

**ICANN**

**Moderator: Brenda Brewer  
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9:00 am CT**

Recorder: Recording has started.

Becky Burr: Okay, I'm sorry, everybody. Thank everybody for participating. We should have one which Brenda doesn't have the deck. I'm going to send it to her right now. What I am looking to work on is the - oh actually, it's not really a deck. It's the email that I sent out on Friday in terms of consumer trust in the Mission Statement. We had some very good back-and-forth on that.

Brenda, if you could - oh, okay, we've got it. So the issue that we want to talk about today is the consumer trust - the reference to consumer trust in the - in the Mission Statement. I'm just seeing in the chat, Brenda, that (CA-VUS) needs to dial out. If you would take care of that.

If I could just set the stage a little bit. You will recall that one of our goals was to incorporate the Affirmation of the Commitments - from the Affirmation of Commitments - into the Mission Statement. In the first draft report, we had a reference to consumer trust in the Mission Statement.

But when we looked more closely at the Affirmation of Commitment, the reference to consumer trust appeared in two places. It appears in Paragraph 3 of the Affirmation of Commitment, which describes the goals of the document saying “This document affirms key commitments by the (OC) and ICANN, including commitments - among other things - to promote competition, consumer trust, and consumer choice in the (DNS) marketplace.”

The other reference to consumer trust - if you're not speaking could please go on mute - thanks. We're hearing some typing in the background.

The other reference to consumer trust in the Mission Statement is in Paragraph 9.3 of the Affirmation of Commitment, which obligates ICANN if and when new TTLDs are added to examine the extent to which the expansion has promoted competition, consumer trust and consumer choice. And says ICANN will then go on to conduct several reviews.

So as I said, this language was transposed into the Core Values in the first draft proposal requiring (IPN) to depend on market mechanisms to promote and sustain a healthy competitive environment in the DNS market and enhance consumer trust into it.

When we looked at that more carefully in the second round, there was some concern about, first of all, whether it fit in that particular provision and also whether a commitment that was referenced in particular and specific to the expansion of the new gTLD should be used to graft a sort of general consumer protection obligation in kind of fundamental ways onto ICANN.

And so in the second draft report, we decided to take the reference in the Core Values out and include the language in the Bylaws provisions relating to

review. So it is there. You will see in Appendix IX, Paragraph 33 where it is specifically tied to new gTLDs expansion.

So although most people didn't comment on this, there were two comments. In particular, ALAC felt in the second - in the comments on the second draft and the comments on the third draft - that this language reference to building consumer trust should be in the Mission Commitments and Core Values statement, as did U.S. Chamber of International Business.

Given the strength and the repeated strings of those comments, we need to take a look at this. And so I've formulated two questions here.

And the first question is, you know, we have an Affirmation of Commitments provision that is specific to gTLD expansion. And the question is should we elevate that to impose a generalized independent and affirmative competition and consumer trust (on it)?

Although it's actually related to consumer trust, because we do have - as we have always had in the ICANN Bylaws - some obligations with respect to blue line and market mechanisms to promote competition.

And then the second question is from a consumer trust standpoint. And this was really a question that was I think raised by the Government of the United Kingdom - which was we know that ICANN's fundamental Mission is to ensure the stable and secure operation of the DNS, and it obviously has various additional and relevant commitments. You know, it's (for) stability and reliability and et cetera. Does that adequately address this concern?

So let's move into the discussion phase. Alan, your hand is raised, and obviously - and it (includes) my typo, "perote" - it should be "promote." So let's turn to Alan.

Alan Greenberg: Thank you very much. So first of all, I'll note - because I don't think there's been an acknowledgment in the email - Annex 9 omitted the whole Bylaw associated with the consumer trust and competition review. So just to make sure that from a staff point of view we put it back in.

In terms of the questions, I'll answer the second question first. If indeed the current Bylaws covered it and covered it clearly, we wouldn't be having this discussion. The significant part of this discussion is the belief by some that the consumer trust reference in the AoC - and therefore in the Bylaws - is only with regards to the expansion of the gTLD space.

So if indeed it was implied, then it would extraneous words, but definitely does apply to the whole gTLD space. Clearly there are many people in this group who believe it only applies to the expansion of the new gTLD space. So for that reason, I believe - and ALAC believes - that indeed it is necessary.

You know, we can go into the various arguments. One of the larger arguments that has been put up by people in the last few days is we don't know what consumer trust means.

Well, the term is already being used within the Bylaws. It's used in regard to the "who is" - whatever "who is" now called. So the term is being used. We're stuck with it. It's in the AoC. It's in the specific review associated with the expansion.

We may have to define it; we may choose to ignore it like (billable) public interest and not try to get a formal definition. But it's a term that's being used. So it's a complete red herring to say we shouldn't use it in this case because it's an undefined term.

Paragraph 3, in my reading, is not just a description of the following reviews. It has references to other things like global interest which are not part of the reviews explicitly. And I believe it does have a home in the Bylaws.

Becky Burr: Okay. Can I be very, very clear here?

Alan Greenberg: Please.

Becky Burr: I have never said that it is just that Paragraph 3 is about just about reviews. Paragraph 3 is a general statement about what's the purpose of the Affirmation of Commitments is as opposed to a specific commitment. That is the only point that I have made throughout, and I think that is pretty clear.

Alan Greenberg: Thank you. Thank you, Becky. And in my mind, it is part of the Affirmation of Commitments and therefore deserves to find a home - not just in reference to the review associated with the expansion. Thank you.

Becky Burr: Milton?

Milton Mueller: Hello. Good morning, everyone. Good afternoon in Europe. Can you all hear me okay?

Becky Burr: Yes, we can hear you, Milton.

Milton Mueller: Okay. Now, I would want to answer the first question that you posed, Becky with a very firm No. And the second question with a Yes. I think what Alan has said is - it's interesting that he addresses second question and not the first. And the first question is really the source of my concern and many others' concern about adding this language.

Because once you remove this idea of consumer trust from the very specific context of the gTLD expansion - which of course is where this idea got its root - then it does become a generalized, independent and affirmative obligation on ICANN which in effect makes it into a consumer protection regulator with a very broad mandate.

And again, if the whole point of this exercise is to have a limited Mission, and to lead to national regulatory authorities and others with more specific legal mandates to deal with the consumer protection issues - and there's no evidence that these national regulatory authorities are incapable of doing their jobs.

There's been all kinds of regulations imposed on VeriSign, for example, related to their pricing. There have been certain kinds of, you know, fraud accusations pursued against certain kinds of people trying to fool people into registering with them. Most of those have been taken place by consumer protection regulators legally mandated at the national level.

And the idea of just sticking this general term, "promoting consumer trust" into ICANN's fundamental Mission and detaching it from the stable and secure operation of DNS - that concerns me greatly, and I think it's hard for anyone to make a case that this generalized, independent and affirmative obligation would be consistent with the idea of limiting the Mission. So that's my approach to that problem.

Becky Burr: Thank you, Milton. Kavouss?

Kavouss Arasteh: Any documents - Mission in any documents of every organization is the highest level from the hierarchy point of view. (And also) you have mentioned it should be precise, concise and very, very high level.

Second: when I look through all of these discussions with everybody's comments, I ask myself are we concerned that where we put this, or are concerned how it is implemented? Does it make a change if we put it in the Mission or if we put it in the Core Value or if put it else, provided that it is implemented and it is properly (crafted approach)?

And I don't understand why we discussing and arguing with each other put it in the Mission, when we should concentrate from the implementation conception. In my personal view and the participants of this group, I prefer to put it not in the Mission, but put it elsewhere - Core Value, any other place - provided that it is properly, appropriately and duly implemented. Thank you.

Becky Burr: Thank you, Kavouss. Greg?

Greg Shatan: Thank you. Greg Shatan here. Following on email I sent yesterday, first, I do want to disagree with the interpretation that Paragraph 3 of the Affirmation of Commitments is not itself a statement of commitment. Is not itself a commitment or a series of commitments and, in particular, Paragraph 3c is a commitment to promote competition, consumer trust and consumer choice in the DNS marketplace, which is not an unlimited statement.

It's a limited statement as far as - we're talking about limiting ICANN's Mission. We're talking about boundaries, not constraining it from its current

Mission. As it says, we're clarifying what those boundaries are. And unless the Affirmation of Commitments has been outside ICANN's Mission for all these years, the section 3c is part of ICANN's Mission and needs to be transposed as is into the Bylaws.

So I think the idea that it doesn't stand on its own - that only somehow provides a predicate for Section 9.3, I think, is incorrect. I think it may get to a desired result, but I don't think it's the correct result. I think that, as such, we need to honor the commitment. I think we need to continue to honor the commitments made in Section 3c and that we need to provide ICANN the language that does that by putting this into the Bylaws as such.

So I think that it's not an unlimited statement. It is limited to the DNS marketplace, but it is not just limited to setting up the expansion. Because, in a sense, before the expansion there was no quote/unquote DNS marketplace, you know, for gTLDs.

So that's probably why it was phrased the way it is, but getting into intent is not really necessary with a document that's clear on its face, and I think it's clear that what we have in Sections 3 - and particularly 3c we're talking about - is a fully-fledged commitment.

And I think that to write it out of the Affirmation of Commitments by not putting it into the Bylaws appropriately is, in fact, changing or constraining the Mission and not doing what we said we'd done with the Affirmation of Commitment, which is to bring the (commitment) into the Bylaws. Thank you.

Becky Burr: Thank you. Can I just ask one follow up question before we go to Alan? The intent is specifically to put this provision into the review section, which is



where it - I mean, I guess we have a difference in reading in Paragraph 3 of the Affirmation of Commitment, although I think it's - on its face it's pretty clear as it is saying this document affirms.

And I would argue that that has to be read in the context of the specific language in the body of text, just from an interpretive mode. Nobody is talking about not putting this language into the Bylaws. It would be in the Bylaws, specifically, in relation to expansion of the TLD space.

Greg Shatan: I'm talking about the language in 3c. Where are you saying that 3c would go?

Becky Burr: Well, the language in Paragraph - I'm now going to look at the language of the draft, because I still think it was in Appendix 9, Paragraph 33. "ICANN will ensure as it expands the top level of domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency and malicious abuse issues, sovereignty concerns and rights protections."

So that's a recommended change to the ICANN Bylaws where it says specifically, "ICANN will ensure that as it expands the top level of domain space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns and rights protections."

Greg Shatan: Well, I don't hear consumer trust in there. So we're reading out the affirmation; the commitment in Paragraph 3c that's specific to affirming commitment to consumer trust in the DNS marketplace. I think that's - that is a change in the Affirmation of Commitments and a change in what ICANN has committed to do.

So I think that's not merely in the - it was not intended initially - as I read this, you know, to attend merely to (the experience), but it is a key commitment. I don't think it's leveraging anything to transfer Section 3, in particular. I think somehow - we've somehow decided we can drop that (unintelligible) as such, and I don't think that is the case.

((Crosstalk))

Becky Burr: Okay. So let me just be very clear that if you look at Section 3, all of the provisions of Section 3 are addressed in different parts of the Bylaws, but they were not transposed - it was not transposed. You know, it was transposed from the direct affirmation - the direct commitment upfront. But I should stop talking and let Alan speak.

Alan Greenberg: Thank you very much. Several things. First of all, with regard to Kavouss' comment. I'm talking - and we have always been talking - about putting it into Article 1 of the Bylaws. I do not care - not everyone may agree with me - I do not care if it's in the Mission or another part. So let's get out of this business of we're changing the Mission. I'm saying put it in Article 1 of the Bylaws, which is where it was originally.

Number 2. Yes, we're going into the weeds, and we're cluttering up the Bylaws with all sorts of details. We started on that path a long time ago. If ever someone wants to go through and start taking out all of the weeds, I'm happy. We could take out this one too. But that's not the direction we're going on.

Milton said why do I disagree that national bodies are incapable - why do I think that national bodies are incapable of doing the job. I don't think they're incapable. I just don't think it's their sole job.

The AoC committed to consumer trust in the DNS marketplace, not just in the expansion of it. We still have dot com and dot net around with a few registrations in them, not to mention others with fewer - with other numbers in them. And that's what this is focusing on.

It is currently in the Mission of compliance. It's says, "consumer trust." It's really clear. The Mission only has about twelve words in it and that's two of them. If compliance spent many years only looking at making sure that they got paid, that's changed. We want to make sure it doesn't change back. That's why it should be somewhere in the Bylaws.

The -Steve or somebody said that if it's in the AoC - or Milton said - if it's in the AoC, why do we have to incorporate it in the Bylaws? The whole intent was to incorporate the AoC into the Bylaws. This is a particular part of the AoC. We're trying to make sure it goes into the Bylaws. Again, not in the Mission necessarily; into the Bylaws. Thank you.

Becky Burr: Thank you. Milton?

Milton Mueller: Yes, well, I think we've cleared up one piece of confusion, because if Alan doesn't want it in the Mission, then we are much closer to agreeing than we would be otherwise. I mean, the statement at the top of this document we're looking at so that has meaning consumer trust in the Mission Statement.

So have we agreed that we don't care - some of us don't want it in the Mission Statement. Alan says he doesn't care; he wants it in the Bylaws. I thought we'd already agreed that the Affirmation - key parts of the Affirmation were going into the Bylaws. So let's clarify what we're debating here. Is it Article 1 of the Bylaws or is it the Mission Statement?

Alan Greenberg: May I, Becky?

Becky Burr: Yes.

Alan Greenberg: Yes. We have - this whole section that Becky has taken responsibility for is on Article 1. We have Mission issues, we have Core Values, and we have added a whole new section that didn't exist currently called "commitments." That's what we're debating here. Now, some people have - to their advantage - said, "Everything is the Mission, and therefore we don't want to add stuff to the Mission." I take no responsibility for being part of that group. Thank you.

Milton Mueller: All right. Then if I could just follow up. So the Affirmation of Commitments as the Section 3 that has just been put up by Becky into the chat room - is a commitment, but between that I can make (unintelligible) the Department of Commerce.

And we have always had problems - "we" meaning the Noncommercial Stakeholders Group - have always had problem with the fact that this bilateral negotiation, which was not a bottom-up policy process and did not have consensus in the community, was making policy commitments for the community based on a top-down negotiation between the ICANN Board and the Department of Commerce.

Now we're willing to concede that there are significant segments of the community who want to incorporate parts of the affirmation into the ICANN Bylaws, but I think again - from our concern is knowing and limiting the Mission of ICANN as much as possible, because those elements - those minimal elements that are needed for centralized coordination on a global scale.

And it's very clear that we have consumer protection and agencies - dozens of them at the national level - we have lots of global cooperation through organizations such as OECD on those issues.

Alan's answer to why he wants ICANN to replace these agencies was not satisfactory. He just said they have other things to do. I just think if we're not willing to limit the Mission to those things that they're directly related to - DNS coordination and security and resilience - then we're straying from this goal of a limited Mission, whether it's in the Mission Statement per se or whether it's in the Core Values or Commitments.

So again, I'm a minimalist. I want ICANN to do as little as possible. I want to distribute power. I don't want it centralized on a global basis.

Becky Burr: Thank you. Brenda, could you load the document that Steve DelBianco sent? Greg, is your hand a new hand or an old hand? Greg? Okay, I'm going to assume that Greg may be speaking. Okay.

Steve, could you talk with us about this document and walk us through it, please?

Steve DelBianco: Thanks, Becky. As a segue to the definition that's on the screen, I was persuaded early on that 3c is an introduction to what shows up in 9.3 and agreed when we met in Paris at the ccWG that the commitment there is fleshed out in 9.3, and therefore that's the right place to focus on consumer trust, consumer choice and competition.

Which is why I agreed with your statement that its presence in the Bylaws - when the affirmation 9.3 is brought into the Bylaws - it's sufficient to

memorialize that commitment by ICANN and to specifically map it to expansion of the gTLD space, which is where I believe the commitment was made, and that being in the Bylaws, as such, is sufficient to use it as something to hold ICANN accountable to.

And that, after all, was what the Mission was for us - sorry, bad choice of words. That was the objective for us, which is to ensure that the community could hold ICANN accountable to the obligations that it had made to the community through Affirmation 9.3.

So I responded, you know, to both your questions, which suggests that I think it's sufficient to have it in the Bylaws in the review section and that it is - it is not a tremendous challenge for us to include a word like consumer trust someplace in the Bylaws because we have words in the Bylaws that have similar interpretation challenges to them.

Words like "security," "stability," "public interest," "resiliency," "private sector," - there's plenty of words in there that require interpretation. So Becky, now just turning to what you asked me to do, we looked at the Affirmation - it's 9.3 - stimulated discussions in the community that say we're coming up, in fact, in 2010, 2011, 2012 we talked about the need to review the new gTLD program after it was launched in 2012.

And when that review occurred it would have to look at 9.3 and the commitments that ICANN made on consumer trust, consumer choice and competition.

But we didn't know what those words meant yet. So many of us approached the board and said let's flesh out the definition, let's even come up with metrics and that effort was led by Jonathan Zuck.

The fleshing out of metrics that could be used so that all the parties involved that registries, registrars, compliance all the parties involved in the new gTLD expansion would have an idea of what it is they were shooting for when it comes to trust, choice and competition.

The board unanimously adopted in December of 2012 a resolution sorry December of 2010 board resolution and a link to it on the screen.

And that resolution instructed and requested the AC and SOs to come back with advice on how to define and measure consumer trust, consumer choice and competition. And that took about a year.

Jonathan Zuck and I, Cheryl Langdon-Orr, several folks in the CCWG worked on that group and came back with recommendations.

And those were adopted by the two of the chartering organizations the GNSO and ALAC. The other chartering organization didn't use specific comment on it.

And on the screen in front of you it's just one small excerpt from that report where these three definitions were laid out.

And you'll see that the definition of consumer trust here really does refer to the domain name system with respect to the consistency when I resolve a name, did it resolve consistently no matter where I am in the world, no matter what times of the year no matter what language it's in?

Did it have confidence that a registry operator is fulfilling their purpose which was Paragraph 18 of their application and is complying with ICANN policy

international laws? And that we have confidence in ICANN's compliance functions.

So those three elements of trust were an attempt to put meat on those bones. And not only was that endorsed by the chartering organization but it went to the board, the board approved and moved that ahead to the next step.

Now the next step is actually the consumer trust, consumer choice and competition working group for the affirmation of commitment which was just formed a few weeks ago. And there are several members of that group on the call today.

And they will take these definitions that have been endorsed and work it into the charter for the work that they will be doing in probably the year ahead. It will probably take quite some time to work that through.

So Becky I think that what this does is establishes that the community in a bottom up fashion because this was a bottom up wide open working group with ALAC, GNSO, GAC participation that we are capable of taking words like consumer trust, choice, and competition in the context of the gTLD expansion and we're capable of making them specific even capable of putting metrics associated with them and putting that through the bottom up process, through consensus and working it through.

And I believe it's adequate to have it in 9.3 and move that into the bylaws in the review section. In fact we should preserve the words consumer trust, choice and competition. Becky anything further you wanted me to say on that?



Becky Burr: No. Thank you Steve. That's very helpful. And so I think that the message is that there has been we do have some history here that consumer trust has been defined in a fairly precise way through a bottom up process.

And that's reflected in this document. And of course that was in the context the new gTLD expansion - just to be very clear.

You know, I don't think anybody is opposed to consumer trust. The concern is imposing a generalized undefined obligated on ICANN to enhance consumer trust without the kind of context that is reflected here in the work of the community and in Paragraph 9.3.

So I think that, you know, if the issue is adding the language of consumer trust into the bylaws through Annex 9 we don't think that is the - at least that's not my concern.

My concern is the generalized undefined consumer protection obligation that is unbounded by context. Kavouss?

Kavouss Arasteh: That's I see the discussion turning around on so on so forth. I read what you said to me. What I'm suggesting that at this very meeting we have to conclude on this issue. Thank you.

Becky Burr: Thank you. Alan?

Alan Greenberg: Thank you. Just to be clear I'm not suggesting that the - this definition be put in the bylaws. Maybe some people wanted to and I probably wouldn't object if it were but I don't think that is what the bylaws are for.

The bylaws have terms which all over the place which we may then have to define. This is a good definition. I'm happy with it.

The problem with saying this is covered by 9.3 is 9.3 the section that it was omitted from Annex 9 says and I quote if it were there it would say because these are the words in the affirmation ICANN will ensure that as it expands in the top level domains space it will adequately address issues of competition, consumer protection, security, stability, resiliency da da all those things okay?

This review will examine the extent to which the expansion of the gTLDs has promoted competition, consumer trust and consumer choice.

Our concern is not just with the expansion it's with the billions or hundreds of millions are whatever of names that are there already and that will continue to be there in TLDs that are not associated with the expansion. That's why it's not adequate to cover it in just the reviews. Thank you.

Becky Burr: So can I go back to Alan? I mean are you proposing the ICANN has an affirmative consumer protections mission other than the security and stability that ICANN has a specific generalized consumer protection obligation?

Alan Greenberg: I'm not changing the word from consumer trust to consumer protection. So don't put words in my mouth.

I said we have an obligation to think of it as we are doing our policy work that's why it's currently in the mission of compliance and that's why it's in the AOC.

All I'm saying is we should use the words that are in the AOC and faithfully reproduce them in the bylaws not necessarily the mission in the bylaws. As

you point out the first occurrence of the word that was removed was in core values not in the mission.

All I'm saying is that we made a decision to put the AOC into the bylaws. We left out a few words. For reasons I don't understand there are some visceral reaction to never putting those back in again. I don't understand why. And all we're saying is honor the commitment we made to move the AOC into the bylaws. Thank you.

Becky Burr: Thank you. If I could just clarify because I think it's my fault that they got in there in the first place. All of..

Alan Greenberg: Thank you.

Becky Burr: ...other words that competition, language, and stability and security all of those were tucked in ICANN's core mission statement and core values since 2003.

The problem was in a less than careful transposition of the affirmation of commitment. And that was as, you know, we spoke about it from (unintelligible) the transposition didn't work and created this concern about mission creep.

So I just don't - I mean it's not true that we added a whole bunch of things from the affirmation of commitments into the mission commitment and core values because most of those things were already specifically there. (Milton)?

Milton Mueller: Yes. I'm not sure I'm going to be saying anything that hasn't already been said on the chat but I just think I had a bit of an epiphany here in this latest exchange.

And it's very clear - I understand Alan's perspective. He thinks the consumer trust is important.

And it, you know, there are ongoing requirements to promote that, that seem to be derived from the existing CLDs and TLD expansions.

But I think what Alan is missing is that when you detach those words from the context of the gTLD expansion and all of the work that's been done on it regarding the definition and meaning of consumer trust once you detach it from that context and just put it in the core values of the commitments of the bylaws standing on its own then you have created this generalized obligation that Becky and I are talking about and others are worried about. And I just don't see what you gain by doing that.

There's all kinds of things in the existing mission and core values that provide the kind of oversight of the DNS market that you need.

And there's all kinds of dangers by detaching it from the existing context of the affirmation of commitments reviews.

It seems to me that Steve is satisfied that we are honoring those commitments by adding competition, choice and trust into the bylaws only in the sections on review of the gTLD expansion.

So I'm unclear as to why anybody would want to go by - go farther than that and just detach it from context?

We have to be aware of the way things happen in regulatory institutions and political institutions. You have these words free floating there. Somebody

comes along five years from now, ten years from now completely unaware of all of this debate and context and they just say oh we've got this general obligation to promote consumer trust and then you have mission creep.

And it'll be all kinds of political and economic reasons that somebody might have picked that up and run with it and thrown ICANN into a, you know, a global regulator of the sort we hoped we we're avoiding.

So I just think we need to stick with 9.3. Keep the words nicely contained within that very definite context. Thank you.

Becky Burr: Thank you. Any other comments any other statements here? I mean I do - I hate to say this but to me the issue is sort of unintended consequences of having language that is untethered to context and that really does hearken to an expansion of ICANN's scope of authority.

And although again I mean I don't understand the distinction that is being drawn by some between sort of a, you know, consumer trust obligation versus consumer protection.

I just - I am quite concerned about the lack of context in the commitments and core values and how that broadens ICANN's scope whether you think it broadens ICANN'S mission or not it's the scope of responsibility. Greg?

Greg Shatan: Thanks, it's Greg. I think that Section 3 defines the responsibility and the commitments of ICANN. And if we're going to eliminate some of those commitments we need to say so.

A review commitment is only one asset. There is not an underlying obligation to promote consumer trust then there be the concept of the review itself

becomes untethered from context the underlying context of Section 3. But I don't think that 9.3 is the limit of, you know, nor 9.3 is a limit of what is meant there.

The fact that there is a review is meant to ascertain whether in fact in the context of expansion this commitment has been honored but I don't think it is the limit of that commitment.

So I think if we are going to say this the affirmation of commitment was overly broad in this area and that we want to eliminate a portion of the affirmation of commitment by limiting what was in Section 3 only to what is in 9.3 and that 3C as a general commitment is being discarded then I think we need to say that.

I don't agree that we should do that but I think we just need to be intellectually honest if that's what we're doing.

So, you know, we may not all agree with every decision that's made that's what happens in a consensus process.

But at the very least we need to be forthright that what we're doing is taking this Sections 3 and in essence whittling it down to only 9.3 because I don't agree that 9.3 is all that it was intended or that all that should be read into Section 3.

And I don't agree that as Section 3 stands as a commitment per se of ICANN out. So if we're going to take that back and discard it we at least need to say that we're doing so. And we think that somehow in this case the affirmation of commitment got it wrong and that we need to rein it in.

That's - I have concerns with that results but I have greater concerns with kind of reworking and recontextualizing this initially to make it sound like that's not really what's happening. Thanks.

Becky Burr: Okay. Well let me just be very clear since we're talking around things like being forthright and dishonest. I just disagree with your reading of the role of Section 3 in the affirmation of commitments. And I'm not willing to concede that there's anything less than totally forthrightness about that.

I just think, you know, having worked on enough of these documents that Paragraph 3 plays a particular role of the document. Alan?

Alan Greenberg: Well Greg captured part of what I was going to say that if we were going to walk away from something then we need to be honest. And I don't think it's this working group's responsibility to decide what ICANN is going to walk away from in the AOC.

Section 3 very clearly says consumer trust in the DNS in the gTLD space. Review 3 says very clearly consumer trust in the expansion of the space they are different. Thank you.

Becky Burr: Okay. So we have a situation where the language was in the first draft it has not been in the second and the third draft.

I mean I don't think that anybody is walking away - anybody is proposing to walk away from anything. We are having a conversation about what the words mean and how they would impact ICANN's scope of responsibility and action.

And I think that there are legitimate totally legitimate concerns about the way and the adequacy of the way that's been phrased.

And so I Greg I see your comment that you don't think it's nearly a misplaced chapeau. I think it's not nearly anything. I think it is an intentional chapeau.

And so I think that reasonable and honest people can disagree with each other on that. So I hope we can keep the conversation at that level. Greg is that a new hand?

Greg Shatan: No.

Becky Burr: Any other thoughts here? I don't see like we have closed the understanding. I will try to summarize the discussion here and circulate it.

And we will then have to have some more discussion on this piece. I'm recognizing where we are in the process and concerns.

And Alan any conclusion has to address the last question which is what question?

Alan Greenberg: Where are we echoing the concept from the AOC that we care about consumer trust in the entire gTLD space as opposed to just the expansion of the space?

Becky Burr: Okay. And if we look at - okay then I will take that I think as (Milton) points out the affirmation of commitment language was about consumer trust in the expansion. I guess you guys disagree you and Greg disagree with that.



Okay I think rather than belabor a conversation on which we are not moving the ball forward we should probably stop here. And I will try to see if we can make move the ball forward in the - on the list. Kavouss?

Kavouss Arasteh: So can you please keep some body of the discussion you have heard many, many things? But we don't know. I don't know really where we are.

Becky Burr: Okay.

Kavouss Arasteh: Could you please make it a small resume even if there are two different views? Thank you.

Becky Burr: Sure. Sure I will do my best to do that Kavouss. I believe that we have two different perspectives on the language in the - I think that everyone is in support of consumer trust in a general way.

I think that there are two different perspectives. One perspective is that the concept of consumer trust in the affirmation of commitment is specifically tied to the expansion of the new gTLD space and that it invokes a review of the expansion to ensure that consumer trust issues are being adequately addressed in that process.

And that for people with those - that perspective are very concerned about including a new reference to a generalized consumer trust obligation outside of that context and the unintended consequences that that might have on ICANN as it carries out its mission. And the questions about whether it is broadening ICANN's scope of responsibility as it does that?

Another perspective here that is also strongly held is that the affirmation of commitment language in Section 3 is a general commitment to ICANN to promote consumer trust in the DNS space full stop.

That it is inadequate to limit that to a specific - limit the language itself to the expansion questions about the expansion and the review.

And that ICANN should have a generalized commitment to promoting consumer trust in the DNS market as a whole in Section 1 of the bylaws.

So it's very much a question about does this broaden in ICANN's scope of responsibility versus is ICANN walking away from a sort of more generalized commitment that it's already made in the affirmation of commitment?

I think that's where we are. I don't think that we have I think that we have two perspectives that are very strongly held.

So for my money that does not count as consensus here. And I'm going to have to put my thinking cap on and see if there is a way to advance this.

And, you know, one question is, is this something that is sufficiently (unintelligible) that it deserves further thought in Work Stream 2. And that's one of the things that I will be thinking about.

And obviously once I - or even before I circulate any thoughts on the list would be welcome. Steve I see your hand.

Steve DelBianco: Thank you Becky. It'll be very brief. First I wanted to clarify something that is said in the chat is that the definitions that are on the screen I don't think anyone on this call is proposing that those definitions get put into the bylaws.

Those definitions were developed in the bottom up multi-stakeholder process to satisfy the 9.3 obligation of the AOC.

And I was bringing them up as examples of where we are capable of giving meaning to those definitions in the context of the gTLD expansion.

Second point is that 3C what convinces me and I'm no lawyer right but 3C convinces me that it's a chapeau that is fleshed out in 9.3.

And the reason I say that is 3C refers to the entire DNS marketplace. Now I don't think there's anyone on this call that believes that 3C back in 2009 when the affirmation was signed that 3C suddenly changed the world with respect to existing TLDs or it had changed the world with respect to existing ccTLDs.

There's not much representation of CCs on this call. But if somebody wants to bring sentence 3C into the mission and core values it's not just the gTLD market place it's everything.

So that had no operational value. In other words after 2009 I don't remember any of us suddenly changing the way we managed the legacy gTLDs or changing the obligations that are placed on ccTLD operators.

And so Greg and Alan, you know, I am as big of fighter for consumer trust as you guys are I just don't see the 3C extending to the entire marketplace for all times for Gs and for Cs. I do think that 3C is fleshed out in 9.3 and therefore it's sort of a chapeau on that. So thank you.

Becky Burr: Thank you Steve. Alan?

Alan Greenberg: Yes, thank you. I can't say how prescient the people who wrote this text were. There are other indications they weren't particularly prescient. So I don't know.

I do know that just about the 2009 framed the whole concept of what compliance was supposed to be doing within ICANN was changing.

And indeed it was going from something wider to that registrar didn't pay their bills to in fact caring what happens on the consumer level. So maybe it was prescient maybe it wasn't. The words are there today. Thank you.

Becky Burr: Okay. And I think that the question is that anxiety is the worst. Maybe they are some people think that they are limited and at the very least there is concern about what they need in a wider context untethered to the expansion of the space.

It's 9 o'clock. I promised this would be an hour. So I think we will stop here and I will try to figure out a way to move the ball forward in this discussion. Thanks everybody for participating. I appreciate the discussion.

END