

ICANN

**Moderator: Brenda Brewer
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1:00 am CT**

Coordinator: Recordings started. You may begin.

Mathieu Weill: Thank you very much. So this is Mathieu Weill. Welcome everyone to this CWG Accountability meeting Number 50. Yes, that's 50. And I'm particularly glad to be back with all of you to celebrate his 50th meeting after a very good and refreshing summer break for me. And it's been a busy period for the rest of the group I know.

And as soon as I'm back, and I have to apologize for I will have to leave this call after one hour to manage a ccNSO-dedicated webinar on that CWG Accountability so (unintelligible) which is called after only one hour.

Meanwhile, you have seen the agenda in the notes. And I would like to have a roll call. We will use the A/C room but obviously if there are dissidents which are only on the audio please make yourselves heard so that we can add you to the roll call.

Greg Shatan: Hi, this is Greg Shatan. I'm only on the audio at least for the moment.

Mathieu Weill: Thank you, Greg. Anyone else? I'm also asking whether there is any update to statement of interest at this point? Currently not and so we will move to the rest of our agenda which is of course focused on the feedback we are receiving in the public comments.

One discussion we wanted to raise with the group was about the preliminary ICANN board comment we have received. I think it was posted on Friday. Dan discussed this between co-chairs and rapporteurs I think it was a little bit of consideration and a bit of time from our group looking at this particular comment.

So the good news about this is that obviously the board is involved. They are putting serious effort into this. They have already been able to produce initial views that are obviously very much scaling up the rapids. And of course they are reminding everyone that they are supportive of the overall approach.

They are also announcing three next steps which are important for us to be aware of. And it's a good thing that they're making us aware of these steps. Step Number 1, so you will find these three next steps at the beginning of Page 2 of the document which is in the A/C room, the three bullet points.

Number one, they are seeking external counsel input and are intending to post them in the public comment forum. Number two, they are planning to reach out to third-party experts on corporate governance to obtain an analysis of the impacts of the proposal. And number three, obviously they will use these briefing materials to develop their own set of comments. And their announcement is that this should be during the timeframe of our public comments.

They are also providing useful examples of some concerns, requesting more details on the community forum comment expressing a concern about the change of role of the advisory committees and the different powers that they would be granted. And it concerned about the risk of paralysis of ICANN and the lack of predictability of decisions to the IRP enhancements especially the timelines, issues and so on. So that's the four - there's some substance, it's not only processing this preliminary review.

A discussion we've had among co-chairs and rapporteurs was our initial reaction was that of being a bit concerned that the text -- because of something that's not mentioned in the preliminary comment which is a discussion with our group.

As you know, we had reached out to the board around the Paris meeting to have a discussion with the full board. That was not possible to find a timeslot would suit their agenda. We reached out very early after the publication of the public comments to find a slot with the board just like I will be doing with the ccNSO after this call and discuss with the whole board on this. And it hasn't been possible at this point to find time.

So we are they concerned that instead of the dialogue, the fruitful dialogue that was tentatively discussed about in Buenos Aires and you will remember this meeting where we all agreed that we had to be more proactive on dialogue. And so this dialogue is not really taking place. And the fact that the board is announcing - is getting basically extra no counsel plus a third-party expert on governance might turn the discussion into an expensive battle of experts rather than a dialogue.

And that's probably -- that's a source of concern for us in terms of protecting the process and ensuring that it is delivered on time. And so those are the

thoughts we had at this point and wanted to get feedback from the group on before we see how we can move the dialogue further with the ICANN Board. I noticed -- I can't see Bruce Tonkin on the list - on the participant list unfortunately. Would have liked to turn to him as the board liaison that he's obviously not attending. But would like to collect feedback from the rest of the group obviously at this point of the call.

And I see Kavouss' hand is raised so please, Kavouss. Kavouss, if you are speaking we cannot hear you.

Kavouss Arasteh: I don't see that comments of the board negative nor I consider that it is in a way that we should be concerned or see this in concern. Part of the comments are positive, part of the comments talk about that their prerogative rights to ask counsel, to ask advisors to advise them on various issue that is -- I think should not criticize that.

Part of the comments is relating some sort of warning that saying that we should do something to be successfully conducting or concluding transition without destabilizing or visioning the delicate balance. The more important issue they referred to is delicate balance in three parts of the report or of the comments and we have to seek what the delicate balance is that they are referring to.

This is the area that we should be a little bit cautious. Other parts of the report they talk about the impact on the budget and cost of these arrangements about the panels, about all of these things. One thing that I agree with you that they have been involved fully in everything and we expect that some of these comments should have been sent to our meeting earlier. But no matter, still we are in the comment - in the comments period.

Perhaps at the end of the discussion when everybody expresses views I may propose something to resolve some of the issues during the public comments. So generally I don't think it is negative. Thank you.

Mathieu Weill: Thank you, Kavouss. Athina.

Athina Fragkouli: Yes, hello everyone. Actually I agree with Mathieu's concern and Kavouss's concern. Maybe he didn't express it as a concern but it is a concern in my opinion because reading this gives me the impression that such an initial feedback should have been given earlier in the process. And, well, since they have been involved from the beginning I don't see why they haven't already set like expert opinion on the matter.

And of course they should do it sooner or later. But I'm a little bit afraid that this will delay the process. I would expect such feedback much earlier and such, you know, seeking of external expert's opinion much earlier. I'm very much concerned what does that mean? Does that mean we're going back on the table if the external counsel thinks so? Are we going to start from scratch? What are we negotiating, you know, here? I would like to hear your opinions on this. Thank you.

Mathieu Weill: Thank you, Athina. And, let me say now the question we can formally answer in place of the board. Jordan, your next.

Jordan Carter: Thank you, Mathieu. Jordan Carter here from (unintelligible). I kind of shared the broad concerns that we've heard by Mathieu as well as our co-chair rapporteur group who discussed at this morning. But my concern is not a particular point which is this proclaimed desire to (unintelligible) discuss these issues in BA and in Paris hasn't really been followed through. I can't - I don't have the attendance logs, I don't know if Bruce has been on recent calls

but if he has he hasn't been all that vocal that I can recall. And he's our key liaison with the board.

I think it's good that the board is using the public comment process so I'm pleased that they have put something in early but I'd agree with Athina that the nature of what they've put in could have been helpfully added almost as soon as the public comment thing was open, the public comment period was open.

I hope we can get to the bottom of what it is the board really want. And so I guess I'd add if we can sort of ask them to have the conversation that we've been trying to have with them if they've got time to prepare remarks like this they've probably got time to have a conversation about it and make sure that any additional bytes that they get in terms of corporate governance specialties or any other points are going to be done in a way that's most constructive as for the effort because, you know, all of the attention in the community transition is now on the accountability question in this proposal.

Its right that it should get a period of scrutiny and it's natural that the board as an entity that would have a lot of authority, this area of policy if there were no accountability changes, would have a natural (unintelligible) desire to protect its own level of influence and control. And we just have to have that conversation I think openly and constructively with the board and make sure that if they are putting in further comments by the end of the period they are doing so with a really (unintelligible) understanding of the intent behind what's written in the report. Okay.

Mathieu Weill: Thank you, Jordan. Roelof.

Roelof Meijer: Thanks, Mathieu. Roelof Meijer for the record. Yeah so slightly different opinion. I think it's far too early to raise any concerns. I think it's perfectly normal that the board from its key role looks very very careful at this (unintelligible) and seeks its own advice on it because if it implements what we propose and for some reason or other it won't work they will be the ones that made ICANN crash and made the model crash.

So I think we have to be careful that by expressing concerns now in this group we repeatedly and repeatedly that we don't kind of create a bias which will make it very difficult to engage with the board in an open and constructive manner. So my opinion is this is a perfectly normal reaction. I think it's quite open. They are telling us what their major concerns are from the first look at the proposal. They are telling us what their steps are that they are going to take. I think it's a good start. Let's just wait and engage when the time is there.

Mathieu Weill: Thank you, Roelof. Alan.

Alan Greenberg: Thank you very much. Alan Greenberg speaking. I share a lot of the concerns that have been raised. And when I read this I too had a somewhat negative, you know, concern that we may get something very negative out of it - may. On the other hand when I look at words like we must be absolutely confident that the new model will be as or more effective, stable and capture proof than the current one, I can't argue with that.

You know, in our wisdom we have made some recommendations or making recommendations - immediate wisdom or maybe it's groupthink, and I think what we've come up with needs to be looked at very carefully. And they say they're going to do that and I think that's a really good thing.

You know, how we're going to handle it if they end up identifying some real problems with the model we've come up with is going to be really interesting. But on the other hand if there are real problems we need to know about them and we need to know about them now. It's not as if we've had a stable model for the last six months that they could have critiqued. You know, we've been a very moving target and we finally have something that they can look at and they are. So I think we're going to have to go with it and hope nothing comes out of it or if something does come out of the negatives that we can adjust. Thank you.

Mathieu Weill: Thomas on your next.

Thomas Rickert: Thanks very much, Mathieu. A lot of points have been made already and I'm not going to repeat them. And Eberhard as mentioned in the chat how does this help us with our work. And I say that depending on the outcome of what the board provides, .com that the board provides us with can either be extremely helpful in disastrous. And I think it can be extremely helpful when it comes up with critiques that constructive and that helps us identify potential weaknesses in our proposal.

I remember that the board has raised -- have raised at the time the issue of derivative lawsuits and statutory claims with the reference model so we listened to that, we fixed it. And I think that's good.

I think that would be extremely bad if the board came back to us in the public comments with critique or even a counter proposal for doing things entirely differently, not better and differently and potentially based on misunderstanding and information that did not get access to.

Certainly everyone is welcome to provide public comments but I think the role of the board is somewhat special. Many of us have vivid memory of that statement that has been made by Steve Crocker and that was picked up by press and taken out of context. So I think we need to be careful about the overall impression of this dialogue. And therefore I think the only point that I would caution is that we should try to avoid that the board signals to the outside world that if either trying to manipulate the outcome of the community discussion or that it is trying to derail the transition and thereby the work that we did.

And therefore I think it would be good for our group to go back to the board and acknowledge that they are putting effort into this but at the same time making the door wide open for dialogue and by dialogue I would understand that we have a long enough meeting including the board, including our group, including their lawyers and including our lawyers so that even if there are misunderstandings -- potential misunderstandings on the legal side of things that they can be sorted out straightaway before we put something in writing or the board put something in writing that could raise confusion with the outside world.

That's as far as the public on that side is concerned. So I hope that you will agree with me that we should be forthcoming and welcoming to the board and suggesting dialogue to be had - to be held before the board issues it's common to avoid these complications.

The second point is on the advisors, corporate governance advisors. And I see some difficulty there - and again I think it's not for us to tell the board what it is supposed to do. I think we should share concerns that we see with the board. And this is my personal opinion and let's see whether others share my concerns. But ICANN as a corporation had come up with the idea of having

public experts, then the (PEG) was convened and we got advisors that helped us with our work.

You will remember that we did not go far enough in the eyes of some advisors with the proposals that we're coming up with. And now I think two scenarios can happen, the board hires independent experts that agree with us not potentially having gone far enough, and then, you know, I think the board might be disappointed because we even have more invasive changes to discuss with the community and the board.

Or, and this is the bigger risk, if the consultants say that we went too far I think it would be perceived by the outside world as the board trying to get advisors that ask for last change and thereby doctor the recommendations that the community felt important to make.

So I think this is something that we should bear in mind. It could have a strong signal to the outside world. And I think we would be well advised to at least advise the board about the unintended consequences. I have no reason to doubt that they are doing what they're doing with the best intention. But I think we should at least flag this. So I think I should pause here and open it up for further discussion.

Mathieu Weill: Thank you very much, Thomas. Before turning to Tijani and Sebastien, let me just take stock of what I would see as a way forward on some common ground. I think we need to recognize that of course the board needs to take their own counsel and external views on such important matters. And that's perfectly legitimate.

There would be value though in stressing the need for a meeting with the board and various legal experts because the concerned that I'm hearing is that

legal experts working into silos on their own side with their own briefing materials if they don't communicate with each other, if we're not in contact with the legal experts from the ICANN board, there's a very high risk that the opinion is based on misunderstandings and that we waste precious time. So I think this point could be raised with the ICANN board right now. And that would avoid expensive back and forth after that.

I think that would be the items that I would suggest that we communicate to probably Steve Crocker and Bruce Tonkin to make sure the dialogue that we were calling for in Buenos Aires and we all agreed on takes place. And, Tijani, you're next.

Tijani Ben Jemaa: Thank you very much, Mathieu. Tijani speaking. Do you hear me?

Mathieu Weill: Yes, Tijani.

Tijani Ben Jemaa: Thank you very much. So I am less pessimistic than Thomas. I don't think there would be a disaster. I don't think there is a problem of misunderstanding because we had always Bruce with us; we had always Chris with us. In Paris with had a lot of members of the board attending the meeting. So I don't think they don't understand what we are doing.

I don't see their comments as negative, it is normal. It is their duty, it is their responsibility to be sure that the transition be - will put ICANN in a better - and so good situation or a better situation than now. I do agree 100% with Thomas about the dialogue. Yes, we need the dialogue with the board now before the issue that comments.

The board will have some - I don't know to the extent that as...

Mathieu Weill: Tijani? Are you still here? I think we lost Tijani. So while - while he tries to rejoin the call and he will be provided an opportunity to finish his intervention later, I will turn to Sebastien. Sebastien.

Sebastien Bachollet: (Unintelligible).

Mathieu Weill: Sebastien, we can barely hear you.

Sebastien Bachollet: (Unintelligible).

Mathieu Weill: Seems like a mic issue. Your sound is very low.

Tijani Ben Jemaa: I am back.

Mathieu Weill: Okay. So we're experiencing some audio issues. So Tijani is back so let's have Tijani finish his intervention. Sebastien, your audio was very low so if you can fix that in the meantime or put your intervention in the chat...

Sebastien Bachollet: Is it better now?

Mathieu Weill: Yeah, that's better. So let's finish Tijani and then turn to you, Sebastien.

Sebastien Bachollet: Yes.

Mathieu Weill: Tijani.

Tijani Ben Jemaa: So I said that I agree 100% with Thomas about the dialogue with the board. We need to initiate it or perhaps to make it happen as soon as possible. We have to be positive ourselves because I don't think the board has any interest

in making the system collapse or the - our work be put back and not be well considered.

It is not a problem of, how to say, that phase but I think it is a concern in the board that everything has to be in a good way and no problem will happen after the transition. Thank you.

Mathieu Weill: Thank you Tijani. Sebastien.

Sebastien Bachollet: Thank you very much. I'm sorry for the mic issue. I hope it's better now. Yeah, I was thinking that after there's so much board member participating to the meeting in Paris the dialogue was in a good shape but it seems that it's not totally the case. And we have to find out how we can improve that.

The comment period I don't think it's a good way to do it. First of all because it's not too much set up unfortunately to be a dialogue and back and forth and answer to the comments and discussion about those comments. And it really needs to be - we need to find a better way to do that.

In the same time it's our proposal we, as a group we just finalize this proposal now and we changed our proposal between the first and the second comment phase. And we can't ensure that we will come with a very stable proposal for the - to the end. A lot of people think that it's a done deal but you have a minority statement, you have comments could be in disagreement and the board can be one of them.

We will have to see how we handle that and maybe disagreement comments from wherever part will be useful for the group. And just take that at a good way to go. And maybe we need to try - I know it's not easy to have them more involved in the next phase. Thank you.

Mathieu Weill: Thank you, Sebastien. And Becky and then we'll conclude this item. Becky.

Becky Burr: Thank you. And good morning, everybody. I just wanted to point out that actually the next step that's spelled out in the second report at least with respect to the IRP is actually to bring together a group from this CCWG and our counsel and ICANN and its counsel to start working out the details of the IRP and the rules and procedure.

So in some way, you know, the general sense is consistent. But I do share Thomas's concern that getting into sort of battling expert reports could be extremely damaging and counterproductive. So at the very least we should kick off that process before - and use that process to make sure whoever ICANN is using actually understands what we're talking about before we get competing legal memos that could put ICANN in a very, very difficult position.

Mathieu Weill: Thank you, Becky. And I think it was a fruitful discussion with - had very useful arguments and the position is quite balanced. The way forward - the action item I'm suggesting would be that the co-chairs draft a co-chair correspondence to the board chair. That would obviously recognize the need for the board to take their role independent legal views in the process but also urge for closer dialogue on these matters including the various legal experts to avoid the counterproductive expert discussions in the next few days or weeks.

And so we will draft this, circulate it on the list as suggested by Kavouss on the chat. And provide for some time for you to chime in on this. And then obviously send it to the ICANN board and obviously we will also provide advance notice to Bruce Tonkin as the board liaison about this process and see what they - to attend this particular meeting.

And with that we'll close this agenda item and move to the next agenda item which is going to be chaired by Thomas.

Thomas Rickert: Thanks very much, Mathieu. And we're now going to discuss the CWG requirement on separation or the - to be more specific a separation cross community working group. And there has been a question coming up based on the report, the ICG report, which states that the separation process is kicked off by the chartering organization establishing a cross community working group based on a procedure proposed by the CCWG. And in this regard CCWG being our cross community working group.

And I know that we have Avri with us on the call today. And Avri was instrumental in drafting that portion of the CWG report at the time. And maybe Avri can chime in and inform this discussion. But the question in front of us now is - and I can say that we discussed with this with the CWG leadership, is whether our group should actually come up with a specific process to go into our final recommendations specifying how this cross community working group on separation is being set up.

Or, in the alternative, whether we could just clarify that this cross community working group is set up as the ICANN community does set up other cross community working groups at present. And at present this is done by actions of the chartering organizations so there is no specific process that is needed to be defined. And so we could lean on and so we could lean on what is there already or we could write up a new process.

Certainly it would be advisable not to build new processes where we can rely on existing ones. Nonetheless, we felt that this was a discussion that we need to have with this group and the CWG leadership has indicated that they would

be fine with us discussing this matter and reaching out to Avri as well. So that's one point.

And before we move to the queue maybe Avri could chime in if she wanted to before we move to the queue. So I guess the question that we have to discuss is do we think there's the need for a dedicated process for setting up the cross community working group on separation or can we use the process that we already live? And apart from that there is the question of a charter for such working group and who does or who writes up such charter?

So I think I should pause here. Avri, would you be willing to or would you like to make some other opening remarks before we go to the queue?

Avri Doria: This is Avri speaking. Thank you. I really don't have that many specific comments to start that. There was a certain ambiguity left in how this separation process would be going because there was sort of, I believe, an assumption that in making a recommendation for moving from the review from the - I guess whether it was the - probably a special function or review, that in making that recommendation there would be recommendations about how to proceed and such.

My first question I think it's almost overkill for us to define at this point what that group would look like. I would have thought that it's just sufficient to say that, you know, perhaps that recommendation should be dealt with at that time given the nature of discussions. But us talking about it from an accountability perspective and how that would be accountable is probably useful. But I guess the - and I'm sort of surprised that we have this request. Thanks.

Thomas Rickert: Thanks very much, Avri. Let's now move to the queue and the first one is Becky.

Becky Burr: Sorry, that's an old hand.

Thomas Rickert: Okay, Kavouss.

Kavouss Arasteh: Yes, part of what I wanted to say is already in the chat. I believe that at this stage first of all it is too early to talk about separation mechanisms or process. And it is too early that CCWG get involved in this matter. I think CWG is still alive. If they seek advice on CCWG let us have something from them. I don't see any problem in the ICG report, no anxiety has been expressed but only providing information.

So I suggest that you co-chair talk with the co-chair of CWG whether there is a need that CCWG get into the business at this stage. So I don't think that we need to create additional jobs. We have ample job to do in the next few weeks therefore I suggest that we do not proceed further on this matter. Thank you.

Thomas Rickert: Thank you, Kavouss. Cheryl.

((Crosstalk))

Cheryl Langdon-Orr: I'm not sure if you can hear me or not.

Thomas Rickert: Cheryl, the audio is very bad. We can barely hear you.

Cheryl Langdon-Orr: Okay. I'll (unintelligible).

Thomas Rickert: Cheryl, are you still with us? Cheryl, we can't hear you but the background noise is gone as well so I assume that maybe your line has -- line was disconnected. If you can still here then please type your comment into the chat

that would be much appreciated. And if you get back on audio we will take you back in the queue at any time. Alan.

Alan Greenberg: Thank you very much. I guess I have a question. Can someone point us to the exact place in the CWG report that says this responsibility is ours? There are a number of places where they make reference to the immunity mechanisms that we are establishing and that he should be a similar mechanism in this new special cross community working group. But I can't find the reference that says we are supposed to design the process. So I would really appreciate knowing exactly what it is we are working to. Thank you.

Thomas Rickert: Thanks, Alan. I will try to dig out the exact reference for you. But let's hear Steve know. And, as Steve, if you have it at hand please make that reference.

Steve DelBianco: Thanks, Thomas. It's Steve DelBianco. And when I asked staff to do was to display Page 14 of our second draft report. And so if any of you scroll to Page 14 you'll see that we have noted before that process to be there deferring to CWG for what the requirements are that process would be.

And folks in the Business Constituency last week were drafting their comments on the ICG proposal and right away asked me well the separation cross community working group has to be approved by GNSO, ccNSO, the board and the community through a process defined by the CCWG.

So, Alan, it does say that the process will be defined by this the CWG as part of the ICG proposal. I'll go over there and find the page number of that reference. But it because we were trying to comment on the ICG proposal. And there's a small risk that ICG thinks that we are handling it and CCWG thinks we're waiting on ICG for more detailed requirements. This is not a controversial element that we shouldn't make it seem as if one hand doesn't

know what the other is doing. And I'll look for that reference and put it in the chat. Thank you.

Thomas Rickert: Thanks, Steve. Alan.

Alan Greenberg: Thank you. My recollection - and the reason I'm asking for the specific reference is my recollection is that at the time the CWG report was drafted they did not know, quite reasonably, exactly what mechanism we were talking about to exercise community rights. They didn't know what groups are going to be involved, what the balance is going to be or anything like that. So they made a vague reference to, you know, something in accordance with what we're doing.

My recollection again, and that's why I want to see the exact words, is I suspect that if they knew what we know now they would have written something very specific there and not put it - and not made it seem like our responsibility. That's why I think we need to make sure of exactly what we're working to. Thank you very much.

Thomas Rickert: Thanks, Alan. So we will send out an e-mail to the group with the references included therein. I'm not sure, Steve and Kavouss, whether these are old hands or new hands, I trust they are old hands so let me know if they are new hands. I think we don't have to conclude this topic now. But what I hear is that you want to see the sources, which is perfectly fine. We understand that this part of the CWG report has been drafted at a time when our work was not as far as it is now.

So that would suggest that the CWG just put it in there as a placeholder and not to interfere with what we're doing. So I think my original suggestion stands that the weight we can deal with this would just be leaving it to the

normal or the currently used processes of establishing cross community working groups and that would be pretty much in line with Kavouss suggestion not to do any further work on it because we would just make a clarifying statement that if and when the cross community working group on separation is needed that should be set up in accordance with how the community sets up cross community working groups.

At the same time, I read in the chat that the charter should be worked on, if need be, by the CWG and so we could also put suggestions in writing for the CWG and ask them to let us know whether there is anything further that they require from us at this time.

So my suggestion would be that we sort of put this current status of our discussion into an e-mail and we put it back on the table next week for confirmation of that approach or alternative approaches that you suggest. I see Avri's hand is up so Avri please.

Avri Doria: Thank you. Avri speaking again. I just wanted to point out that in the ICG report at Paragraph 1390, which is Annex L, the separation process, is where you see the paragraph that basically says that the IFR, although I was assuming it would mostly be one of the special ones, not one of the, you know, regular ones, would recommend such a group and that it would be based upon models developed from the CCWG.

I don't see, and as I think of it, don't remember us having any dependency on the accountability group actually doing it. It was more for, as was sort of indicated here, models of cross community working groups. But I believe that the expectation was that the IFR in recommending the separation process, and should it ever get to that point, recommends how the group is formed and that then goes to the various ACs and SOs and the board for approval.

We have not defined doing that as one of our mechanisms for the community for, you know, the single-member community mechanism so I'm not sure how we would fit it into that unless we wanted to give it that kind of power.

But I don't think that was ever recommended by the CWG nor do I, at the moment, see a reason for us to go in that direction. But anyhow, it's Paragraph 1390 in the ICG which basically discusses it. Thanks.

Thomas Rickert: Thanks very much, Avri. That was very helpful input. And I suggest that we get back to the group on the list summarizing where we are at the moment so that we can now move to the next topic. And again, we're not closing the discussion on this item today, which allows us to go to Item Number 4 on the agenda which is the human rights discussion and for that I gladly hand over to Leon.

Leon Sanchez: thank you very much unless. This is Leon Sanchez. On the human rights discussion we have had some progress in teeing up the discussion. Nigel Roberts was kind enough to provide us with two documents to feed the discussion. We have on our screen one of the documents that was set up by Nigel. And we also received the first draft on the high level objective for this group. And we will be holding a call later this week, maybe on Thursday or Friday. We are in the process of closing the Doodle polls for this call.

And what we have on our screen is a background paper. As I said it was set up by Nigel Roberts. And we can see that this paper establishes common ground for our discussion. It takes us by the hand on the origins of the terminology, definitions, the different approaches that are taken on the human rights and fundamental rights also. And it also gives us a walk through the different types or classifications of fundamental rights either absolute or qualified.

And of course as I said it sets a common understanding for us to move forward in discussing the issue on human rights.

As I said, we have also first draft of the high level objective for this group. And I don't know if staff has it handy so we could also display at this point in our screens. But this was also sent by Nigel earlier. And here it is in our screens.

So it reads, "Recognizing ICANN's special role in the functioning of the worldwide Internet, further recognizing ICANN's unique nature as a multi-stakeholder private sector led organization, having in mind that commitment of the corporation set out in ICANN's Articles of Incorporation to carrying out of its activities in conformity with relevant principles of international law and applicable international conventions and local law asserting that it was just to ensure the same level when acting within its distinct mission of rights for Internet users and businesses that would be expected of it were it a state actor hereby affirms its supports without reservation for the United Nation's guiding principles of businesses and human rights and intent developed bylaws and policy to give it full effect within the work and defined mission of the corporation."

So this is a starter for our discussion. This doesn't mean that this is the final text. As I said, we need to go through these and the paper that Nigel prepared for us for feeding the discussion. And I see Nigel's hand is already up so I would like to turn now to Nigel so he can expand on the explanation of the two documents that he kindly set up for us. So, Nigel, you have the floor.

Nigel Roberts: Thank you, Leon. I'll be extremely brief. And the - what's before you is a starter discussion. And I hope it does exactly that. And I look forward to

hearing from members on the call what it provokes them to think and say. But before that I'd just like to thank you for the comprehensive and - comprehensive introduction. And so back to you.

Leon Sanchez: Thank you very much, Nigel. Next in the queue I have Tijani Ben Jemaa. Tijani, would you like to make some comments?

Tijani Ben Jemaa: Yes, thank you, Leon. Tijani speaking. May I or may we have those documents? And can you - or at least tell us where we can find them?

Leon Sanchez: Yes, Tijani. I will circulate both documents to the general list so everyone can have a look at them. And you are very welcome to join the discussions that will be undertaken in the calls from the subgroup. But, yes, I will make sure that you have these documents in hand. Next in the queue I have Kavouss.

Kavouss Arasteh: Thank you very much and thanks indeed very much to Nigel for providing such an in depth study or search for documents. But I remember Nigel at the previous session all had mentioned that we should be precise, concise and high level. So I am waiting to see what we could get out of this very, very useful document. But putting something at this stage and as Jordan mentioned, we shift the detailed discussions for Work Stream 2. Thank you, Nigel, again.

Leon Sanchez: Thank you very much, Kavouss. And as discussed in our last call, the agenda for this subgroup was amended to include not only the discussion on these documents that Nigel set up for taking the discussion but also on providing or discussing the rationale and the explanatory notes for the high level statement that we come up to at the end of the discussions.

We need to remember that these explanatory notes would not be something to be included in the bylaws itself but rather just the explanatory notes that

would accompany the text within our proposal. So at this stage I don't know if there are any other comments or questions with regards to these two documents that we have reviewed with regards to the human rights discussion. I see Alan Greenberg has a green tick and I don't know if that's a - if that was intended to be a hand or an agreement.

Alan Greenberg: It was a green tick from a very long time ago. Sorry.

Leon Sanchez: Okay. So if there are no other comments we can have an action item for myself to distribute these two documents to the general list. So anyone will have them handy and can go and - can go through them and review them. And well of course we will keep you posted on the scheduling of the calls later this week and the next week and we welcome your input and participation in those calls.

So I will now turn back to Thomas for the next agenda item.

Thomas Rickert: Thanks very much, Leon. And agenda Item Number 5 provides an opportunity for you to share feedback that you got from your respective groups on our second report. And you will find this agenda item on the calls to come. Certainly we do have the possibility to file written comments. But this is more or less an early warning system for us so if we spot any issues or any concerns that we can maybe resolve by explaining more or explaining better than we think we should note.

And I would like to open the floor to the group to share feedback that you got from your respective groups. And the first in line is Steve.

Steve DelBianco: Thanks, Thomas. It's Steve DelBianco with the Business Constituency. Initial feedback has been pretty positive. They loved the simplicity of the community

mechanism as sole member. And I did want to share about an hour-long discussion I had today with members of the Business Constituency and Intellectual Property Constituency focusing just on the proposed mission and core values and the extent to which they might limit ICANN through an IRP or some other mechanism but limit ICANN's ability to enforce the contracts that it already has and to make contracts that are enforceable on registries and registrars.

I've alerted Greg Shatan and Becky Burr to the specific provisions of that. Probably isn't any need to get into the details here on this call. But the good news is that people are reading in detail the language we've come up with and trying to figure out unintended type consequences where perhaps a future ICANN could use that language to prevent ICANN from doing the same kind of compliance that ICANN's doing pretty effectively today.

Compliance with policies such as the UDRP, the URS, the RAA, Whois requirements and also PIC Specs, Public Interest Commitment specifications made by registries. So good feedback so far from the BC and IPC. But definitely want to make sure that we don't get in the way of good compliance. Thank you.

Thomas Rickert: Thanks very much, Steve. And there's a queue forming. But since we had Becky - and I think Greg - thinking about this earlier I would like to give you the opportunity to maybe chime in before others comments to set the record straight if possible on our thinking or non-thinking about this unintended consequence of our work on the mission commitments and core values. So, Becky, if you would like to take the floor please do, otherwise we move to the queue. Same goes for Greg.

Becky Burr: So I continue to believe, and others have shared that - expressed the same opinion that, you know, the saying that ICANN has to comply with its mission and core values and that it can't regulate has no impact on the commitments that are made voluntarily in the contracts.

Greg carefully read through the language and did find one potentially ambiguous reference because we say in the bylaws that they will not regulate the unique - the content that they carry. And I think we mean that the services provided in connection with the unique identifier. And so Greg has proposed a two-word change to the core values in that respect that I think - or to the mission statement in that respect that I think is fully consistent with everything that we've talked about.

I think we can provide and we did provide a sort of fuller discussion about why we think this is not a problem in the comment tool. And so I wonder, Steve, if that is of help or if you need something more detailed than that.

Thomas Rickert: Thanks very much, Becky. Let's move to the queue now, so we have Kavouss and then Alan.

Kavouss Arasteh: Yes, we have the - some preliminary discussion made at least within the GAC. We have discussed at least the preliminary three areas, one area is - starts with 18 core value 7, the new one, the working group dealings with that and working I hope it would have some result, I hope.

Second issue is the voting procedures and voting power of the GAC, participation in voting or not they are preferring another document now under the discussions. There was some unclarity on the way that it was suggested. I made some clarification on that. But they may have some views on the Paragraph (337), 38 and 39 regarding the one year that the advisory

committee decides to come back and so on, so forth. They are thinking of GAC meeting but not one year but it is just preliminary discussion, not yet even concluded at the working level.

The third issue that I raise is a discussion that I had with Becky - a long, long discussion and that was the non-binding effect of IRP on the GAC advice and the (unintelligible), very sorry, she confirmed in a mail to me that yes that is true. And I have communicated with her permission now, what she send to me in the email with respect of non-applicability of the IRP binding effect on the GAC advice to the GAC mailing list to be shared that that is what I have received from Becky. And they need not to be worried about that.

But these are still under the discussion in the mailing list and the chair or the rapporteur of that group is working. What I advise them that if possible they should communicate either individually or collectively during the commenting period but not waiting for the GAC 54 because that may be too late. Thank you.

Thomas Rickert: Thanks very much, Kavouss. Alan.

Alan Greenberg: Thank you very much. ALAC and At Large has been doing a lot of work on this although as we've said before the current model we had is not what we would have preferred. We can live with a lot of it. We do have a number of specific problems and one of them would be helped - during one of our last meetings I asked that we have a table of the core values and principles from the current ones to what we're proposing in this version which is not in the - in our current proposal.

And I think Becky or somebody said they'd get one. I haven't seen that yet. If indeed someone's working on it can we have it soon please preferably before

the end of the comment period so that we can actually do a comparison of that is changing from the current live bylaws to what we're proposing that would be very, very helpful. Thank you.

Thomas Rickert: Thanks very much, Alan. And rest assured that the synopsis of the original bylaws or the current bylaws in comparison to the second report is on its way. And you can expect that to be going live very soon so you don't have to wait until the end of the public comment period.

So that's helpful advice. With respect to the first point that we discussed on the question raised by Steve with respect to potentially - potential limits on ICANN's possibility to enforce contracts, there's a discussion going on in the chat. So I suggest that Becky and Greg further work or think about revised language for that. And as soon as we have that I think we should reconvene with this group and publish the update so that those that were concerned can rest assured that their concern is being addressed. So clarifying language on that one is on its way.

Kavouss, thank you very much for giving us an update on the GAC's thinking and the sub teams that have been set up inside the GAC. I think my question would be - and that doesn't only go in your direction, Kavouss, but also for the other government representatives on this call, I know that there has been and still is considerable discussion surrounding Stress Test 18. And I was wondering or we were wondering whether there is any clarifying language that we could offer that could maybe help this discussion to be concluded.

You will remember that we came up with alternative language and additional language in the Paris meeting which got some traction but not sufficient traction for us to justify a change in our report. But if you got feedback from

your respective groups and if you did have language that could help bridge the gap between the different views I think that would be most appreciated.

Kavouss, you've raised your hand again I guess. And the floor is yours.

Kavouss Arasteh: Yes, Thomas, we don't have any language yet agreed even within the group dealing with the issue of Stress Test 18 and core values. But we are working on that very hard. Thank you.

Thomas Rickert: Thanks very much, Kavouss, again. And this doesn't only go for the Stress Test 18 topic but if you see any opportunity for our group to help remove concerns by offering additional explanation or clarifying language that doesn't necessarily change the essence of our report, then I guess that would be much appreciated because we could hopefully smooth them out some of the wrinkles that we still see with this report.

Good. Alan, you mentioned that there are some issues that are discussed inside ALAC and At Large. Could you give us an indication of where these concerns are located? I don't want to put you on the spot but if there's anything that you could share with us I think that would be appreciated.

Alan Greenberg: I can easily share. The current core value - let me pull it up - yeah, the current Core Value 5 says where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment, the new version simply says depending on market mechanisms to promote and sustain a healthy and competitive environment in the DNS market. In other words, it's saying we will rely purely on market mechanisms and not make any judgment call but whether it makes sense or whether it's actually going to work.

And I don't know why those words got pulled out. They got pulled out of a number of different core values, the feasible and appropriate. It changes completely the business the ICANN is in from my perspective.

Thomas Rickert: Anything else, Alan?

Alan Greenberg: No, there's a couple - the ones I was talking about are two or three core values that have that phrase in where it disappeared in the new version. It may have been discussed at some meeting, not one I was at or not one I was paying attention to anyway.

Thomas Rickert: Okay. Becky, can you offer a response to that now or shall we take it offline?

Becky Burr: We'll take it offline.

Thomas Rickert: Okay. So, Alan, if I could kindly ask you to drop us a note on that to just confirm that our understanding of the concern is correct?

Alan Greenberg: Sure.

Thomas Rickert: And then we will make sure that Becky and team take a look at it and maybe we can also remove that concern quickly. Good, any more feedback from your...

Alan Greenberg: Thomas, I'll just note there may be some other ones like that but right now having to hold these documents up to the light and trying to see what the changes are it's really difficult.

Thomas Rickert: Sure. Sure. Understood. Thanks. Kavouss.

Kavouss Arasteh: There is two times, and this is the third time, the apparent discrepancies, non-coherence between various parts of the report. I gave an example with the power sometimes we have five powers, sometimes we have six powers, sometimes we have seven powers. And this is no consistency really. Sometimes we combine two powers together (unintelligible) the strategic plan.

Sometimes we separate the powers, bylaw we have two powers, fundamental bylaws. So we should have a systematic approach that if we combine two powers, for the instance, bylaw, we should combine them. And if we separate them we should separate (unintelligible) from the strategic plan so it is not clear.

And some of these cross references are not consistent with each other. And we have to be really clear about this issue and particularly there are some things that why the issue of one year for a advisory committee to come back if they want or to remember again of the voting for where this one year comes from and the - some people they believe that this is too long period, that if someone decide to come back they should wait of only one year.

So still these are the issue. But I raise that with you already and you said that there are something to be done. I don't know when we want to do that. It might have some impact on the community reply. Thank you.

Thomas Rickert: Thanks very much, Kavouss. And the additional proof reading or reading for consistency is on its way so that's work in progress. The - yeah, let's see are there more comments from the group? There don't seem to be any so we can now close this agenda item. Excuse me.

But again, if you get feedback from your groups with concerns let us know maybe even before you file your comments because everything that we can smooth out before that I think would be helpful.

Let's now move to the next agenda item and that is a quick update on ICANN 54. And Hilary is with us on the call today and she will give us an update on what we're going to do or what we've planned for Dublin.

Hillary Jett: Thank you, Thomas. Hi, everybody. I'm going to keep this nice and brief for you all. So just quickly I wanted to run through the sessions that we're looking at right now for ICANN 54 just so everyone is on the same page early on from here.

The first session that we're looking at would be on Friday the 16th of October which is going to be a full day meeting from 9:00 to 1700. This is going to be a working session so we can make sure that everyone is in a good spot before the meeting starts. After that we're looking at a possible engagement session on the Monday afternoon either with a joint session with the ICG or we're going to be doing something on our own as the CCWG. So that's still being worked out but definitely if you have some feedback or you want to get involved I would contact the chairs and have that kind of as a discussion.

And then the last session we're looking at is a session on the Thursday - the last day of the meeting, the 22nd of October. And that's going to be Monday - or on the morning, excuse me, prior to the public forum. And before a working session of the ICG and that's going to kind of touch base after the meeting to make sure kind of to see where we stand with the chartering organizations and see what else we need to do before sending those recommendation on to the board. And that's it. So if you have any questions

definitely reach out. And I'm going to send this back to Thomas and the chairs.

Thomas Rickert: Thanks very much, Hillary. Kavouss has raised his hand so, Kavouss, please.

Kavouss Arasteh: Yes, I think by ICANN 54 ICG should have received all the comments with respect to the public comment raised in the public comment area or period. I welcome the joint session CCWG and ICG because there might be some point that it is better we clarify that is help for us to finalize the proposal if we want to finish with the first public comment, if you go to the second one, I don't know. But even with the first one it'd be good if we could organize this joint session. This is my personal view, it is not ICG view, I have not discussed with ICG. But as a member of the ICG I welcome that joint session. Thank you.

Thomas Rickert: Thanks very much, Kavouss. Any further comments? Good, so I think we can then move to AOB and closing remarks. And, Leon, if you don't mind maybe you can take over that.

Leon Sanchez: Thank you, Thomas. This is Leon Sanchez again. Well - for closing this call I think we have some - I lost connection on the Adobe Connect room. But we have some action items for the chairs and for staff too. And I believe that the most important start that I can take from this call is from the human rights discussion. I remind you that we will be holding our calls later this week and next week. And of course encourage anyone that wants to join to those calls to join us.

And also to remind you that we need to be very mindful of reaching out to the different constituencies and different groups that we need to get feedback from. And so it would also be very good idea to continue to doing this reach

out so we can have as many comments in this second public comment period as possible. And at this point I would like to call for any other business in this call. Okay so seeing no one raising their hand or making their voice heard on any other business, we can now close this call. I thank you for your attendance we look forward to continuing the work later this week and on our next calls.

Thank you very much. And this call is now adjourned.

Becky Burr: Bye, everybody.

Man: Thank you, Leon.

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