

**ICANN**

**Moderator: Brenda Brewer  
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6:00 am CT**

Cheryl Langdon-Orr: Okay well we don't have a large roll up but it is the top of the hour. So what I think we might we do is just look forward to perhaps a couple of other people joining us. But we have an agenda which is fairly simple. We're going to continue on and develop and discuss our responses to the public comments, the high level review of the public comments we went through in the Los Angeles meeting, and Steve will be - if staff could be ready to put up the document that we've shared earlier.

Steve, because I'm driving -- well, I'm not actually driving; I'm a passenger -- I'm going to mute so I don't make life difficult for everybody and hand the proceedings over to you and we might as well just start straight in with picking up on our public comment sections. You might want to do a bit of review, however, on the - where we are in terms of using the public comment tool as well.

Okay, Steve, over to you.

Steve DelBianco: Thank you, Cheryl. Steve DelBianco with the CSG. I'm getting an echo. Brenda can help us with that. And, Brenda, if you could also please load the

document that we circulated last night, an analysis of public comments and the second draft. Thanks, Brenda.

This is a template that we first started using in Work Party 1 about a week and half ago when they started diving into the analysis of public comments. The notion was to first discover areas of consensus, then areas that needed, say, clarification and refinement, then to note areas of divergence, where the public comments diverged either from each other or from the CCWG's second draft, and then finally items that - comments that lead us to believe it's something that's bigger than just the stress team, right, that we would put to the entire Work Party 1 or the entire CCWG before putting it into our final draft or our next draft, I should call it.

So today's call is scheduled for one hour, and I think we can get quite a bit accomplished in one hour, although I don't think we can do everything, since it requires a fulsome discussion on what to do with stress test 18. And on that, we don't want to get ahead of the GAC, who was working on new draft text. And I don't really know the status of that, but I note that there are GAC members on the call that can help to update us.

Cheryl also mentioned the public comment tool, and a number of you have probably opened it. It's an Excel sheet that staff prepared, and it's extensive. And what staff did was extract the key bits from each and every public comment received and distribute them amongst the different topic areas in the CCWG's second draft report. And those topic areas are delineated as tabs in the Excel sheet. And there's a tab specifically for our stress test.

Now to make life easier for some of you that don't use Microsoft products -- Cheryl -- I extracted all of the tab for stress test as a PDF document and circulated that as the first attachment on last night's e-mail. So that might be

an easier way for some of you to look at the actual public comments that came in as we try to make our way through.

All right, I'll watch for hands to go up. Please interrupt at any time as we walk through this. And as Cheryl said, we began analyzing public comments when the CCWG met in Los Angeles two weekends ago. That process was not supposed to discover new ideas but rather to analyze the public comments. And in doing so, we discovered the elaboration of certain concerns about the stress tests. It was quite a lively discussion of stress tests while we were there.

There were 20 public commenters on the stress test tab. Nobody who made a public comment expressed any overall objection to the use of stress tests or the way in which we're applying them. I might also note that the U.S. government's General Accountability Office, or GAO, gave us I think a nice shout out in the report they submitted to the U.S. Congress last month, where they thought that the risk assessment analysis that was done by the CCWG was pretty comprehensive and a good model to follow.

All right, so I noted that there's not much for us to say on the areas of consensus, so let's go into the areas that need clarification or refinement. And it strikes me that there could be a few of them, but the most important one I noted that was we have stress tests on unintended consequences of change. And that's stress tests number 12 and 13, and then three brand new stress tests that were requested by Larry Strickling and the NTIA. Those are stress tests 33, 34, and 35.

Those particular ones asked the - let's say participants in an AC/SO might attempt to capture it by having over-representation. Number 34 was the stakeholders who tried to join an AC or an SO encountered barriers that discouraged them from participating. And 35 was unintended consequences of

operationalizing the group that formally only gave advice to the ICANN board, for example, the GAC.

So those were three stress tests, and a few public commenters suggested that our analysis should dig deeper. And here's what they said. I have it in the - from the text on the screen is that they expressed concerned over the potential rebalancing of power between the AC and SO community as defined by the method of participation in the community mechanism.

And they suggest that stress test 35, the last one I noted, may not have fully examined the potential impact of operationalizing the advisory committee. So it was a very gently worded public comment, but I guess it's an invitation for us to think whether our analysis in stress test 35 is truly complete.

So let's take a little discussion on that. Thirty-five again was NTIA asked us to look into the unintended consequences of operationalizing the group that had previously only given advice to the board, for example, the GAC. And the consequence would be, noted was that an AC who previously gave advice on a narrow scope of issues would affect voting on community powers that extend beyond the narrow scope.

So the narrow scope is a little harder to apply to the example of the GAC. The GAC has a broad scope on public policy, but the RSAC and SSAC do have a narrow scope, though it's possible that you might apply that analysis to them. We looked at existing accountability measures and said that they've already given Advisory Committee significant influence over ICANN's operations.

So the key to that analysis was - and by the way, Brenda, if you have a copy of the August 3 document, the one we distributed for public comment, we're

on Page 118. And if it's not too difficult to put up Page 118 in the Adobe, we can give this - our team a chance to see what it is we're looking at. Thank you.

On the proposed measures, there are about six paragraphs. And when Brenda brings that up you'll have a chance to look at it. Those of you who have the document in front of you, we're on Page 118. And we have to figure out what our response will be to this area for further clarification.

We noted in the analysis that we did is that the CCWG invited all ACs and SOs to exercise the community powers in the community mechanism. And an AC like the GAC could expand its scope of influence by voting, it's true, but there are several ways that the GAC would have a reduced ability to affect operations at ICANN, and we delineated stress test 18, core values restricting ICANN's scope of activities.

GAC chair would no longer appoint review team members and the new IRP would give the community the ability to overturn a board decision, to accept and act upon GAC advice if it could be judged that it was against the mission, core values of the amended bylaws. So our answer went straight to the example that NTIA gave us with this notion of operationalizing the GAC.

So I'll take a queue. What are some ideas the stress test team could do to address the public comment you have on the screen in front of you? Fully examine the potential impact. And if we don't know, then it might be wise for us to go back to the commenter who asked that. It was the Cyber Invasion LTD, and I believe that is (James Gannon). If any of you know the answer let me know, but I think it's (James Gannon). And I could go back and ask him to elaborate on that. Because it sounds as if no one in this particular group has any insights as how to react to this.

Okay let's move to the next item on here. So we have no action on this one yet. We're going to need to dig deeper. On the next item it's called a request for a new stress test. We had one that I noted so far from Elig, E-L-I-G. That is a law firm. They had suggested - and this was in their comments that they submitted on fundamental and regular bylaws. So I don't really know if it's even in the stress test tab.

But in the tab under fundamental and regular bylaws, they noted that we should do a new stress test about a deadlock over an approving of a change to the fundamental bylaw or blocking a change to the regular bylaws. So they describe in their comment that a deadlock would be a situation where the board and the community mechanism do not agree on what to do move forward with a bylaw.

So a bylaw has been blocked by the community and the board keeps resubmitting the very same bylaw and the community blocks it, or the board tries to propose a change to a fundamental bylaw and the community fails to approve the change, and the board brings it right back. I don't know that I would characterize that as a deadlock.

It strikes me that that's the community exerting the power that we're giving it in the bylaws. But I suppose it would be a very frustrating and embarrassing situation if it went over and over again on a change, especially if certain parts of the bylaws change enjoyed support of the community but some aspect of the change was reason enough for the community to exert its ability to block or fail to approve.

The first thing we'll do is take a queue. Are there any members who have a view towards whether we should take on this stress test and how we might analyze it? Good I see a hand up. Jonathan Zuck?

Jonathan Zuck: Yes, I guess my first impression is that it's not the same kind of deadlock we talk about in the context of a budget or something. I mean this type of deadlock is not likely to cause a situation of urgency and is going to be one in which people are likely to eventually form a compromise, because the status quo is unlikely to be, you know, a place that's tough to rest. So I mean if you - I'm not sure what the consequences of this kind of deadlock would be, as it wouldn't really lock up the organization.

Steve DelBianco: Thanks, Jonathan. Agree with that. As a threshold matter, the stress team can respond to this comment or suggesting that we don't think a new stress test is needed for this, and we would explain why. And the alternative is to take it on board and write up a stress test. I don't usually know what the answer would be. We're not going to necessarily propose a new bylaws change that limits the number of times a bylaw can be blocked or put back for approval.

I think the natural view on that, as you know from many of your governments and legislatures, is that if a bill fails to pass because of objections to certain elements of it, what typically happens is negotiation to remedy the objection and to bring it back. And I think if that happened at several iterations, it ordinarily results in the key parts of the legislation being passed and the controversial parts being set aside.

All right so I'm not seeing much input on that. I'll suggest there's no conclusion as to whether we should do a stress test on this.

Thanks, Brenda, for bringing up the actual document, the stress test document.

The next item was in areas of convergence and divergence, areas of convergence and divergence. And we have three of them noted. To quickly

summarize, what you'd love to do here is go to Page 2 everyone on the document that Brenda's put on the screen. Stress test 21, we had a divergence, and 21 regards the revocation and reassignment of the ccTLD manager. So this was very important to a lot of the ccTLD managers that were part of the CCWG.

And early on we attempted to describe a scenario, stress test 21, which is on Page 94 of our document. And Brenda, you can leave this document up. I've tried to - we'll try to map along with this one.

If you recall, the stress test team did not propose any specific changes in the review and redress mechanism if a government had revoked or tried to reassign the ccTLD manager. And we stayed away from that because we had a specific written request by the CWG stewardship group, the chairs of that group.

A number of you were there in Istanbul at a breakfast meeting. If you remember, Cheryl had to keep telling the kitchen staff to close the doors, right, because we can hear. And at the meeting, the ccNSO joined the CWG stewardship suggesting that they had policy development under way pursuant to the framework of interpretation, which had just been approved in October 2014, and that since the ccNSO was developing policy to include potentially appeals and redress that the CCWG should not undertake to get in front of that process.

For that reason, we concluded that the proposed mechanisms that we have today were not adequate to address the stress test. That doesn't mean that we not proceed with the transition, it's just that there are some items that will have to occur outside of CCWG, and the right group to handle that is the ccNSO.



So I would have thought this was set aside but the government of New Zealand suggested in their public comment that the IRP, as designed by CCWG, should be available to address the scenario in stress test 21. And I note, let's see, is New Zealand on the phone today? Unfortunately they're not.

And then we brought this topic up while we met in Los Angeles. And when we did, Jordan Carter of .nz suggested well maybe we should propose a moratorium on re-delegations of ccTLD during this gap period while we wait for ccNSO. Speaking personally, that sounded like a great idea, but then Chris Disspain with the ccNSO said that if that kind of an interim measure were to be proposed, it should come from the ccNSO, who owns the policy, it shouldn't come from the CCWG. And I think Jordan agreed with that.

So my proposal to all of you is in yellow highlight in italic there. My proposal to you is that we resolve this divergence by saying that we believe we should retain the current 21 analysis and not recommend other actions, with the explanation that ccNSO owns this policy and if they want to propose interim or gap measures, it would be for them to do so.

I'll take a queue on that, since a lot of you are keen on the ccNSO space. Cheryl, I realize you're in the car and if you have something to say, just speak any time you would like. Okay hearing nothing on that, I'll assume that the stress test team has at least a consensus on the reaction I proposed in the yellow highlight.

The next of the three is stress test 29 and 30. Those are on Pages 112 and 113. To refresh your memory, these stress tests were added by the stress test team because public comments on the first run requested them specifically. It was (Danielle Kale) and (David Post) of the New America Foundation. They were concerned about parts of the registrar accreditation agreement 2013, and

namely the provision in there to investigate and respond on reports of abuse. And these are elements that were added to the RAA, mostly in response to the GAC's safeguard advice that emerged from the Beijing meeting.

ICANN staff ended up implementing that through RAA, and it does require action to investigate and respond. We are still waiting on ICANN to define what that means, but the commenters on this begin to fear that it means take downs, as in taking down websites if there's a report of abuse or malicious conduct or intellectual property problems.

And they suggest that someone could file an IRP that would allow any aggrieved party to challenge ICANN's enforcement of that RAA. That would be an IRP that would be judged against the new mission and bylaws. When you look at our new mission, commitments, and core values, there's a standard of review in there that requires that policies be developed through a consensus-based multi-stakeholder process.

So the stress test team said the proposed measures of a IRP challenge might well overturn an RAA provision that came solely as the result of, say, GAC advice and hadn't been developed through bottom up policy. By the same token, stress test 30, in a very related way, looked at terminating a registrar versus terminating a registry. In both cases, they're the same.

So we asked the public to react to this, and the reaction was strong. We had seven commenters who objected to the mere inclusion of 29 and 30. And I have to say that the stress test team, we took it as our job that if a public commenter specifically framed a legitimate question that we would reflect that in the stress test analysis that we did.

So I don't think we have anything to apologize for. We implemented 29 and 30. The public commenters in Los Angeles suggested that we shouldn't have accepted the full consequence that was stated by the public commenters, which was, "that ICANN effectively becomes a regulator of conduct and content, which could cause it run afoul of a limited mission statement that would say that ICANN shall not use its powers to regulate the content of websites."

So all of this has succeeded at focusing the attention of Work Party 2. That's the work party working on mission and core values. And Work Party 2 has said on many occasions that the way the bylaws are phrased wouldn't interfere with contract enforcement, because the RAA is a contract by the same token the PICK specs that many registries have added to their registry agreement are part of a contract and they're voluntary.

So Becky Burr most pointedly keeps saying that contract enforcement wouldn't be affected by the mission and core values. I'm no attorney, but it would be better, in my opinion, it would be better if something in the new mission and core values carved out contract enforcement, especially with respect to voluntary public interest commitments, and carve them out so that they couldn't be challenged by an IRP as being against the bylaws.

And I have not yet seen new language from Work Party 2 to address this concern, but we do expect to see it. For that reason, in yellow at the bottom of Page 2, I have not put anything in here as to what our recommendation is yet. But I'm happy to take a queue from those of you on the call as to what kind of a path forward on this.

At the very least, we could potentially change the consequence line on the stress test 29 and 30, because our consequence is a little bit presumptive. Let

me read it to you. It said, "ICANN effectively becomes a regulator of conduct and content on registrant websites." That's the consequence that was suggested by the public commenters earlier this summer. We don't have to accept that consequence if we thought that was an overstatement, or in some respects a leading statement that would preordain our conclusion that an IRP would prevail.

Okay. So I guess nothing on that. And I guess that brings us to the main event and the reason why most of you are on the call, which is stress test 18. This is on Page 3 of the document I circulated last night. Now we summarized 36 comments that were listed on the GAC tab, and there were 20 comments listed on the stress test tab.

We went through all of them and 16 of the comments were explicitly in favor of the bylaws change recommended by stress test 18, and four had public comments that were opposed to the bylaws change for stress test 18. I noted that's an 80% public comment count, but when we met - and also I put in there the way that staff has summarized the public comment, and that's in italics in the middle of it.

So then we brought this up in Los Angeles at the CCWG meeting. Olga Cavalli of Argentina opened by saying that on the GAC list it was apparent that several more GAC reps shared the concern about stress test 18, and they just had not submitted public comments. And so she suggested it was more like the number could be more like 12.

I do note that those weren't part of the public comments. We're not really supposed to analyze it. But let's not kid ourselves. There's plenty of governments that objected to some aspect of the bylaws change that came out

of stress test 18. And then I became aware that some governments were upset about the way in which we phrased stress test 18.

And I'll take full responsibility for having added an example at the top of stress test 18, and I did that at the time I originated that in testimony before the U.S. Congress. And I said, "A majority of governments could thereby approve GAC advice that restricted free online expression, for example."

So that sentence was added as an example. And I became aware recently that that was a very sore point and perceived as disrespectful and provocative to governments.

And I'll do as I did in Los Angeles, I'll apologize to any GAC reps or governments who took offense with that example that was included. The example's not necessary for the stress test, and it was - there was no reason for us to have to have that in there, especially if it caused discomfort with governments.

So I proposed, and Cheryl supported, removing that example from the stress analysis if it would help in any way not only the apology but the removal of that.

And there were several GAC reps who appreciated that. But listen, that doesn't change the actual analysis of the stress test and it doesn't change the bylaws change that would emerge, but it simply removes what was causing a sore point, along with the apology from me.

So we have - I don't know that there's any objection on this call to removing the example about free expression. So I propose that we take that out. Is there

anyone who wants to retain that example? Cheryl, your hand is up? You're agreeing. Thank you, Cheryl.

All right. The next item on here is that several GAC reps -- and (Jorge Consio) reminded us this morning -- several GAC reps suggest that the rationale given for the bylaws change was not sufficient and perhaps not understandable enough to lead one to the conclusion that we needed a bylaws change.

So that's what he calls the rationale, that they want a better, more thorough rationale for why the bylaws change that we recommend would spring from the stress test itself.

During that discussion in Los Angeles, the GAC chair, Thomas Schneider, as well as (Susan Ridelle) from USA GAC rep, said that they are going back and forth with new text for stress test 18.

I honestly don't know whether that is new text just for the opening of the description or for the rational and proposed bylaws. I will note that USA and the NTIA support the bylaws change.

But it's possible that by re-writing the stress test itself it will focus less on the GAC and more on the board. And let me try to explain what I understood from that conversation.

Is that it's the board of ICANN that has to react to advice, formal advice from AC's like the GAC. And in the case of the GAC advice carries a special unique obligation to try and work out a mutually acceptable solution if the board chooses not to accept the GAC advice.

So how does one instruct ICANN's board when it receives advice that came over without a full consensus, advice that might have been supported by only a majority of the members of an advisory committee?

I guess the first element of that is that the board needs to understand the level of support that accompanied the advice. So if ALAC or GAC were to send advice the level of support as in consensus simple majority or super majority should be transparently revealed along with the advice itself so that ICANN's board can take that on account before it decides how it can act.

And then the board makes a decision and proceeds either to work out a mutually acceptable solution to accept the advice and at the end of the day it's the board's action that is subject to challenge through an IRP by the community.

If it took ICANN outside of its limited mission or if it was a top down as opposed to bottom up policy or if it took ICANN in, you know, areas of content regulation.

And those are the kind of IRP challenges we just discussed with regard to 29 and 30, stress 29 and 30. So my understanding is that we're waiting on new text from some GAC members and potentially the GAC chair.

A text that would reframe stress test 18 as being about instructing the board on how it must understand advice that comes over but the conclusion I understand is the same.

The conclusion is that we should clarify and ICANN bylaw that ICANN's obligation to try and find a mutually acceptable solution with regard to GAC

advice would only apply for today's situation and today's situation is the GAC advice is approved in the absence of an objection.

So a very strong form of consensus is what the GAC uses today and the recommendation we have here is that GAC advice that is supported by consensus would continue to carry that obligation.

And the implication here is that if the GAC advice did not have consensus the obligation to try and find a mutually acceptable solution would not be there. So that's the walk through on how that comes about.

My understanding about the request for additional rationale I sense that that is about tying it into the NTIA requirements in some respect but that isn't what drove the stress test team to suggest the stress test team wasn't scared about government capture when we wrote this.

We understand that the U.S. Government has subsequently said that they believe that the stress test 18 bylaws change is necessary to meet NTIA's conditions and we welcome that as a public comment.

It's a public comment from the government is in the position of getting off the IANA contract. So for the last time that government has sort of unilateral control over the conditions.

Some of the GAC members are calling this a strait jacket in respects. We understand that the U.S. Government was able to impose certain conditions on the relinquishment of the IANA contract and they believe that stress test 18's bylaws change is necessary to meet one of those conditions.



We can feel free to debate or disagree with that but that's not really what drives this. What drives this is for the bylaws to reflect clearly that that obligation is reserved or consensus advice, the kind that the GAC uses today and it would not extend to advice that simply arose from a majority opinion emerging from the GAC.

So that's about all I have on that and I could potentially seek the help of those of you on the call to help draft a new rationale. Just dish this logic together in a way that is more satisfactory for those who are objecting to the bylaws change.

Now a new rationale doesn't change the bylaw recommendation but it helps perhaps to explain it better and at least one GAC rep (Jorge Consio) was of the believe that we needed a better rationale to help to explain why we've done it. So I'll stop there and take a queue.

I'll note that Mark Carvell for the UK Government notes that it's helpful to remove the example on free expression and he found agreement from (Alyss) and from Julia and that's great we'll do that.

But Cheryl notes we're going to re-write the rationale but let's just be clear Cheryl. We'll still conclude that the stress test leads to the conclusion that we need to make that bylaws change.

And the bylaws change does nothing to affect GAC decision making at all it simply instructs ICANN's board that the obligation to try and find a mutually acceptable solution is only there when the GAC advice was arrived at by consensus.

I'll wait because I think a number of you are typing in the chat. Since we have several GAC members on the phone, can any of you educate us on the status of the GAC email list or GAC meetings and discussions?

Is the GAC working on new text that we want to take on board and should we wait for that or proceed by re-writing our rationale? Please. Hello Olga. Olga notes in the chat that the perspective of the bylaws change by instructing the board does not change the essence of stress test 18.

Olga I would agree. We still end up with the bylaws change and it does not affect GAC decision making in any way. What we are trying to do is reframe it so that it's very clear this is not about how the GAC makes decisions it's about how ICANN acts on advice.

And it puts into the bylaws the status quo which has always been the case. The GAC advice has been generated by consensus and we'll note that the GAC is free to change its decision making at any point in time.

But when it does and sends over advice that didn't have consensus that needs to be noted and that would affect whether ICANN's board had an obligation to find a mutually acceptable solution.

Thank you Olga for being completely clear and I really appreciate that. Olga has noted in the chat that if we reframed it et cetera but still ended up with the same bylaws recommendation it (would leave) Argentina's concern and I appreciate being clear about that Olga thank you very much.

Mark Carvell is giving some very helpful answers to the questions I asked. Mark is suggesting that in parallel we work on our rationale in parallel with the GAC debating this issue.

So Mark I'll take that as encouragement that before we get to Dublin and perhaps over the weekend anyone who wants to assist me can help to work on re-writing the rationale for stress test 18 for the purposes of giving that circulating it within the stress test team, circulating among GAC members that are really active on the stress test team so that that can be part of the discussion as we go into Dublin.

Julia is agreeing with that as well and I know Cheryl did earlier today. So I'm happy to take advice on elements to the rationale. I've already described to you how I would draft it by focusing on the reframing but I'm happy to take advice and volunteers who want to assist on that drafting.

All right we'll go to the queue. **Rafael** you're first go ahead. **Rafael** I cannot hear you. **Rafael** we're having issues with the mike. Just put your hand back up as soon as you recover that but in the meantime feel free to put in the chat.

Another angle would be are you volunteering to help draft the rationale in which case I'll put your name down? While we're waiting for **Rafael** why don't we skip to Pedro Ivo Silva from Brazil.

Pedro Ivo Silva: Hello can you hear me?

Steve DelBianco: Perfectly thank you.

Pedro Ivo Silva: Okay great. Yes thank you Steve and thank you Cheryl for leading this or preparing all this. A reaction of the public comment for actually (unintelligible).

With regard to the rationale I think it's important not only to consider the issue whether it's directed to GAC or directed to (unintelligible). There is another aspect to the rationale.

Why in the first place didn't we (unintelligible). Actually why stress test 18 necessarily or why is it attached to (unintelligible)? You have just mentioned that's not the right way to see it but still I see that that's the main rationale that's been given.

Otherwise I can't understand why this stress test 18 (unintelligible). I am perhaps (unintelligible) repeating myself of what I stated in Los Angeles but still given the nature of the GAC how the GAC acts towards the board given that (unintelligible) advice that (unintelligible) by the board by a simple majority.

Still I don't see why they have that bylaw change (unintelligible) that current practice that GAC advice (unintelligible) will be (unintelligible) by the board. I think no it's something that the GAC decided that, you know, we've got to capture something that really we don't (unintelligible) something that (unintelligible).

So if it were if the stress test (unintelligible) reconsider this the rationale it's to address that specific that why stress test (unintelligible).

Steve DelBianco: Thank you Pedro. I thought you were finished I'm sorry.

Pedro Ivo Silva: We cannot (unintelligible) thank you.

Steve DelBianco: Thank you Pedro, this is Steve. I heard most of that and the essence of the question is why would it focus on the GAC and where is the notion of capture. So I'll address both of them.

I think the rationale should begin by explaining that the stress test team became aware that certain GAC - there were sentiments in the GAC for potentially changing from the current method of decision making.

And I don't believe there is any dispute that there were discussions about that and that led a few of us on the stress test team to take a look at the ICANN bylaws and the GAC's operating principles and it's clear that the GAC can change its decision making method at any time.

And yet ICANN's bylaws preserve a special obligation for GAC advice that is to try and find a mutually acceptable solution and that only the GAC has that advice, has that obligation.

So when you put that together number one, an awareness that some members of the GAC wanted to change the decision making method and that the GAC has the ability to do so any time it wants.

And you couple that with the special status in deference given to the GAC advice. That led us to the conclusion that the bylaws ought to clarify that the extra obligation only applies when the advice is consensus which is what it is today.

And this would be an incentive for the GAC to - even if it changes its method of decision making it's the consensus advice from the GAC that carries this extraordinary level of deference over to ICANN.

And notice that that rationale says nothing about capture and in fact all of page 85 which is on the screen if you'll scroll down on that page 85 you'll see the rationale is in there right now.

Nothing about the rationale ever mentions capture. So that's not been part of the rhetoric on the stress test work team. I suggest maybe that is perhaps a little disrespectful and maybe that's what has given a few GAC members heartburn over stress test 18.

But this isn't a capture issue it's really just about acknowledging the fact that the GAC can change the way it makes decisions. It can make decisions under any means whatsoever but when advice comes over its only consensus advice that should deserve a deference reserved for the GAC.

If you recall in the bylaws when the board gets advice from GNSO it is only super majority advice that carries the obligation for the board to do the implementation and that's mentioned 22 times in the ICANN bylaws.

So there are instances where when the GAC takes advice from an SO or an AC the consensus is noted in outlining the obligation for the GAC to act. So it's not about capture and I will follow your advice and answer the question about why by talking about awareness that the GAC was considering a decision making change and that it could do so anytime it wanted couple with a special obligation to GAC advice.

Pedro back to you and then we'll go to see if Rafael has his microphone working again. If nothing further from Pedro then Rafael let's see if your mike is working.

Rafael Perez Galindo: Can you hear me now?

Steve DelBianco: We do.

Rafael Perez Galindo: Hello.

Steve DelBianco: We hear you.

Rafael Perez Galindo: Can you hear me? Okay thank you.

Steve DelBianco: Yes we do.

Rafael Perez Galindo: Okay thank you, thank you Steve. Thank you for providing us with this helpful explanation about the rationale behind this stress test. So I understand that you have stated this is not about capture then it's about how the board deals with the GAC advice.

So in that regard I would like to really understand what this is all about because I still fail to see where the program lays. So and I (unintelligible) a little further.

So this stress test is sort of the purpose of this stress test is to sort of skip the engagements that when the GAC provides advice to the board and if so this advice would not be supported by GAC consensus.

This stress test states that the GAC should not be obliged to enter into this process to find a mutually satisfactory solution. But then again I would like to draw your attention to the current bylaws, Article 11 to 1K which are at the bottom of this Article.

That says and states that after that process that you're talking about to find a mutually agreeable solution if no solution can be found the ICANN board will state in its final decision the reasons why the government advisory committee advice was not followed.

So at any rate the board has the ability and the power to just turn down or reject GAC advice. And to do so after that process to doing - after that engagement the board has to provide us with the rationale why it has done so.

So I really fail to see where the problem is with this stress test because if you just want to skip the engagement process it really, you're just removing a step that actually in any case the board can still (reward) every one.

So I really fail to see where the advantages of this even though our advice would not be based in consensus which I believe it will always be but not in any case what is the advantage for you to just keep the engagement step because the board in the end will do even though it has to (unintelligible) the advice and stuff.

But then at the end after the (unintelligible) the board can say no or can say yes and to do so can just it has to provide the rationale. And I want to remember as well to remind you as well that ICANN bylaws the current one as well allow the ICANN board to reject GAC advice on a simple matter to vote of the board members.

So the board only needs half of its voting members to reject the GAC advice. So I still cannot follow your rationale to audit this stress test here because just skipping engagement that process or step in the process of engaging between the GAC and the board I can't find an advantage to that because it's advisory board and again it can be turned down. Thank you.



Steve DelBianco: Thank you Rafael that was clear and so I will note that you would like our rationale to answer the question why is the stress test team suggesting that we skip the consultation process, we skip the requirement of a consultation process for advice that is less than consensus.

Why skip the consultation for advice that is less than consensus. And I'll remind you that it doesn't say don't have a consultation Rafael it says there is no obligation for the consultation to try and find a mutually acceptable solution.

So I've noted your question and I will try to address that in the draft rationale we come back with and it's a good question. Thank you and I think...

Rafael Perez Galindo: I mean the consultation I mean engagement if you want, engagement process. Sorry for my English. I mean just a step which says okay try and find mutually agreeable solution.

Steve DelBianco: Right.

Rafael Perez Galindo: That's what you tried to skip with this I believe.

Steve DelBianco: Right, we tried to - it's not that you try to skip it but you try to tell the board they don't have to do that. It's telling the board that if the advice was not consensus you are not required, you may if you wish but you are not required to find a mutually acceptable solution and negotiate.

You're not required to negotiate it if it's not consensus. That will end up being what I will draft in my rationale but I think you raised a really good question

and if you recall in the rationale paragraph 620 all of paragraph K was in there.

We didn't propose any amendments to K. We tried to show it all so that our one sentence change would be very apparent and would be in context.

Rafael Perez Galindo: Thank you Steve.

Steve DelBianco: Thank you I appreciate that. And Pedro I think you wanted to get back in the queue right?

Pedro Ivo Silva: Yes that's right. I think Rafael got most of the things I wanted to say but I just want briefly to indicate that while Steve I think you've mentioned that while it's not about capture but I think then in the rationale it would be very (unintelligible) with the transition requirement.

I think we are working on work stream one based on all the changes that need to be in place for the transition to happen. So why are the changes related to the bylaws that are recommended by stress test 18 how they connect with the transition requirement?

This needs to be in the rationale and to be very honest we still don't see that. Given all the discussion we have had so far still we fail to see that link. Thank you.

Steve DelBianco: Thank you Pedro. I noted that you said it's not about capture and we didn't say that and that led you to ask the question, so why are we doing this bylaws change if it's not addressing one of the four NTIA requirements?

You know, it's a fair question but most of the 200 pages in the CCWG's proposal are not about addressing the NTIA requirements. The entire

accountability track was launched in parallel to the transition of the IANA functions.

And it was launched because this was the last opportunity to use the leverage of this transition to impose bylaws changes on ICANN and new procedures on ICANN to increase its accountability to the community.

So all of the CCWG is outside of a direct one-to-one match or correspondence with the NTIA requirements. Pick any page in this proposal the affirmation of commitments for instance, the reviews that are in there, the bylaws changes on mission and core value, the new IRP process.

Pick anything that is in the CCWG proposal and you would ask the same question then and that would be a slight misunderstanding that the CCWG track is about using the transition as the opportunity to get accountability of ICANN to the broader community.

Now under that rationale the accountability of ICANN to the GAC has very special significance in the bylaws because they're the only group whose advice brings the obligation to work out a mutually acceptable solution.

So to make ICANN's board more accountable to the broader community we want to remove the obligation to do that for GAC advice unless it is accompanied by consensus.

So there is not an attempt to try to map it to the four NTIA requirements and that's not essential. That test does not apply to the CCWG because it's a separate track than the NTIA's transition of the CWG stewardship function.

And Rafael and Pedro your hands are still up so if you wish to keep the dialogue going please do. I will draft some rationale and if anyone wants a

special to join me in holding the first pen please just raise your hand or let me know in the chat.

Otherwise before the end of the weekend I will send the draft to everyone who is in the stress test work team. So all of you will have the opportunity to comment on it and I hope that we can do some of that over email prior to our next call.

And I'll get with Cheryl and staff to see whether it's possible to do another call next Wednesday before many of us start to travel to Ireland. Any further business on today's call?

Okay hearing none I'll just remind staff to please capture the chat and discussion notes because they'll be essential for me to do this drafting and all of you please check your emails before the end of the weekend, I'll try to get some draft circulated.

Thank you all for participating I truly appreciate the interest in this transition and in stress test in particular. Have a great day.

Cheryl Langdon-Orr: Thank you Steve, thank you everybody bye for now.

END