

ICANN

**Moderator: Brenda Brewer
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Mathieu Weill: This is Mathieu Weill, ccNSO, appointed co-chair of the cross community working group for enhancing ICANN's accountability and welcome to our meeting 73.

We're grateful for you taking some time in this busy period of time to join us on this call. And before we go to a quite (full) agenda, I would like to call for any participants are member who are on audio only and would like to be added to the roll call.

No one. So apparently everyone is in the AC room, so this will complete the roll call this way. If there are any updates to the statement of interest - no, none either.

And so we will dive right into our agenda starting with the public comment period since, as you know, it was the close of the public comment period a few hours ago. And for that, I will turn to Thomas.

Thomas Rickert: Thank you very much and welcome everyone. This is Thomas Rickert, the GNSO appointed co-chair to the CCWG. And as Mathieu said, the public comment period ended yesterday but our excellent staff has already taken a look at the comments and are able to provide an update on where we are. And for that, I would really like to hand over to Bernie, who is the master of the analysis.

Bernie Turcotte: Thank you, Thomas. Thank you. Can you hear me?

Thomas Rickert: Yes, we can hear you all right.

Bernie Turcotte: All right, so a very quick summary. As of a few hours ago when I decided to call it quits, we had 80 replies and 75 have been entered into the tracking tool. And actually the results are quite impressive.

The two (softer) recommendations, as (I sent it) are recommendations eleven and recommendation six and by no means claiming that they are negative. They're just less strong than some of the - most of the other recommendations.

We also have comments from four other (sit) chartering organizations to GAC, which only gave us three points but they promised to give us the rest by the end of January.

The ALAC which supported everything except the recommendations two, five and six. The ASO, which had no issues and, in fact, they only had three comments and no significant issues.

So from a chartering organization point of view, we're missing the ccNSO and the GNSO. From the (G) side, because it's a big (unintelligible), we have comments from registries, registrars, ISPC, (NPOC), ICC, NCUC and NCSG.

Greg Shatan says we should have the ICC minutes 24 to 48 hours and, of course, the comments from the (unintelligible) to GNSO are more diverse from opinion on certain points than a general look at the comments.

Recommendation eleven, which is the stress test 18, thanks to those who have been with us for a long time, so the sense is split between those two want less constraints, as many governments do, and those who want (more) (unintelligible), i.e., are not supporting the two-thirds, so the (unintelligible) in the recommendation.

And that's a quick survey of where we are with it. And I'll be glad to take some high-level questions, but obviously we haven't finished any kind of a detailed analysis on this, but we're hoping to get that done in the next few days.

Mathieu Weill: Bernie, just before we open it up for questions, can you maybe refresh everyone's memory on the methodology used for the analysis and what the tool looks like? You know, it's been a while, too, since we've been using it last slide think there's no harm for us to get a recap on that.

Bernie Turcotte: Good point. Oh, I probably should've started with the introduction. What the tool will look like will start - is basically a spreadsheet-based analysis tool like this (level) for entering the comments.

It starts off within the various points. There's another sheet that is strictly the comments, i.e., the list of commenters and their affiliations and where we want to find the original comments.

After that, we have what we call the master sheet where basically we will list what the respondents - a quick summary of - generated by staff of what they have replied, and then an analysis per recommendation whether they support, they're against, they're neutral or if they did not respond.

So - and then we sort of crunch all those numbers to give us an idea of where they are. After that, basically we've got one sheet for recommendation where we include, if at all possible, all the text that was provided on a specific recommendation by the respondents.

And if they did not reply to the survey indicating that they were for or against the particular recommendations, that (tries) to analyze from the written comments whether the respondent is in favor, against or did not give any reply regarding where they want their efforts to be.

Then again, we have a quick summary of that comment and that's it. So it provides a way of looking at this from a global perspective and then it dives in on a per recommendation basis with the actual text provided by (Melissa Ponch).

Like I said, we tried to include most of the text. In most cases, it worked. In some cases, the submissions are quite long. It just really does not make sense to include that into the spreadsheet format.

And anywhere where we've had to cut back on the amount of text provided by respondents, we include very specific text that notes that we have done that and ask the reader to go back to the original comments for all the details if they are so interested. I believe that's a quick overview of what we thought and how we do it. Thomas?

Thomas Rickert: Great. Thank you so much, Bernie. I have two questions. One, I'm reading from the chat - or it was rather comment from Kavouss thing that the number of comments are very low so maybe, Bernie, you have available the number of comments we received for the previous report.

Because, if memory doesn't fail me, IT responses in total is even better than previously. And the second question is whether you have a split of the comments received via the interactive tool versus those that have used the public comment form.

Bernie Turcotte: Thank you, Thomas. It will take me one or two minutes to (shake) up the exact number from Version 2 of our report, how many comments we got. Responses to the survey was at 58.7%, so almost 60%, and basically twice but we have been used to seeing when we've used this kind of tool.

So almost 60% is very impressive. I should note there have been several responses where people have done both. They have included their replies to the survey and they have included a written document.

Most of the time, the written document (in question) is more because their comments a long in the becomes a little bit (unyielding) trying to read that in the column format of the survey. So it was very useful. And that's that.

((Crosstalk))

Bernie Turcotte: And I - and for your first question, we had 93 commenters on the second draft.

Thomas Rickert: Thanks so much. So looks like we're not far from the response rate we got for the previous report, so actually representation or community feedback is not too bad.

I'm sure that the geographic analysis is yet to be done. There is a question from Avri but, you know, Bernie, should you have geographic spread of the responses available already, by all means share them with us.

Bernie Turcotte: No, that has not been done, I'm sorry to say. However, just a general feeling that North America, Europe, Africa and some of Asia are okay. Overall, volumes probably are less from South America. That - those are my initial feelings. We look forward to confirming that as we complete the analysis.

Thomas Rickert: Thank you so much, Bernie. Do we have any questions from the group? I will pause for a second and wait for hands to be raised. And Greg Shatan is just posting in the comment box that we only had 59 comments on the first report.

I should say that we - maybe we should only not look at the number of comments and observations. I'm sure that Kavouss's concern is about geographic outreach and includes - and actually we had a very good turnout from people that we have not seen in our group on the various Webinars.

So that has been a very pleasant surprise to see that newcomers, so to speak, have helped work on - or have taken the opportunity to listen to the presentation of the proposal and ask questions, (good) questions.

And actually - (Ann) is correct in saying in the chat that we should be getting fewer and fewer comments because we're only sort of doing updates to the report who's call recommendation or less have stayed the same and already enjoyed community consensus from the beginning.

So I see the hand raised of a participant SEB so I'm not sure who's behind that acronym, so please introduce yourself, and the floor is yours.

Sebastian Bachollet: Thank you. Can you hear me?

Thomas Rickert: Ah, so that's Sebastian. Welcome, and yes, we can hear you.

Sebastian Bachollet: Again, sorry, I am on my phone and it will be sort of tricky. But I just - again, it's Sebastian Bachollet for the record. And I'm sorry for my short name in this chat.

Yes, I want to remind you that the goal is not to have - the goal is not to have more comments or (unintelligible) comments. It's not relevant here because we ask (specifically) for the (commenters number) of (ASO) and AC (participate) within the (ASO) and AC in the discussion and try to have (a report) of (the ASOs) or ACs to give their comments.

And you may see less (aid) from end-user directly, for example, because we tried to get them into this (ALAC) comments and even for a member of the group of (unintelligible) this group is for (the roll), then please don't try to check the number.

Try to check the new ones, the ones who are outside of (ASO) and AC that will be a good (group member to fit) and, yes, we, as the (unintelligible) at large, we try (unintelligible) all them in one.

And we are (working out) for that and I think we'll proceed. And please don't try to get the number of something (so) in this third report or comments. You very much.

Mathieu Weill: Thomas, are you speaking into a muted microphone?

Thomas Rickert: Oh, yes, that's my usual practice. Sorry. Sorry for this. But I actually was saying that I wanted to give the group a few more seconds to chime in, that more questions on the public comment.

Okay, so that doesn't seem to be the case for the moment. The me just briefly check in terms of next steps. Mathieu, would you like to cover the next steps in the work plan, item number four? Is that okay?

Mathieu Weill: I can do that.

Thomas Rickert: Okay, perfect. So with that, we can close this agenda item. I'd like to hand over to Leon for the third agenda item.

Leon Sanchez: Thank you very much, Thomas. And hello everyone. This is Leon Sanchez. In the next agenda item is (unintelligible) based on the charter organizations). So at this point, I would like to open the floor for the different chartering organizations, a spokesperson that has been updating the group on the progress and the thoughts that the different charter organizations have on this recommendation.

And I see no one raising their hand, so if you want me to call anyone directly - I see Alan Greenberg has raised - and he has raised his hand. So Alan, could you please take the floor?

Alan Greenberg: Thank you very much. As Bernie said, we have submitted their comments. We're one of the ones that submitted a separate document in addition to the survey, although I don't think it is posted to the comment period yet.

We found out (somewhat) through our (chalk) or something, that the survey tool takes some very detailed comments with paragraphs and title headings

and merges it all into a single stream of consciousness which is sort of hard to read.

So we have provided something that is formatted a little bit better. We do have a number where we have either had a yes but a restricted yes, and in those cases, we don't think the issue is controversial to fix but there was something we needed to point out or in one case, we're identifying some things which could break the yes and change it to a no which we know are being discussed in some circles.

And there are five un- or rather, seven unrestricted no's and for restricted no's - four restricted yeses. Sorry - I started with - four restricted yeses, five no's and four res- I'm not doing this well.

Let's start again. Seven no's, four restricted yeses, which we don't think you're going to be controversial, taking off the restriction, and five unrestricted no's that, where we think are substantive issues that have to be addressed.

And in some cases, they coincide with board issues which CCWG seems to have to be able to address and, some cases, there are things which we're - which are perhaps you need to at-large, but we are, in all cases, have identified what we believe has to be changed to change everything into a yes.

So I apologize for the confusion on the numbers, but it'll become obvious when you look at the actual report. Thank you.

Leon Sanchez: Thank you very much for this update, Alan. Next in the queue I have Athina Fragkouli from the ASO. Athina, might...

Athina Fragkouli: Yes. Hello, thank you.

Man: Now we can hear you.

Athina Fragkouli: Can you hear me? Perfect. Okay, thank you very much. I would like to give, like, the highlights of the ASO submission. In general, I would say that it was very positive and (we) support the third draft report.

Of course, the (unintelligible) is coming from all five (unintelligible), so it's, in general, from the member's community. So looking into the recommendations, (and now) we support the model and we - in the recommendations.

And we intend to participate in the community structure. A couple of clarifications we want to make and recommendation number three, we're talking about the fundamental bylaws - the addition of the fundamental - of the IANA related issues to the fundamental bylaws.

Maybe there we want to specify that we're talking about the main functions and not the other functions. With regards to the ICANN mission, we clarify that it's important for us to have a reference to the ASO MOU and to have (unintelligible) there.

With regards to recommendation eight about the reconfiguration focus, I believe there is a typo there. We are excluded - we're supposed to be excluded, but instead of talking about reconsideration process, it talks about the IRP.

So this can be clarified, of course. And other than that, about (step) 18, we - in general, we say that if the context is acceptable and we support (a text) that

clarifies today's practices and can be supported by the NTIA. That's from our part. Thank you.

Leon Sanchez: Thank you very much, Athina and next in the queue I have Mathieu Weill from the GNSO.

Mathieu Weill: Thank you very much, Leon. This is just to confirm that there is a ccNSO council (culture) where our group is reporting on the agenda, so there is no - there has been a submission from the ccNSO yet, but therefore, it is as planned and it is possible that we can get an input from me ccNSO the next few days. That's it for the ccNSO. Thank you, Leon.

Leon Sanchez: Thank you for this very concise (intervention), Mathieu. Thanks in the queue I have Julie from the (ASAC).

Julie Hammer: Thank you, Leon. Just to (go) everyone in the (ASAC) didn't deliberately choose to submit a one page comments and not to comment specifically on individual recommendations.

That was a very deliberate decision because the (ASAC) has refined some commenting on any aspect outside its limited scope and (unintelligible) comments they have made that supports the implementation in the bylaws of such periodic reviews to ensure that ICANN is serving (as security, stability) and resiliency as the DNS.

It (makes that the sole) designator will be (unintelligible) and remove only those directives selected by the organizations that currently appointed voting members of the board and that will be empowered to appoint to remove board liaisons.

And it also comments on advisors that any process that empowers the community to reject all part or the whole of the IANA budget must be implemented in such a way as social (unintelligible) continuous delivery of the IANA functions.

So that's the gist of the comments that the (ASAC) had made. It also notes that, with appreciation, that the current draft proposal has taken note of (ASAC)'s advice in Dublin that it does not wish to exercise power in - or even have the ability to exercise power in the community mechanism.

And taking into account those comments and - on that basis, the (ASAC) as a chartering organization, anticipates that it will be able to support the final proposal, obviously, on the understanding that nothing dramatically changes between now and then. Thank you, Leon.

Leon Sanchez: Thank you very much, Julie. Thank you - thanks to the (ASAC) for their very concise comments. One page should be something we should everyone look forward to which is, at this stage, so thank you very much, Julie.

And I note that Keith Drasek has provided an update from the GNSO in the chat box. I will read it so that we haven't also on audio and it says that the GNSO aims to have a consolidated position statement by the middle of January.

The GNSO Council will have two calls in early January and plans to have a motion by January 14th. Most GNSO, SGs and (Cs) has submitted the recommendation. But there will be composed data in early January. And thank you for this, Keith.

I see that Alan Greenberg's hand is still up. I don't know if that is a new hand or an old hand, Alan. Okay, I'm seeing a request from (Megan Richards) on a correction to the notes in the discussion page regarding the ALAC position as communicated in the chat by Alan for ALAC. So she's asking to please that are on the (notepad) as per the request of Alan Greenberg.

So at this point, I would like to turn back to my co-chair, Mathieu, for the next agenda item.

Mathieu Weill: Thank you very much, Leon. Mathieu Weill speaking. The next agenda item is our plan. It's basically trying to discuss together the question where do we go from there? What now? Now we have almost all the inputs on the public comment. You have some clear signal from the chartering organization.

We've had a comment from the board and so we are looking both at the very short-term and the mid- in the next few weeks how we turn that around. In the analysis, staff will draft analysis report of public comments in line with what we discussed earlier.

And that will be shared in the week until the - around the 5th of January. We have a call, I think, on the 5th. And so that we can provide our initial analysis. The idea behind this analysis is, not only to produce the statistics, but also to assess the type of this since we may have to a consensus view on the various items, the recommendations.

So analyzing how much, whether it's simply an implementation question, whether it's needing to address comments, that is just a quick correction, or whether there's a substantial issue to actually initiate a clear discussion on.

That is going to be, obviously not a surprise to anyone who will read the different comments. We know from ALAC that there are some no's, in their view.

We know from the board that there are some items - I think it's five, where the global public interest concern might be at stake. And so we are certain of one thing - is that there will be issues that we have to deal with on such things that we have to restart a discussion to find a common way forward.

So that's going to be on our agenda at the very beginning of January to - and our proposal is to start discussing the easy to fix items first so that we can update the report on this and organize (work) on the more complex items including obviously the (notes) from ALAC, the items of concern for the ICANN board so that we can organize work on this.

I have no preconceived view on exactly how to organize this discussion at this point because we need to highlight and identify the topics. But what is certain is that we might have the flexibility for some of them to consider them implementation directions but not all of them. And so we will certainly have to discuss them on substance and organize this on a recommendation by recommendation aspect of it.

And just as a reminder, our charter when discussing the outcome of the phase that we're in where we ask the chartering organization for endorsement or not of our recommendation, our charter says that in the event of one or more of the participating SOs or ACs who do not adopt one or more of the recommendations contained in the draft proposal, and we are in this case if we take only (unintelligible) case right now, the co-chairs shall be notified accordingly. The notification shall include at a minimum, the reason for the

lack of support and a suggested alternative that will be acceptable, if any. I think we're in this case.

And the CCWG Accountability may, at its discretion, either reconsider or post for public comments and/or submit to the charting organization a supplemental draft proposal which takes into accounting - well it should be takes into account the concerns raised. So we will have on these issues to discuss whether we are reconsidering, whether we are submitting a supplemental draft or whether we are going to an extra public comment. And that's going to be the kind of decisions that we'll have to make on these substantial issues.

That being said, I think this draft analysis is absolutely key for us to structure the work. And we also are well aware that there are already some items that we can start discussing, although it would be certainly better to have a clear view on exactly the list of items before we rush into one or the other.

And a question was raised in the chat about the fact that the GNSO will not comment until January 14. It is a very good question and I don't think we should wait until January 14 to start assessing the comments we've received and how we might mitigate them. I would anticipate that since a lot of the stakeholder groups from the GNSO and a lot of the constituencies from the GNSO have contributed directly to our public comments, we already have the substance on the potential input from the GNSO.

And if we take them all - try and take them all into account then we certainly have an ability to start working from there from this basis in an efficient manner that will not contradict the GNSO input when it comes later on. So I hope that's addressing your question. And to a question from Seun who says that no comment from the GAC yet, it's - there is a GAC comment and Alice

has provided the link in the chat. And more is expected to come but I think we already have a good view of the type of issues that the GAC is considering right now.

So I think we really are now in a position to start addressing all of these comments on their merit and try and expedite as much as possible this so that we have a full view, that it's an assessment that is inclusive but also efficient in terms of turning around a new report.

And obviously I would say that it does not seem to be very realistic at this point to expect that our potential supplemental report would be published by January 7. We have a lot of work ahead of us. And so some of the questions we might have to discuss now - and I will open the floor for discussion in a minute - are whether there is a need perceived by the group for maybe increasing the frequency of calls in the coming period starting at the beginning of January; re-setting up some subgroups to address some of the topics, and obviously how we can work in as efficient a way as possible.

That's what I would say in terms of work plan at this point. And obviously this agenda item is meant for each of you to provide your input to how we organize work. And I see that Kavouss had his hand raised but has been disconnected. Kavouss if you can still speak then you're welcome to do so, otherwise we'll try to reconnect with you - I think Kavouss is requesting a dial-out.

Kavouss Arasteh: Hello, do you hear me?

Mathieu Weill: Yes, Kavouss, we can hear you. Welcome.

Kavouss Arasteh: Hello. Mathieu, do you hear me please?

Mathieu Weill: Yes I can hear you all right.

Kavouss Arasteh: Okay. So thank you very much for the call. You mentioned that you have all comments but please kindly remember that up to (unintelligible) of January all chartering organizations still have time to comment. For instance, GAC comment does not help. There are very general in two area and none clear in another area saying there is no consensus. I don't know about the others. So please kindly consider that still we have time to deal with that.

With respect to the supplement, you mentioned that you provide supplement to the charter organization, very good. But it depends what is the nature of supplement. If supplement is make corrections or implement the comments here, but if there are comments with (drastical) changes then the supplement is also intended or should be intended to go to the public comment for views because we have to see what is the type of the supplement. For the time being it may be early to talk about where this supplement should go.

We need to wait until the time that you have mentioned, 7th of January, where everything is more clear and then to go to the supplement nature. Mathieu, what I have gathered that there is still a lot of rush from some groups or some people and perhaps - perhaps from the chairs. Please kindly note that leave a little bit more time to have a better understanding and better judgment. And then when you come to the Item 4 I will discuss about the ICANN views or board view. Thank you.

Mathieu Weill: Thank you, Kavouss. Indeed I think we - as we certainly have enough right now to start discussing and we need to remain flexible for the input from the chartering orgs that might come later, including the GAC. And I think your perception of rush is well noted. I think we do have enough now to start

working and do it diligently on the merits of the comments. And I'm certain that we'll be very careful to make sure that the next iteration is the final one. It should be certainly the outcome.

And if there are drastic changes in the next iteration then obviously we'll have to consider the question whether or not to go for a public comment; that's what our charter say, at least it's not prescriptive but it's a question we'll have to address.

Tijani, you're next.

Tijani Ben Jemaa: Yes, thank you Mathieu. Tijani speaking. You said that you will form some more groups to address the issues. I don't think it's the right way to do now at this stage because we will have to discuss everything in the whole group - in the whole CCWG group because it is probably, as you said, the final round. And we have to take the final decision. What happened last time I think that because of some issues were discussed in the working parties they - right now we have comments and the negative comments from people who are from the group. It is because some issues didn't - they didn't find that there is a consensus on and we are here now.

So I think that for the remaining issues we have to discuss them all in the CCWG group. We need to have more calls, yes, I agree. But we have to address them together. Thank you.

Mathieu Weill: Thank you, Tijani. That's - I was opening for discussion on this question of groups or more calls and thank you for giving your perspective on this which is clearly that you would be in favor of plenary discussions and if need be more calls. And if others want to chime in on this that would be much appreciated.

Alan, you're next.

Alan Greenberg: Thank you. I've got a slightly different view from Tijani and that I don't believe you can come up with ideas and do the basic work in the plenary. I think there has to be some prep work in the smaller group but this time I think every issue that is going to be changed has to be brought back to this group which did not happen in the previous go-around. So I agree that everything ultimately has to come back here but it should come back in a concise and proposed way as opposed to, you know, just starting the random talk that's at the start of these kind of things on how to reconcile the different positions.

For clarity, the schedule you have up on there implies that there is no CCWG or working party work that's going to start until the 7th of January. Is that indeed what you're saying or is there something ongoing in parallel with that?

Mathieu Weill: No the - we can start right away any topic-based discussion without waiting for the full analysis report.

Alan Greenberg: Okay.

Mathieu Weill: Our next call is going to be on the 5th of January I think.

Alan Greenberg: Okay.

Mathieu Weill: So that's - but obviously if there are any items, for instance, on the discussions that we need to have and further agenda items that we want to follow up on in the meantime that's perfectly - we need to do that. That's just not going to be something that can be reconciled as a decision of the CCWG until then but as you said, there's a lot of prep work to do.

Alan Greenberg: Yeah, for clarity, this is a difficult season for all of us. I'm not surprising anyone.

Mathieu Weill: Oh yeah.

Alan Greenberg: To the extent that we can, between now and let's say the 4th of January, we need to schedule any meetings, work parties or CCWG meetings, really as quickly as possible.

Mathieu Weill: The intent is that there is no formal meetings in between.

Alan Greenberg: Okay fine. Thank you.

Mathieu Weill: That's our (rushing) approach for today. I'm not seeing any other comments yet. Obviously we have some decisions to make to start planning the calls for January and we'll - we can take that discussion on the list if need be for input. And so that's - we'll take note of those comments.

With regards to the question actually Kavouss made a - mentioned that he wanted to speak to how we would treat the board comments. And so I'm coming back to this item because I would not forget that approach. You will remember in our call last week we concluded that there was an area where greater understanding of the board's interpretation of global public interest would be useful for us in that it would help our group anticipate what the board's reaction would be to a new proposal.

We have followed up with a request sent by email to Bruce as our liaison on that matter. We have not yet received an answer to your question, Kavouss, on

this. We would - we will probably remind Bruce of the question and at least ask whether that's possible to get an answer.

One of the options as well was to request our advisors to think a little bit - provide us with their thoughts on this question. And I'm meaning the independent advisors appointed by the public (unintelligible) group. And that's an option that maybe we can discuss now but I will turn to Kavouss to see whether he has thoughts on the way to address the board comment.

Kavouss Arasteh: Thank you, Mathieu. I think we have heard a lot of things. One thing we have heard that people quoting the Fadi Chehadé before the Senate saying that ICANN or board will send the proposal from CCWG without any comments. I'm not going to judge whether he's right or wrong. But what I understand from the very beginning is report of the CCWG should go to the ICANN to the NTIA that means ICANN could have all possibilities and opportunities to comment on that.

Therefore, we should be careful about not treating the comment of the board timely. Please apologize me, you three co-chairs, you said that you three take the comment of the board exactly equal with the comment of the public comments. I have no problem with that. But there is some difference between that.

The board finally may put some veto on one or of or some of your recommendations therefore it is better you take timely consideration of the board's views and you know that in the past we have done that and we gained something. The sole membership was one example that was not agreed by the board and we changed that to the sole designator and so on so forth.

I'm not suggesting we agree with all board's comments but I'm saying that we put them in a proper context and treat them properly and timely. This comment is before (unintelligible) the last 10 days and we have not yet take a procedural aspect how to deal with that. There has been some (unintelligible) emails about that but we need to see what we can do, take them in the order of priority - his is a message I told to the ICANN board in the call - in the order of priority. Treat the most difficult one first and then go to the smallest or more simplest at the later stage. We need to do that one and that is important.

I have not seen any proposal from the co-chair for the last 10 days. Perhaps you're waiting for some time. But it is now the time that you take the leadership and propose an approach to that either establishing a sub working group or working group or existing group to deal with the items according to the subject and try to find something involving the board's representatives, Bruce and Cherine, and so on, because I have sent some message to Steve Crocker and he positively replied that they are ready to collaborate to the maximum extent possible with the CCWG. But we should treat them in a more, let us say, friendly manner and not in a confrontational manner. Thank you.

Mathieu Weill: Thank you very much, Kavouss. And I think Thomas is next and I think he's - it might be a response to your question. Thomas.

Thomas Rickert: Yes thank you very much, Mathieu. And thank you very much, Kavouss, for your question. First of all let me say that we do not want to be confrontational with the board at all. We want to be as constructive as can be and we understand the board wants to be as constructive with their comments as well. I mean, if you take a look at what the board has done they have done exactly what they indicated to be doing so their comments came in after they had already given the group a head's up that they would be chiming in.

And they need to. It's their role to be doing that. But talking about the board's role they actually have two roles. One is chiming into the conversation forming our consensus recommendation and the second role is the role as being the entity (unintelligible) that passes on consensus recommendations to NTIA.

And, Kavouss, we have not weighted until today in order to either or lose time but for the following reason. If you look at our charter, we are tasked with coming up with a community consensus proposal. And for that to be a community consensus proposal we need the support of the chartering organizations. We're seeing now that chartering organizations do comment and some have substantive comments asking for revisions of our recommendations.

So we have to be very clear in the demarcation of the two board roles. And I think the - or we think the right and appropriate way to do that is to wait for the chartering organizations and the community to have time then to see what the impact on the consensus recommendations that we have is and then we need to assess whether the recommendations in their final form - and the final form will be worked on also in the light of the board comments - whether their recommendations in their final form still raise concerns with the board.

It would be premature to try to start tweaking our recommendations, as you know we have enjoyed community or other's consensus before we even heard what the rest of the community says. And how that would potentially further shape the recommendations that we've put in our third report.

So we have to follow the sequence of things. The board has indicated that they do have concerns but they surely will have their concerns of frame their

concerns on the basis of the final recommendation. So we want to work with the community including the board to come up with consensus recommendations and hopefully these consensus recommendations will enjoy broad support including support from the board.

Having said that, and this is actually the point why I raised my hand, we need to think about how we deal with the global public interest consideration because of two things. One is that we need to understand what global public interest is. The board has made reference to the global public interest with respect to five or six of their concerns.

And so we need to understand what this (unintelligible) is being used, this is what we've asked the board to chime in on and also we need to understand whether we share the board's concern. And even whether we share the board's views that the concerns they have raised do have public policy or global public interest - I'm sorry, not public policy - global public interest relevance.

And in order to find that out we are waiting for the board to come back to us. But it may be a way forward and we would really like to hear the group's view on that whether we should ask our independent advisor whether they share the view that the global public interest is concerned work in the areas that the board has raised.

And as we move forward, may well be possible that the community consensus might still be such that does not entirely exclude the possibility of the board having global public interest concerns and therefore I think we as a group need to offer a rationale with our recommendations as to why we think the global public interest is not effective.

So in a nut shell I think we as a group need to consider reaching out to our global public - to our advisors to ask them their views and also we need to build into our process global public interest related rationale that will also support as well as the wider community understand why our group is not of the opinion that global public interest issues are in our final recommendations.

So I'll just pause here. Kavouss, I hope that answers your question. And back to you, Mathieu.

Mathieu Weill: Thank you very much, Thomas, for this very broad and clear explanation. Next is Izumi.

Izumi Okutani: Thank you. So I completely agree with Thomas and Kavouss that we should consider and treat the board's suggestions and comments very flatly, objectively. And we should look at the content of what they are suggesting rather than to react to the fact that the board just made these comments and suggestions. I also agree with the approach of distinguishing and categorizing the board's comments rather than considering them all flatly.

I think Thomas just clarified very rational way of working on this. I want to share the observation from the ASOs related to this. And while the approach may sound a little bit different, I think in essence we are in agreement with the suggestion made by Thomas. So just to reiterate, we observe that out of the board's suggestions there may be varying degrees of impact on the current CCWG proposal.

So some could be easily addressed and considered as not substantial changes to the third version of the proposal in which case we think that it doesn't need a big discussion in term of how we address it. But the suggestions that could be considered as leading to fundamental changes are not likely to be able to

get support from other chartering organizations. It would be good to clarify with the board on how strongly they feel about the suggestions. And I understand that this is what exactly the CCWG is confirming with the board on the definition of the public interest.

In addition as a comment, an observation from the discussions in the ASO. I have also asked to Bruce whether there is a particular suggestion out of multiple suggestions that they made that they feel very strongly about and maybe we can see if there are any suggestions that is considered to be important for the CCWG members and the chartering organizations to - not to make radical changes from the third version but the board will, if it's important, that their suggestion for changes gets addressed.

So I think this is something that we should identify very quickly and start coordination between the board and the CCWG members as well as in parallel coordination with the respective chartering organizations. So I think in essence I'm very much in agreement with what Thomas was saying because I think that needs to be the direction that he was suggesting. So thank you.

Mathieu Weill: Thank you very much, Izumi. And I think we're seeing convergence of views on how to address this. Kavouss, it's a new hand I believe? Kavouss? If you're speaking your line may be muted.

Kavouss Arasteh: ...reconciliatory approach but not offensive or defensive approach. I do not agree totally with the remarks of our co-chairs, Thomas, it was too strict and too hard. That does not take us to anywhere. And I don't agree that anybody saying that any comment is nonsense. Nothing is nonsense. Comments is comment. People may be right or wrong. We may agree or not agree but they could not say something is nonsense. Let us provide some constructive

approach. It is the duty of the co-chairs to take this reconciliatory approach now.

I told the other night to be my distinguished co-chair, Leon, negotiations, he did not get my point. Negotiation means that you get involved in discussions and to find a solution. If I defend my own points and you defend your own points we never get anywhere. Please, it is your duties and incumbent to the co-chairs to take this leadership. Thank you.

Mathieu Weill: Thank you very much, Kavouss, for this advice. And I know that Thomas was correct in that he has no - not called any comments nonsense and although we may have different styles and different cultural backgrounds I think we are all in this process not only speaking for the co-chairs but everyone around in this call in a very keen in making all of this work in a collaborative and constructive approach. And that's certainly what we need to do.

There are good suggestions that were made about how to assess the various types of degrees of impact of the board comments as part of our comment analysis. We can certainly start this early on. I have - I've seen some strong traction for stressing again that request that constructive request to the board to further understand the underlying definition of global public interest that they are preparing to apply to the way - to our recommendation. I think that would be very beneficial to all stakeholders to get clarity around this.

And as a consequence I think we will certainly get fruitful collaboration and discussion with the board over the next few weeks. As an action item from this section of the agenda I would say that we will request Bruce for an update on this request from last week. We will also have to - we will provide, now that we have the full comments, some assessments about the board comments as well as the key other inputs we've received, so that we can assess the

varying degrees of impact that is certainly going to be useful in our discussions further down in January.

And we are also going to be defining a plan for the meetings in January and we've heard very clearly that all of the remaining outstanding items need to be discussed in a plenary. There was some divergent views on how to prepare work. But at least the consensus was that the plenary of the CCWG must discuss every outstanding item and so we need to plan for that.

Tijani, I think I see you're back with your hand raised. And if you're speaking, Tijani, you're maybe on mute?

Tijani Ben Jemaa: Yes, Tijani speaking. Do you hear me now?

Mathieu Weill: Yes.

Tijani Ben Jemaa: Okay thank you. I feel that we are entering a long and endless discussion regarding the public interest. You remember very well at the beginning of our work when I first tried to make it as a key point most of you said there is no definition - a clear definition of the public interest. And you remember, Mathieu, we had the private call so that you convinced me to change that into public benefit or something like this, I don't remember exactly.

So if our discussion about the comments of the board will be around the meaning of the public interest it will be an endless discussion. I think that at this stage, and especially because we are a very, very tight - a very tight time - we need to look at the issues very - how to say - positively or productively trying to find solutions, trying to - not trying to find a definition that will make this comments not very well - not relevant or this one is irrelevant. So I beg your pardon, we have to be - if you want to finish our work and to have a

report that is not contradicted by the board, we have to address the concerns of the board in another way. Thank you.

Mathieu Weill: Thank you, Tijani. I think that's definitely the spirit is to get into constructive discussions to further understand each other and then find solutions that meet everyone's need. Thank you for these comments. We obviously have significant amount of work to do ahead of us. And I think it's good that we are now going to move into an agenda item that is more substance driven and I'm handing over to Thomas for the next agenda item for that purpose. Thomas.

Thomas Rickert: Thank you very much, Mathieu. And now we're going to discuss where we are with respect to the mission, commitment and core values. I'm sure that many of you, if not all of you are following the discussion on the list with great interest. And it's now a time for us to try to get a common understanding on where we are and what's the potential ways forward for us might be.

And in order to give that status update I'd like to hand over to Becky.

Becky Burr: Thank you. I'm going to try to make this as concrete as possible because I believe that the conversation that's been, you know, somewhat mysterious to some participants in the CCWG. And I'm going to focus on the comments submitted by the board and ALAC but I believe that in sort of drilling down on those we'll get to those other - the variety of comments that we've heard on the mission, commitments and core values.

Taking the, you know, sort of driving to the core of the board comments, you know, although they have, you know, suggested some rearrangements and (unintelligible) scope as opposed to mission and the like. In the end the board's fundamental objection is to the phrase that ICANN shall not regulate services that use the unique - the Internet's unique identifiers nor the content

that carry or provide. And the board objects to that notwithstanding the fact that it asserts that as a matter of status it is not a regulator and does not regulate content.

So on the one hand I think we have a sort of fundamental divide about what the potential unintended consequences are for saying that ICANN shall not regulate services that use the Internet's unique identifiers. And in response to that - and this is the area in which the board has said if we can't get a resolution they need to consider a public interest objection. And moreover they have, you know, it appears that the other provisions come in our note to drafters, for example, does not create a problem. But there are some questions in our mind about where they belong.

On this one regulatory point I have in a public comment that I posted to the list so all of you have it, I have asked Bruce, you know, as one of the board participants, to see if there is some language that the board could offer because given the fact that this language about the regulatory prohibition has appeared in all three sets of comments, and notwithstanding the fact that some of us sought a strong limited mission statement would address this, at this point we have legislative history that needs to be dealt with.

So I'm hoping that the board - because it, you know, says in its comments that it's not a regulator and it doesn't regulate content, will try to come back with some language that will help us to close this divide.

With respect to the comments submitted by the ALAC you will see I also posted, and again this was in my personal capacity, not officially as the rapporteur for Work Stream 2, some comments and responses to the ALAC draft comments. And Alan has responded to those. So we've begun a dialogue.

Now again, there are a variety of issues there. But fundamentally I believe that the ALAC comments boil down to a concern that, you know, about unintended consequences or maybe intended consequences about what this language would do with respect to renewal of existing registry agreements, the ability of new gTLD applicants to sign those agreements after this language is adopted, and the PIC specifications.

On the one hand we have a group of people who basically say the grandfathering language should mean that to the extent somebody has signed a contract with those provisions then that should be enforced. But when those contracts come up for renewal to the extent that there is language in the contracts that, for example in the PICS that would have ICANN engaged in enforcement that is outside its mission, those provisions should not be renewed.

There are others - and I frankly count myself among those - who say that, you know, to the extent folks have truly voluntarily committed to undertake certain things as part of their new gTLD application, they should be, you know, they did that to gain a particular advantage and they should be held to those.

That question is a question that I think we're going to have to state very squarely and clearly and have some difficult discussions on because I actually think there is a kind of fundamental difference of opinion. Now the GAC I know has been asking for a legal opinion with respect to what I've just been describing. And I suspect that that would not be inconsistent with the ALAC's views. Otherwise I have a concern, and I think our legal counsel has concern, that we're asking a very, very open ended question.

So I hope that we can, you know, sufficiently narrow this down and think about positively to address everybody's concerns on this. I do have one question for Alan in this regard, and then, you know, I just wanted to sort of get these big issues on the table - well actually I have one question for Alan and I have two other - one other comment - which is that I intend to check in personally with the number folks, with the IAB, IETF folks to get their input and reaction on to the board's suggested changes to the mission statement that affect their organizations.

But the final thing is that I understand at some point that the ALAC did undertake an analysis of what was described to me as all of the PICS. And I wonder if that analysis exists or if indeed there is a compilation somewhere of all of the PICS that have been proposed because that would be something important to view if that resource exists.

So I hope this helps to make the issues a bit more complete and please understand that I know I have been, you know, summarizing some complex issues at a pretty high level. Thank you.

Thomas Rickert: Thanks very much - thank you very much, Becky for that overview. Since you asked Alan a question, before moving to the queue maybe we can give Alan the opportunity to respond? Alan.

Alan Greenberg: Sure, thanks. It's Alan speaking. I'm not aware of any such analysis. I vaguely recall there was a discussion like that that the staff might have done one very early in the process probably before this would be a fully useful thing to do. We did do a very careful analysis of the PICS for the class of TLDs that the GAC identified as category 1, safeguards 1-8 that is the sensitive use ones. And we did do some analysis of that but certainly not on a wider scale than

that. Thank you. That was about 80 or so applications of the total so a very small percentage.

Thomas Rickert: Thanks very much, Alan. Kavouss, I think that was an old hand, correct?

Kavouss Arasteh: Yes it is old, sorry.

Thomas Rickert: No worries, Kavouss. Thank you. Next is Greg.

Greg Shatan: Thanks. Greg Shatan for the record. Not sure how much time we want to spend on particular substantive points. But I do think with regard to the grandfathering discussion that Becky just had that there's definitely differences of opinion on whether the grandfathering is long term or short term and whether we're going to join at some point a discussion of what's inside and outside the mission within current contracts is definitely an issue; how long the grandfather lives before we kill him off definitely an issue.

As well the issue of whether contracts by a new gTLD registry applicant becoming registries, you know, should all be grandfathered in or there should be a split within the first round based on when it becomes effective. I don't think those issues have been resolved. And if we punt them into implementation we'll just - we'll be dealing with them then. So I guess we get into that kind of whole policy versus implementation rubric and we know how much fun that is. Thanks.

Thomas Rickert: Thanks, Greg. Actually we - these days we're in the fortunate position that we have a paper (unintelligible) comes to policy and implementation. There has been a working group working on that for a year or so. So even that might be manageable. But that's not for now. Kavouss has raised his hand again. Kavouss, please.

Kavouss Arasteh: Yes, I think the grandfathering is an approach is used very often in many other areas. It is correct that any new law does not have the distractive application unless their legislator because of the sensitivity insists that it should have this proxy. So here we have to be very careful whether we just want to limit ourselves to the grandfathering and not to talk about anything or we have to get out of that and think that it has retroactive application.

This is a legal issue that we need to careful analyze. And if you kindly read my previous message in the chat that basically is in a full command of all this and we request once again that take this leadership and try to take all of these comments we have received to find a solution in the one hand, not to regulate the content in the other hand to respond to the concerns of board and to some extent of ALAC. Thank you.

Thomas Rickert: Thanks very much, Kavouss. And I think I can safely say that Becky is fully committed to further work on this and lead as strongly as she did over the last year in order to navigate the group towards consensus on this important and challenging subject.

I'm wondering, and this might be an idea that you think is pointless, but it looks like we're having different camps where one group says ICANN should not engage in any such activity that look or faintly resemble content regulation while another group says that ICANN must be in a position to do so. The question is how can we bridge this - the gap, reconcile the differences which look so much contradicting each other.

And listening to what's been said and reading what's been written I think that the core fear has been framed by Milton quite nicely - Milton Mueller. And he said that even accepting voluntary agreement, you know, whether they're new

or grandfathered I think is, you know, renewal sort of resembles entering into new agreements, could lead to a situation where ICANN is exploiting a monopoly position and sort of gently forces contractors into making commitments they otherwise wouldn't make.

And I think that this concept is not brand new. We have (unintelligible) laws, we have competition laws in many, many countries where you have - where you have organizations or companies with huge market power and I'm wondering whether it would be worthwhile considering an attempt to mitigate the friction between the differences by maybe adding language that limits the risk of ICANN exercising such monopoly position and thereby imposing force on contractors.

And I think that ultimately if we came to a situation where one is forced to make commitments they otherwise wouldn't in order to contract but where a contractor voluntarily offers a limitation to what it can do or can't do or a - or conditions under which their services are provided, I think that should be more or less uncontroversial. Becky has previously used the example that, you know, there should not be disagreement on let's say an (adult) service provider offering that domain name in his - or under his (unintelligible) can only register it by persons over the age of 18.

And therefore I'd like to hear from you whether you think it might be worthwhile reaching out to lawyers in the field to help come up with language that could - bridge the gap between the different groups. Andrew, your hand is raised. Andrew, please.

Andrew Sullivan: Hi, yeah, thank you. So I think this is an intriguing and interesting direction to take this. But I want to maybe add a little spin to it to see if this would be a good vein to mine. One of the problems that I think some people have had

with the - with this regulatory stuff and the reason that people are concerned about this power is not just the monopoly power of ICANN but the ability of others who want to use ICANN's monopoly power for various ends to successfully get through the board and all the rest of it a particular regulation.

And so there are people who seem to be concerned and I'm emphatically not expressing an opinion about this but I want to make sure we're clear about the opinion. There are people who are expressing concern basically that ICANN itself as an organization can be manipulated into becoming that regulator despite its monopoly power. So in that case it's actually outside groups who are attempting to leverage the monopoly power rather than ICANN trying to do something.

And I think that's a separate problem from the danger of ICANN's own interests somehow being reflected and both of these things are getting bound up in this discussion. So it could be that, you know, we can find a way to separate those threads in our discussion and still come up with a common answer that is based on this protection from monopoly power sort of approach. And I think if we try it in that direction we might find - we might find that there was something that everyone could agree on. So I really like the idea but I want to make sure we don't lose that other piece of the thread. Thank you.

Thomas Rickert: Thanks very much, Andrew. I was muted again, I apologize. Becky is next.

Becky Burr: Yes, Thomas mentioned this notion to me yesterday. And I've done a little bit of looking and thinking about it. I mean, I think that the competition law analogy is a little difficult to apply. But there are concepts about, you know, associations or joint ventures who - that, you know, come together for a legitimate end and limiting their ability to constrain competition to that which is necessary to achieve their legitimate end.

So I think that there are some thoughts and some concepts that may be useful for us. And as I said on the list, you know, I'm going to, you know, spend a little time trying to kind of articulate the issues that we have to resolve and making them a bit more accessible for everybody in the group. I think in doing that and that process we may be able to identify some ways forward.

Thomas Rickert: Thanks very much, Becky. And before we move to Steve, let me be clear, I'm just thinking of - or I'm proposing to look into this conceptually, as you say. Certainly we can't copy language that has been developed for other scenarios verbatim to what we're doing here. But, you know, to use plain language and paraphrase things it's sort of language that would clarify that ICANN must not impose rules on its contractors that are outside its limited mission. You know, this is - but at the same time clarify that ICANN may accept voluntary offers by its contractors to do so.

Next in line is Steve.

Steve DelBianco: Thanks. It's Steve DelBianco. Thomas, when you talk about voluntary, and then in an earlier sentence mention this notion of monopoly, I'm afraid those two could clash. There is only going to be one operator of each TLD like for instance there's only one dotBank, not multiple; there's only one dotPharmacy and not multiple. So before that applicant gets a monopoly control of dotBank or dotPharmacy another monopoly will make a decision about the criteria necessary to get dotBank or dotPharmacy as well as maybe to distinguish between multiple applicants and how you pick the winner in those regards.

So I'm well aware - and all of you have discussed this before - is that an applicant like dotBank included in its application lots of unilateral voluntary promises about restricting what happens left of the dot as to these terms of use

of their registrants, whether they had to be chartered financial institutions. And I think you're concluding, as I would, that those are voluntary restrictions that do address content and that those were offered by the applicant.

But we also had a situation where from a top down perspective, regulators through the GAC express concern about certain top level domains. And when those concerns were expressed through objections, and, look, we wrote the guidebook and the guidebook included lots of objection processes, if an applicant wanted to satisfy objections by promising to multiple governments that they would undertake some level of restrictions on who a registrant would be like dotPharmacy, well then those promises needed to be memorialized someplace so that they could be enforced as part of that registry's agreement.

Now were they voluntary? I guess they were. DotPharmacy wouldn't have to agree and it could walk away from its application and withdraw. So there's certainly a voluntary aspect to public safeguards that were inserted in the public interest commitments. And yet if somebody looked at this as a monopoly power problem they might conclude that it wasn't voluntary. So I would just encourage us to use examples; examples that include things that we did in the last round of gTLD expansion.

But if we get too wrapped around examples we'll lose sight of the fact that, look, moving ahead we may not have the same guidebook the next time around. In fact I'm pretty sure we won't have the exact same Applicant Guidebook for subsequent rounds of gTLD expansion and therefore we may be trying to solve problems that wouldn't come up the same way in the next round. Thank you.

Thomas Rickert: Thanks very much, Steve. And I think that this is not the place where we can reach consensus or finalize this discussion. It was just an idea of maybe being

able to add language to our recommendation that would remove some of the concerns. And you're certainly correct, Steve, that we need to distinguish between the various scenarios that might come up or that ICANN has experienced in the past.

Kavouss, please. Kavouss, I'm not sure whether you wanted to speak? I see you've lowered your hand. I'm not sure whether that was accidental or intentionally.

Kavouss Arasteh: Yes, Thomas, I wanted to put something in the chat not taking up time but now you've given me so thank you very much. I think it might be good if Becky kindly prepare a discussion document highlighting the situation, giving examples and proposing alternative solutions in order that we work on that and try to find a solution for this so thank you.

Thomas Rickert: Thanks very much, Kavouss. I'm sure that Becky will take up that idea as she did previously to summarize where we are and put options on the table. In order to take stock of the discussion that we had so far I read and heard from some concerns the proposal that I put forward should not be an exact copy of other scenarios because that might be difficult or even dangerous.

On the other hand I've seen some support for the idea of giving that a try. So why don't we put that down as an action item for us for Becky to look at and maybe discuss with external counsel whether there are ways to maybe make use of corporate law or competition law experience in trying to mitigate friction (unintelligible) community on this very aspect.

I'm not sure whether Becky would like to make some final remarks on this agenda item so I would like to give you the last word before handing it over to Leon.

Becky Burr: Thanks. And as I indicated in the list I will try to put something on paper to circulate to everybody to make this as concrete as possible and to try and articulate where I think the questions that we need to wrestle with are. I suspect it won't get it exactly right but I think part of the sort of exercise of understanding precisely what the questions are will help us narrow those things. So I will endeavor to do that. I have to say that it is probably going to be next week that I get that out to the group as I have family duties that are going to keep me otherwise occupied this week.

Thomas Rickert: Thanks very much, Becky. And actually I misspoke, next agenda will be covered by Mathieu so over to you, Mathieu. And thank you, Becky for all your work on this.

Mathieu Weill: Thank you very much - thank you, Thomas. And apologies for those of you who were - are certainly very disappointed that it's not Leon. The second - this agenda item is also for a quick update and clarification on the discussion that took place on the list regarding Recommendation 11 which was - which is related to the famous Stress Test 18. And as Bernie said in his opening analysis of the comments, it's one of the items where we have support but a softer support than others.

And especially where the objections are basically dissenting, some of them wanting something tighter, something more flexible on the other side. So it's certainly going to be one of our items to discuss thoroughly in the next phase. And to recap this discussion that took place on the list at least, obviously we haven't reviewed all the comments, Steve had prepared a short slide to be displayed reminding ourselves of the wording. And Steve, would you like to recap what your understanding of the discussion on the list on Recommendation 11 please?

Steve DelBianco: Sure, Mathieu. Brenda, would you be able to display that single slide in the Adobe room? Thanks. While Brenda is bringing up the slide just to recap, the Stress Test Work Party identified Stress Test 18 and the and the (test) identified the fact that ICANN has board - board has a special obligation to try and find a mutually acceptable solution if it should decide not to follow advice from the GAC.

And that special obligation is imposed in our bylaws without any requirement that the GAC advice that came over was a consensus advice. In other words, the word consensus is not in there, the level of consensus is not there. And while today's GAC operates under support in the absence of a formal objection, there is - there was no reason to believe that the GAC will forever operate under that rule and the GAC alone controls its decision making processes; it's one of its own operating procedures.

What Stress Test 18 identified was the risk that the GAC might decide to move to a different decision making method such as some sort of super majority or significantly less than the current consensus method but ICANN's board would still have the identical obligation to try and find a mutually acceptable solution.

Our rationale for fixing that is that that would place ICANN's board in the untenable situation of having to arbitrate amongst governments - sovereign governments who had different views on an element of advice because if advice came over with a minority objection to it then those GAC members would expect to be treated like sovereigns as ICANN tried to work out a mutually acceptable solution among multiple governments and ICANN.

To avoid that in our first and second draft, the CCWG added one sentence to Article 11 Section 2 relating to the GAC on Item 1J. And that particular sentence we added was that where GAC advice was approved through consensus then the Governmental Advisory Committee and the board would try to find a mutually acceptable solution. That survived the first and second draft with wide support except from members of the GAC. Many members of the GAC objected to us suggesting that ICANN's obligation would only there in the event of consensus.

Then at the Dublin meeting the GAC communiqué emerged by adding something that the GAC had sought in the past but has never been part of the CCWG conversation and that was GAC's desire that the board have to achieve a 2/3 majority if it were to decide to reject or not follow GAC advice.

That set the table for what we call the compromise in the third draft which was to reflect the GAC's desire to have the board get to 2/3 instead of a simple majority combined with CCWG desire to memorialize and lock in the current GAC decision making method where the GAC advice that gets this high level of special obligation is GAC advice that was approved in the absence of a formal objection.

So on the screen in front of you in Adobe all we've done is display today's bylaws and then Recommendation 11. And I've tried to show in the center of the second column the underlined phrase which is the new phrase added by Recommendation 11. The key to adding that phrase was to reserve the special obligation of finding a mutually acceptable solution or trying to find one that that special obligation can only be reached if the GAC advice was approved the way it is today, a general agreement in the absence of a formal objection.

And in exchange for the GAC's reserving that treatment just for that kind of advice, that ICANN's board would have to get to 2/3 instead of a simple majority to reject that advice in situations where the board's deciding to reject GAC advice. So a simple majority of the 16 board members today is 9; 2/3 is 11 so it is a higher level.

Now on the list some folks got into a separate discussion of whether this suddenly creates a new obligation for the board to vote on all elements of GAC advice or whether it significantly changes the calculus of the balance of obligations and balance of powers. I believe the comments from myself, from Steve Crocker and several other individuals circled around this conversation.

And it would be great to clear the air a little bit here and understand the levels of concern - and I haven't read all of the comments that were submitted by the deadline yesterday - but on list there was quite a bit of belief that somehow this one sentence that we've added, this phrase that we've added, obligates the board to vote on all GAC advice.

But as Steve Crocker indicated, there have been perhaps two instances where the board decided not - formally decided not to follow GAC advice. And in that instance informed the GAC that it wasn't going to follow it and it had a discussion about trying to find a mutually acceptable solution. In most instances when GAC advice comes over to the board the board either begins some element of implementation or hands the advice over to the appropriate policy making body such as GNSO or even ccNSO so that we can honor our bottom up policy development process and the GAC advice runs through the board but makes it way to the appropriate body.

In only two instances did Steve Crocker recall that the board itself took a vote and found either a majority or something greater than a majority in order to

come to the conclusion of telling the GAC that here's an instance where we are not going to follow that advice, we're not going to put it over to a policy body but instead we're going to explain why we're not going to follow the advice and now we'll try and find a mutually acceptable solution if one can be found.

So the addition of this sentence doesn't obligate the board to vote in any more circumstances than it does today. It just says that when the board reaches a decision - sorry, reaches the point where the board says we're not going to follow this particular advice. That decision needs to be recorded as a board vote where at least 11 board members felt that way. And then the board picks things up exactly where they are in today's bylaws where the board and the GAC would try to find a mutually acceptable solution.

So I think presented in this way you start to understand we are not changing the dynamics or processes on how the board deals with GAC advice when it comes over; we are only formalizing the level of voting necessary if the board reaches those rare instances where it would say to the GAC, we're not going to follow this particular advice. So, Mathieu, I hope that that summarizes where we've - how we've gotten to where we are and I hope that it helps to clear the air a bit with respect to some of the conversations that happened on list over the past two weeks.

Mathieu Weill: Thank you very much, Steve, for the comprehensive summary. Kavouss, you raised your hand, please.

Kavouss Arasteh: Yes, I am on the queue. I have sent you my comment about Recommendation 11. I don't think that I could take your time to explain that. The approach taken by Steve as the main architect of this is not a proper approach. It is not clear whether Steve or CCWG is not happy with the current situation or if

they are of the belief that if in future Principle 47, which is based on consensus - by the way there is no full consensus; full has no meaning. Please take out the full before consensus. There is no objective for consensus.

If the GAC change its Principle 47 from consensus as defined in that principle to other approach such as majority, simple majority or super majority, then CCWG could have some (unintelligible). It means that the current situation should not be changed.

So the current bylaw should remain as it is but a sentence should be added should in future GAC modify its Principle 47 from consensus to simple majority or to super majority whatsoever you can put in figure 2/3 or (unintelligible) so on so forth, then the text that proposed by Steve or by CCWG with the recent modifications of voting could apply. But not certainly from the very beginning that the current procedure is not correct. We have lived with this for 17 years; did not cause any difficulty at all.

So we should do it in two step; Step 1, this is the situation but should the Principle 47 is changed from the consensus to simple majority or super majority then we need these actions that only those consensus advice would have the obligation of ICANN to take action with respect to getting into the bilateral discussion with GAC. So the procedure is not correct. And I put in my comment Recommendation 11, send it to you co-chair, send it to the chair of the GAC and send it to the Secretariat. And I have explained everything

There is a superfluous explanation of Stress Test 18. And you (unintelligible) the public on a particular GAC that you are more serious than anyone else about this and there is no way why such a suspicious arrangement is made so we should correct the action, distinguished of Steve. Thank you.

Mathieu Weill: Thank you very much, Kavouss. And I think it's fair to say that Steve was recollecting a collective effort from the CCWG to try and find some compromise on a topic where we are well aware that there are some conflicting expectations from the various stakeholders around this and so obviously it's difficult to be (straight) compromise and your comment is well noted on this. And as I said, we have a number of comments that we will need to analyze on this recommendation which still has some way to go to the finalization I'm afraid.

Greg, you raised the discussion on the list. I would like to know whether Steve's explanation are clearing things up on your side. Greg.

Greg Shatan: Thanks. Greg Shatan for the record. I think Steve's explanation is more an opinion than an explanation. And I disagree with it as an analysis of the draft that we ended up with. I do think it was the intent of some in the group that worked on this to merely list a current majority threshold to a 2/3 threshold. I don't think that was the intent of everybody in the group. Frankly, I think it was the intent of some to institute a more formal mandatory voting requirement in order to act inconsistently with GAC advice. And I think that came out on the list.

I think it also came out on the list and particularly in Steve Crocker's note that the board currently uses some flexibility that's available in the unique phrase determined to take an action that is not consistent rather than using the term voting to decide the board's view of how it is acting in regard to GAC advice. The board uses that flexibility in order to move forward and try to resolve issues with the GAC. I think that the - that flexibility will be lost with the language that we currently have.

I also think that it does create at least an issue with regard to the status of GAC advice that it either fails a rejection vote or is not put up for rejection vote, whether that is binding or not. I think there are a number of other issues with this as well. But I fundamentally disagree with Steve's opinion about the effect of this - the language but I agree that my intent in agreeing to this was very limited. I don't agree that what we ended up with is limited.

And I think that we need to revise it so that it is (unintelligible).

Mathieu Weill: I can still hear you, Greg.

Greg Shatan: Okay thank you. I thought I was cut off but...

((Crosstalk))

Mathieu Weill: No, you're still with us.

Greg Shatan: So I think we do need to revise the language in order to make it clear that all we are changing is the 2/3. Frankly, I believe that IPC will come out in opposition to the 2/3. I don't think there is any explanation in Recommendation 11 for why 2/3 is necessary or desirable other than that it's a quid pro quo and a horse trading session.

And frankly, I might actually end up agreeing with Kavouss that we're better off putting this whole discussion off to some point where the GAC tries to change its voting standards and tries to, you know, get the same treatment for GAC advice rather than joining the issue now because I don't think I like the horse trade anymore. Unless we do in fact limit it and even then whether that will stand is questionable. Thanks.

Mathieu Weill: Thank you, Greg. And I think I'm now seeing a little more clearly what your concern is that in the previous bylaws no mention was made on the rejection vote. There was - that's an additional paragraph in our proposal. And it is your perception that the board may not always have resorted to a formal decision and used that flexibility in the past.

That's an interesting perspective. And we are aware that we will have to get further discussions on this practical recommendation in the next few weeks but otherwise that's at least useful for me to further understand.

Steve, would you like to provide a concluding thought before we close the call?

Steve DelBianco: Only this, Mathieu. I'll continue to struggle but I will try to understand the point of view the Greg is articulating. And he's been kind enough to send me a personal note to explain it. But we're ships passing in the night here and I'm not getting it. The current bylaws require the board to take a certain action if it determines to do something inconsistent with GAC advice. And that word "determine" is something that the board has in both columns and the board may decide to do that with a vote or a conversation and that flexibility is still there.

But this just clarifies that the only way to obligate the board to try and find a mutually acceptable solution is if the GAC advice is actually locked into the current level of consensus. And that's the security behind allowing it to go to 2/3. So thank you, Greg. And we'll have to continue to work at this along with anyone else who's got a sort of a vision of this Recommendation 11 that gives them trouble. Thank you.

Mathieu Weill: Thank you, Steve. And I think that was a useful - Kavouss, is that an old hand or a new hand?

Kavouss Arasteh: That is an old hand, sorry. I'm sorry.

Mathieu Weill: No problem, Kavouss. Sorry, I was just checking. With that I'm moving to Leon for AOB and closing remarks. Leon.

Leon Sanchez: Thank you very much, Mathieu. And as you said, this is the time for any other business. So are there any other business that we should be taking care of in the next five minutes of this call? I see that both Kavouss and Izumi's hand are up. I heard Kavouss saying that that was an old hand. I just want to double check with that.

Kavouss Arasteh: Yes, it is an old hand. I'm sorry, I am not (unintelligible). I am not in front of computer, I am in the back so I couldn't raise down (unintelligible). Thank you.

Leon Sanchez: Thank you very much, Kavouss. Izumi, is that a new hand or an old hand?

Izumi Okutani: It's a new hand.

Leon Sanchez: Okay go ahead.

Izumi Okutani: Yes, thank you. Thank you very much. I'll be very quick. I posted the (unintelligible) statement about the timeline, you probably know the content so I'm not going to go into the details of it. But I just want to make two clarifications. One is that we mentioned about the impact on the CCWG timeline in addressing the board (unintelligible) but that was listed as a specific example. And it's more meant for any public comment in general. And so that's one clarification that I'd like to make.

And the second is that this is basically intended to be addressed to the co-chairs and being shared with the wider CCWG for transparency since we're not one of the chartering organizations. I'll actually make a better clarification on text but I just wanted to get this to the attention. Thanks.

Leon Sanchez: Thank you very much, Izumi, for this clarification. They are well taken into account. And are there any other business from any other attendants to this call that we should be looking at or that we should be taking care of? Okay so I see no hands being raised to voice any other business at this point. So we would like to wish everyone a happy holiday season and thank you for attending this call Number 73. And of course we look forward to continuing our work in analyzing the comments received so far and to the next steps in our working plan. So thank you very much, everyone, for attending this call again. And have a happy holiday season. This call is now adjourned. Thank you.

Mathieu Weill: And happy winter or summer solstice wherever you are.

Cheryl Langdon-Orr: Thank you very much, Mathieu.

Leon Sanchez: Thanks, everyone.

Leon Sanchez: Bye, everyone.

Man: Bye-bye.

END