing that the community felt pretty strongly about and I think since we all agree that GAC can't - that ICANN can't do things that exceed its mission or violate its bylaws that it's simply a statement of fact and cannot be said to diminish the GAC's authority and obviously when we drop the language, the duly taking account of public policy advice remains and the discussions remain. Other comments?

Thomas Rickert: Yeah, thanks Becky Maybe Fin can indicate whether this efficiently clarifies the issue but apart from that it is - if it were true that the GAC sort of feels discriminated if based on their advice is included by making reference to ICANN's bylaws, then I think a possible way out could be to make that caveat for all advice from advisory groups, you know, I think that it's an important clarification that whatever advice ICANN gets or the ICANN board gets, it will never go that far as forcing ICANN to operate outside its bylaws.

Becky Burr: Okay, so we have another suggestion which is to have as part of the (unintelligible) to article 11, which is on advisory committees, a general prohibition on taking advice I think consistent, that exceeds its mission or is inconsistent with its bylaws. That's a great idea, Thomas. I like that a lot. Others? Okay. Great minds working together can come up with a solution. Can we see the current language in the chat? It would be something like - it

would just be something like ICANN shall not act on advice. ICANN shall not act on advice that exceeds its mission or otherwise violates the bylaws, advice from advisory groups. And Malcolm, I'm sure is going to give me exactly the right wording. Comments, questions? David?

David McAuley: Thank you Becky If we use language like you just suggested which is brief and to the point, should we add on to it that ICANN would so notify whichever group gave the advice so that there's not this just incredibly long dragged out period where people are wondering what happened?

Becky Burr: Sure. That sounds like a good idea. And that addresses my concern about the timing. Malcolm?

Malcolm Hutty: If you can say something like that idea (unintelligible) and it sounds like a good idea, I was trying to think where the best place to put it is, and I think that the best place to put it would probably be not in this section but actually in the bit that we were previously discussing, the general statements that ICANN shall have no power to act in accordance with and as reasonably as necessary to achieve its mission. You could follow that with a statement that says something like discussing precedence over any duty to defer to the advice of any advisory group.

Becky Burr: Okay. I sort of like it as a (unintelligible) to the article on advisory groups myself, other views on either putting it into mission statement? I'm just trying to see what we've got. Either putting it in the mission's statement section of the bylaws or in the commitment from core values section. Views? Malcolm do you have a new hand up? Okay. I'm not getting - can I see checks from people who think it better goes in the advice section? And Xs from people who think it better goes in the commit and core values section?

Okay because (unintelligible) were willing to commit, it looks like putting in an article 11, so for this afternoon, I am going to - I don't want to close this discussion off before people have a chance to read the language that Malcolm has put in the chat. Did that change anybody's mind? I don't see so.

Okay, so what I will do for this afternoon is I will make that change but I will put - I'm going to clear away most of the comments here and I will put Malcolm's alternative language up here for our discussion this afternoon. And what we're hoping to do is come to you know, closure on the mission commitments and core values today at our group call.

Okay that was my agenda for today. Any other business? No other business. You get 16 minutes back of your life. Thank you everybody for participating and thanks to everybody for really wrestling to try and come to terms with some of this language. As I see it, the two discussion points are the human rights issue and the core value 8 and the GAC's objection. Okay tomorrow -- the call tomorrow, we need to talk about the independent review. So everybody come with your thinking cap on because we really have to figure out how we want to proceed on that. Thanks everybody.

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