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TERRI AGNEW: Good morning, good afternoon, and good evening. This is the At-Large Briefing on the ALAC Response to the CCWG Accountability 3<sup>rd</sup> Draft Proposal on Wednesday, the 16<sup>th</sup> of December 2015 at 22:00 UTC. We will not be doing a roll call, as it is a briefing, but if I could please remind everyone on the phone bridge as well as computer to mute your speakers and microphone as well as state your name when speaking not only for transcription purposes, but to allow our interpreters to identify you on the other language channels. We have English, Spanish, and French interpretation. Thank you for joining. I'll now turn it back over to our moderator, Olivier Crepin-LeBlond. Please begin.

ALAN GREENBERG: Have we lost Olivier?

OLIVIER CRÉPIN-LEBLOND: I'm still here.

TERRI AGNEW: Go ahead, Olivier.

OLIVIER CRÉPIN-LEBLOND: You've lost me? No, I'm still here. Okay, can you hear me still?

TERRI AGNEW: We can now. Thank you.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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OLIVIER CRÉPIN-LEBLOND: Okay, thanks. I'm not moving at all, by the way. It's all in the same thing. If you do lose me, please say it, interrupt and take over.

This call is one of two webinars. They're not really so much webinars, I guess, as to being discussion calls between [inaudible] and the At-Large community and the members of the IANA Issues Working Group, which is a working group that has worked both on the ICANN accountability thread – the CCWG Accountability and also the CWG IANA. Both CWG and CCWG mean the same thing, but the two acronyms were changed [inaudible] be able to quickly refer to the CWG or the CCWG.

Anyway, today is all about the accountability third draft proposal. There's very little time to come up with some feedback on this. We're very close to the crunch time when this advisory committee – the ALAC – is going to have to make a choice as to whether it wants to proceed forward with ratifying this document and saying, "Yes, we're okay with it," or whether it wants to not ratify it, in which case there are a whole number of potential consequences to this. Anyway, let's not think about the consequences. The first thing is really to try and iron out all of the points which we think might need improvement.

The [inaudible] is particularly long. It's got a main part and it's got a large number of annexes, an even larger number of appendices, and it takes quite a while to go through the whole thing.

Thankfully, there was a webinar that took place just an hour ago, in the past hour, hour-and-a-half that was going to summarize the main points

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that were there. I hope that everyone on the call here has been able to be on this. I guess that's my quick introductory remarks.

I'll hand the floor over to Alan Greenberg who was the chair of the ALAC, but he's also been very much involved in the drafting of the first draft of the ALAC statement or feedback on this. [inaudible] hand over to Alan.

Maybe just before handing over Alan, did anybody else wish to add anything to what I've just said so far as an opening comments on the process [inaudible]? I don't see any hands being put up, so let's get moving then. I hand the floor over to Alan Greenberg.

ALAN GREENBERG:

Thank you very much. As I start my introductory parts... One second. My screen. My computer wants to update itself. How fortunate. Could I ask staff to try to resize the screen? We don't need either of the pods on the right-hand side and maybe we could make the actual presentation somewhat larger, see if that's possible as I start talking. And go to the next slide however first.

What we're going to do is as we go through the proposal from the CCWG I will very briefly describe what each of the recommendations is. As Olivier implied, we're assuming that everyone here has either been to one of the webinars from the CCWG or has at least gone through the documents or something.

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So to the extent possible, we're assuming that you have some idea. You may not have memorized it, but you have some idea what we're talking about. To the extent that if you've done that and still don't understand what I'm saying, then perhaps we'll try at least to see if it's problematic and I'll take questions slide by slide. But let's see if we can go through it without having to do too much of that.

What we're going to be describing is the positions that the ALAC has arrived at. When I say ALAC, the work is actually being done by the ad hoc working group on the IANA Transition and Accountability. This is the group of people which includes some ALAC members and some other members of the community who have been heavily focusing on both the CWG and the CCWG and have formed the basis for most of the positions that have been taken by the ALAC over the next year.

However, at this point, we're getting very close to the point where the ALAC ultimately will have to decide are we ratifying the position as a chartering organization or not? And it becomes quite crucial of course that every ALAC member thoroughly understand what it is they're approving and decide how to go forward. Next slide, please.

The proposal itself, as Olivier said, is one large document, a whole bunch of annexes, and a whole bunch of appendices. But the substance of the report, of the proposal, is our 12 recommendations.

The first recommendation is to establish a concept which is called the empowered community. The empowered community allows the ACs

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and SOs that have chosen to, to participate in various powers that we'll be describing.

At this point, we believe the GNSO, the ccNSO, the ASO, the GAC and the ALAC are the groups that will likely be participating. We will use... There's an expression called the sole designator. This is a term in California law by which parts of organizations can name directors and implicitly, under California law also, remove directors.

So the term designator technically corresponds only to the director part of the powers, but the same entity – the unincorporated association that will exercise those powers will also exercise the other powers. So it's a somewhat convoluted scheme, but it allows us to exercise the various things we'll be describing and do this with the ability ultimately to take action, should the board choose to ignore the community.

The ALAC supports this overall proposal. It is very close to one that we have been pushing all along and we feel is far preferable than the membership model and a number of other ones that we looked at before.

There are a number of potential problems, however. As you'll see, the SSAC and the RSSAC are not listed. They have both clearly said they want to remain purely advisory and do not want to participate in any of these powers. So they will advise the other groups, but they will not actually wield any force themselves.

The ASO (the Address Supporting Organization) has yet to say whether they are in or out. If they end up saying they're out, then we are left

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with only four organizations – the two registry SOs, and the GAC and the ALAC – and a lot of the overall proposal is going to become a lot harder to implement. We expect to hear from the ASO soon.

The other issue is all five of these organizations will participate as equals. There is a strong push in certain parts of the community to say SOs are far more important in ICANN because they create policy than advisory committees and they should have much more power than the ACs do. It's moderately clear to us that if that were to win – and at this point, it is not in the proposal – that the ALAC would have a very significant time ratifying this proposal.

Any questions/comments? We do have enough time. We might as well take them if there are any. Olivier, yes, please?

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Alan. You mentioned that some other SOs or other commenters might [inaudible].

ALAN GREENBERG: Olivier, you're unintelligible. Olivier, you destroy the line when you talk.

OLIVIER CRÉPIN-LEBLOND: Oh, this is terrible. What should I do?

ALAN GREENBERG: Now you're okay.

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OLIVIER CRÉPIN-LEBLOND: Oh, it's better now. Okay, great.

ALAN GREENBERG: Well, talk quickly before it goes bad again.

OLIVIER CRÉPIN-LEBLOND: Okay, quickly. Bearing in mind that other communities might be saying that they want to change that balance, should we take the initiative and in our statement say that we would like to keep – that we're satisfied with that balance?

ALAN GREENBERG: No. We are saying we accept the proposal. We have said clearly in our previous proposals, the changes, it's a showstopper for us. I don't think there's any reason to bring up the [inaudible] presume it's going to hold sway. It is off the table right now, except as a minority statement. We could pass judgment on a minority statement. Let's talk about that at the end when we're talking about add-ons. Christopher? We can't hear you. Can anyone still hear me?

CHRISTOPHER WILKINSON: Can you hear me?

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ALAN GREENBERG: Yes.

CHRISTOPHER WILKINSON: Alan, you can't hear me?

ALAN GREENBERG: We can hear you.

CHRISTOPHER WILKINSON: Thank you. I think the ALAC should consult with other [inaudible], particularly ccTLD and GAC, to build a more concrete, effective position. What I see is the ALAC is put into a minority and GAC is ignored. All I see is basically a cartel emerging and that.... In any event, as I've said in the consultations, the whole proposal should be reviewed by the antitrust authorities in the US and the EU, but rebalancing towards the SOs is a no-no. What you get is a cartel, and sooner or later, it will be taken down by the antitrust authorities.

ALAN GREENBERG: Okay. Christopher, at this point we are commenting on the proposal as written. I don't believe we have an issue at this point. Certainly you can [put something in writing].

CHRISTOPHER WILKINSON: I think we do. I don't think this proposal as it stands will survive scrutiny by the chartering organizations—

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ALAN GREENBERG: Christopher, we're going to have a section at the end to talk about additions to the overall statement we're making. Right now we need to focus on the recommendation by recommendation.

CHRISTOPHER WILKINSON: Okay.

ALAN GREENBERG: Sebastien?

SEBASTIEN BACHOLLET: Thank you, Alan. Just one question. You referred to [inaudible] who may decide not to be part of this work. But are we [yet] sure that the GAC will be one of them or it is also one with a question mark? And we could have a lot of consequences.

ALAN GREENBERG: We don't know that. The GAC is not likely to say they will not. They may be silent and I'm not sure how that will be taken. After that I'm guessing at this point. There have been discussions in the CCWG of is silence acquiescing? In other words, in the absence of what the SSAC did of explicitly saying they are not participating, can we assume they are participating?

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At this point, the plan is to draw up the bylaws saying they are participating, and if no one objects, then it's a done deal. If there are objections, times will be interesting.

All right, let's go on to the next slide please. The recommendation two is how the community will be empowered. Now, essentially there will be a relatively long and complex process by which the powers can be exercised. They vary slightly from power to power, but the overall process is a petition has to be initiated within one of the participating ACs and SOs. A petition can be initiated by anybody, not just a member. So someone can walk in the door and initiate a petition.

There is the potential for annoyances and people doing things continuously. At this point, the CCWG believes that it is better to be open and not accused of being a closed group which is purely ICANN insiders, and risk the danger of people taking action which is simply going to cause distractions.

So at this point, a petition can be raised by anyone. The supporting organization or AC has to formally agree. At that point, we look for other ACs and SOs. Assuming we can get someone else, a conference call is called. If after the call we have support from a certain number of ACs and SOs – and the number varies based on the power – at that point we convene a community forum which is either an extended conference call or it could be a face-to-face meeting.

If the community forum decides to go ahead – sorry. If the ACs and SOs following the community forum decide to go ahead, then a poll is taken

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and depending on how many of the ACs and SOs decide they want to exercise the power and factoring in how many of the ACs or SOs vote against the power, the action can be taken.

So it's a relatively long process. One of the concerns of some people are the time delays for each step are moderately short. However, when you look at it, if you look at a time delay of 7 days – or 15 days towards the end – that comes at the end of a relatively long process.

So from the very beginning everyone knows that this is working its way along, and presumably each AC and SO will be looking at the issue and deciding to what extent are they interested in supporting it or not. Next slide.

Now, one of the questions asked is, well, fine if a community exercises a power, what if the board decides it doesn't want to honor it? That's certainly a possibility. Not likely, but a possibility.

The answer is the community has a number of options. It can go for mediation. It can use the independent review process we'll be talking about later, and following that could go to court if the board refuses to honor the IRP results. Or it can initiate at that point a recall of the whole board. If the board won't do it, we say, "Then replace the board."

Ultimately, we can skip all those processes and just replace the board. Now, replacing the board is exercising another power. Essentially you have to go through the process again a second time on that one. Next slide.

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Here's a chart showing each of the powers. The community will have the ability, if you look down the first column, to reject a plan or a budget to approve a fundamental bylaw – and we'll talk about what fundamental bylaws are in a moment – to reject or essentially veto a regular bylaw that the board has changed, to remove individual directors appointed by ACs and SOs, remove directors appointed by the NomCom, remove the whole Board of Directors, or initiate an independent review process on behalf of the community.

And there's a similar power associated with rejecting actions related to IANA, which is one of the requirements of the CWG that we have the ability to make sure that decisions regarding IANA are controlled by the community. Next slide. I see your hand, Olivier. We'll go to you in a moment. Next slide, please.

Okay. The ALAC basically supports the process. There has been a recent suggestion that if one of the five groups abstains that any of the powers requiring four votes or four supports only become three. That would apply to rejecting budgets or plans, recalling the whole board, approving fundamental bylaws, and IANA related issues.

In some cases, such as the fundamental bylaws, the ALAC supports this. We have had a worry from the very beginning that there is the potential for ICANN not being changeable because we are locking things in too much. And some of the critical parts we're locking in are indeed in the fundamental bylaws.

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So lowering the threshold and making sure that we can change those bylaws if necessary is something we do support. We do not support it for recalling the whole board. In that case, we believe that we need very significant support from the community.

We're somewhat in the middle on rejecting the plan in IANA. We could probably live with the reduction, but we would prefer not to see it.

There's one other small concern and that is if we recall the entire board, the process says that at the time we remove the board we put in place an interim board.

So when we vote to, say, kick them out, we have to name directors who will temporarily replace them. So ICANN is never without a board. All those interim members have to be replaced by appointments from the NomCom and from the ACs and SOs within 120 days. The 120-days is reasonable. That's four months. That's quite reasonable. But for the ALAC in particular it's going to be... It will require a change in our procedures. Our current procedures could not do it in that period of time.

Moreover, the wording that is being talked about says it must be done. We have significant concerns when something must be done, but there's no penalty for not doing it. Words like that tend to be somewhat problematic.

But in general, if we ignore the issue of reducing the amount of support for recalling the whole board, then the ALAC supports this overall process and plan. Olivier? Cannot hear you, Olivier.

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OLIVIER CRÉPIN-LEBLOND: Can anybody hear me?

ALAN GREENBERG: Now we can hear you.

OLIVIER CRÉPIN-LEBLOND: Oh, okay. So I need to take a deep voice for people to hear me. Going back one slide, please, there was one question that I had with regards to rejection just to regular bylaws. That's one thing I myself have not quite understood.

It talks about the board wanting to change bylaws. It also talks about PDP, bylaws which are not PDP derived. But in my knowledge of whatever bylaws have been changed recently, it often has come out of a... Let's say the At-Large review has come out with the bylaw change and reviews of the GAC have come out with bylaw changes. Are these configured as being PDPs or is that considered as being the board changing bylaws and this needs to be approved by the community?

ALAN GREENBERG: Okay. I'll go over that. For regular bylaws, right now the board by a simple majority – sorry, by a two-thirds majority – of sitting directors can change bylaws unilaterally.

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OLIVIER CRÉPIN-LEBLOND: I'm not talking about those. I'm talking about the ones which, for example, the ALAC has asked the board to change the bylaws because that's what we want.

ALAN GREENBERG: I'll get to that. All bylaws are changed by the board, period. Regardless of what path came up with the idea. So the board changes bylaws.

For non-fundamental bylaws, that is not changing. However, the community has the ability, if it can muster the support of sufficient ACs and SOs to reject the change.

Now, the exception is if the bylaw was being changed because of a PDP GNSO or ccNSO, PDP policy development process recommendation that was accepted by the community and by the board. That has rarely happened. I'm not sure if it ever happened.

But should it happen, there was a worry that the community could take action without the support of the appropriate SO that made the recommendation. So in other words, the community could veto the outcome of the PDP. That was troublesome because that says that the policy recommendations no longer rest in that PDP.

So an exception was carved out saying unless the body that made the recommendation now believes that, for whatever reason, the bylaw is so bad that it must not happen – and yet the board has put it in place anyway – then with the concurrence of the appropriate SO, that bylaw, too, can be overridden. Is that any clearer?

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OLIVIER CRÉPIN-LEBLOND: Thanks very much, Alan. Thank you.

ALAN GREENBERG: Thank you. We're back now onto slide number eight, I believe. Thank you. We're now defining the terms we've been using for the last few minutes. Right now all bylaws are simply bylaws. The recommendation three says we create a new class of bylaws that says some bylaws are harder to change than others. The bylaws that are in that category are the mission of ICANN and the bylaws associated with the accountability powers.

So as I said, for regular bylaws, the board has a process which consults the community. And in the past, if the community has risen up and said no – there's only been one case of it in recent history – then the board essentially has backed down.

But according to the bylaws, the board could ignore the community. The board could meet tomorrow in secret and pass a bylaw, as an example, saying SOs and ACs no longer appoint directors. We're now going to appoint directors ourselves. We're going to perpetuate – only name our friends – and that's the new Board of Directors. It could do that. It has never done that, but it could.

We are now saying that for certain classes of critical bylaws, they not only can be rejected by the community if the community doesn't like them, but the community actually has to ratify them. So changes to



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fundamental bylaws have to be jointly approved by the community mechanism and by the board. That's the story of the fundamental bylaws. Essentially, it says the class of bylaws which control the accountability itself or control the direction of ICANN and those related to the IANA function are fundamental and cannot be changed unilaterally by the board. Next slide, seeing no hands.

Recommendation number four is looking at explicitly what are the actions that can be taken. So as we said, we can reject the budget or strategic or operating plans. Now, rejection of a budget is an interesting thing. If we veto a budget, how does ICANN keep on paying its bills next week? That has been a really difficult part.

Initially, the proposal was that if we veto the budget, then last year's budget continues. Or I think at one point someone said last year's budget plus 10%. But if the community is vetoing the budget because we believe the board is spending too much money, that doesn't fix anything.

So we now have the concept of a caretaker budget that is a budget which covers the essentials that ICANN needs to operate. That's still being defined, but there's a good level of comfort that can be defined and that's what we revert to if indeed the budget is vetoed. We can reject the ICANN standard bylaws, as we just said. Someone is talking in the background. I think it's Christopher, but I'm not sure.

Individual board members can be removed. If they're a NomCom appointed board member, then they're removed by the overall

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community power. If they're a board member appointed by an AC or SO, they can be removed unilaterally by that AC or SO in consultation with the rest of the community. Excuse me, can staff please mute that line?

TERRI AGNEW: We're trying to locate the line quickly.

CHERYL LANGDON-ORR: It's an entertaining interlude, Alan.

ALAN GREENBERG: It is indeed and I'm not going to try to speak over it. Does anyone understand the language so we can know what the joke was? All right, we seem to have fixed the problem, whatever it is.

Fundamental bylaws and the Articles of Incorporation which are the basic precepts on which the organization exists can be changed only with the concurrence of the community. The community can enter into an independent review process on behalf of the community through this power and we can also reject certain decisions of the ICANN board related to the IANA function. That includes triggering the separation process. Next slide, please.

The ALAC is in general agreement [inaudible] these powers. We do have a concern on liability [inaudible].

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TERRI AGNEW: Your audio is back now.

ALAN GREENBERG: Sorry?

TERRI AGNEW: Your audio faded out for a moment, but it's back now.

ALAN GREENBERG: Oh, sorry. Okay. I didn't know that. The ALAC is supportive of the powers. The one concern is associated with the removal of the board members. Under California law, board members can be removed without cause and they have no claim – there is no example in recorded law history that we can find where a director would sue anyone over removal because it is a legal right that the organization has to remove them.

In our case, we are explicitly saying that in order to go through the process of removing a board member, we must identify the reason. We must make specific essentially accusations of why we believe the director is not performing properly. That potentially opens up the organization, and more important, the individuals who are acting on behalf of the ACs and SOs to lawsuits. That we feel is a significant issue that needs to be fixed. We think it's fixable, but it's something which is not covered by the current proposal. It's an issue we have raised repeatedly in past comments but has not been addressed.

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Seeing no questions, let's go on to the next slide, please.

Recommendation five is changing certain aspects of the ICANN mission, commitments, and core values. We have had very significant comments on this section in the past. Some of our objections have been addressed. Some are not. And in fact, some of the changes that were made after the second draft proposal have added a new issue which is of some concern.

Now, I give you fair warning. What we're about to embark in gets a little bit complex and hairy, but there's no real way to look at it without going into the depth at some level. Next slide, please.

The text in the proposed mission has the first three paragraphs in it – that ICANN shall act strictly in accordance with and only as reasonably appropriate to its mission, ICANN shall not impose regulations on services that use the Internet's unique identifiers or the content that such services carry, and lastly ICANN shall have the ability to negotiate and to enter an enforced agreements with contracted parties in service of its mission.

They seem moderately innocuous, but the wording is not intuitively obvious in many cases. The wording here are not necessarily the bylaws that will go into the new bylaws. The wording is essentially instructions to the lawyers who will have to draft the bylaws and there are a number of instructions that are included.

One of them says the prohibition against content... Now, remember, ICANN periodically is asked to fix the Internet because there's spam, fix

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the Internet because there's porn, and clearly that is outside of our scope.

The prohibition against regulating content explicitly says content is outside of ICANN's mission in general, but there are some catches. There are some people who say that the identifiers, the TLDs, the URLs themselves are content. In fact, courts on occasion have ruled that the identifiers are content.

So the first note to the drafters says domain names are not content from the points of view of this regulation. That was something that was added at the request of ALAC. It's one of the changes that we have asked for that was made. So that's quite important.

The second part is it makes reference to saying things that are within the picket fence – we'll define that in a moment – that is, are identified in certain parts of the registry and registration agreement, are understood to be within scope of the mission.

Now, that's an interesting statement. It says they are within the scope of the mission. It doesn't say if there's anything else within the scope. That ends up becoming very problematic.

The last thing is they are requesting that the existing agreements be grandfathered. That is, you cannot use the new bylaws to invalidate an existing agreement.

That's very important. Right now, there are parts in the agreement that are not within the picket fence, that are talking about content. So, for

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instance, in a new gTLD, there may be a public interest commitment that talks about what is allowed within that TLD. That's content. And we don't want that PIC, which in many cases is very much in the public interest, to be invalidated because it is content. So the grandfathering is an important aspect. Next slide, please.

Now, here's something that you're not going to read in full. It is the specification one from the registry agreement. I've underlined a couple of interesting things. Some of the things that are within spec one are resolution of disputes regarding the resolution of domain names. So the UDRP which says someone is violating someone's trademark by registering a domain name is something that we can pass consensus policy on.

Cross-ownership. Those of you who have been around for a while may remember that registries could not own registrars. They now can. But we're saying that should ICANN in the future decide that that is problematic, it can make new policy on it.

Warehousing is something that we could make policy on. We never have. That is, someone buying a whole bunch of domain names and keeping them for their own personal use until they can sell them.

Reserved names. There's a bunch of things that are within spec one, but there's a bunch of things that are not within spec one. Public interest commitments are among them. So, next slide, please.

The ALAC has a number of concerns. The new mission says things must be developed through a bottom-up process, but there are many parts of

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the contract that have been there for 12 years. They were not developed as part of a bottom-up process. They were written before the bottom-up process even existed.

There are certain things like PICs which are not in that list we just looked at within the picket fence, and therefore there is a potential problem that these kind of things could be invalidated and not fixable again.

Lastly, the grandfathering says protecting existing contracts. It is not 100% clear whether contracts when they are renewable – and all gTLD contracts are renewable in ten years – whether it would protect the renewable or not.

Also, it protects existing contracts. It doesn't protect the ones that aren't signed yet, and there's still several hundred new gTLD contracts that are currently unsigned.

So the bottom line for the ALAC is – at least in our proposed draft – that the ability to use the [IRD] to invalidate current contractual terms is just not acceptable. Those are terms that very often protect users and they were put there for a reason. And even though the contracted parties may not like all of them, they should not be able to invalidate them.

That's the end of that particular one, so I'll take any questions. I see Olivier has his hand up. Olivier?

OLIVIER CRÉPIN-LEBLOND: Yes. Can you hear me?

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ALAN GREENBERG: Yes.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you. There's one point that you haven't made, Alan, and that's one thing which did raise my eyebrow. One of the clarifications to the change of the mission statement which relates to the bylaws is that it says that clarify that ICANN's powers are enumerated, meaning that anything not articulated in the bylaws are outside the scope of ICANN's authority. [inaudible].

ALAN GREENBERG: Olivier, you've gone bad again.

OLIVIER CRÉPIN-LEBLOND: Oh, God. I'm going to throw this thing out the window.

ALAN GREENBERG: I think you were saying there's a clause somewhere which says the powers are...

OLIVIER CRÉPIN-LEBLOND: Enumerated.



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ALAN GREENBERG: I've never seen that. If you could put a link in the chat or something. That's the first I heard about that.

OLIVIER CRÉPIN-LEBLOND: Paragraph 205.

ALAN GREENBERG: I'm on a laptop and I can't look at it right now. Just make note of it and we'll look at it later. Christopher?

CHRISTOPHER WILKINSON: Yes, [inaudible], Alan. Basically, this has to be future proof. We're not defending the PICs that we've got. We're defending the principle that in the future if registries wish to enter domains which are significant public interest that future restrictions, future commitments, will be respected. It's not on the cards for this process to close the door on public interest commitments of new registries. That has to be maintained into the future. It's got to be future-proof.

ALAN GREENBERG: Okay. For future rounds of new gTLDs, should there be any, it becomes a different issue. There will be a PDP that will look at future rounds. And should the PDP decide that PICs of some category are an essential part of those new rounds, then it will have been developed by a bottom-up process.

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So the future rounds are not the issue. It's this round and all of the TLDs that are the current issue with regard to PICs. PICs are not the only issue. They're just one of the things that are easy to talk about.

CHRISTOPHER WILKINSON: I agree that PICs are not the only issue, but I think what we settle at this stage will create a precedence and a presumption regarding future rounds even if they materialize or not.

ALAN GREENBERG: Agreed, but it will be the result of a PDP at that point. It becomes allowed under the terms, even of the most restrictive version of the mission that is being proposed.

CHRISTOPHER WILKINSON: Yes, but then there's an enormous onus on At-Large since we manifested [inaudible] cannot rely on civil society and GNSO. [inaudible] on At-Large to ensure that the balance is maintained through the next gTLD round.

ALAN GREENBERG: Well, it's not only At-Large. It's also the GAC and it's also the board. So there are many different players.

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CHRISTOPHER WILKINSON: Agreed. Institutionally, At-Large cannot hide behind either the board or the GAC.

ALAN GREENBERG: There's no hiding behind. We are going to ask to participate. Okay, let's keep on going. We're an hour into the process and we're not nearly done yet. Next slide, please.

The next one is a relatively simple one. It takes the... The clause on the left is a core value that is currently within the bylaws and it proposed to replace it with the one on the right. If we can find out, staff, who's making that noise, that would be good.

The proposal essentially drops "where feasible and appropriate" and simply says ICANN must depend on market mechanisms to ensure a healthy, competitive environment. The ALAC in its discussions had a lot of problems with that. Next slide, please.

As it turns out, one of the reasons given to demonstrate why we had to remove that clause is the registry service evaluation process. This is a process by which registries can get exemptions to their contract clauses. And registries on a semi-regular basis make requests, some of which are approved, some of which are not.

The process by which ICANN evaluates them... Well, [inaudible]. One of the questions asked of the registry is: are there competition issues associated with this change? ICANN evaluates whether there are indeed competition issues.

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If there are things that might have significant competition problems, then it refers them to outside agencies because ICANN is not the expert on those.

But to do that, it does make an evaluation. It does exercise its judgment on whether there is competition issue or not. It is not clear if this core value is changed whether ICANN could do that.

So although ICANN doesn't make final decisions on competition, it does do preliminary discussion on competition issues. We strongly believe that it is very important that ICANN maintain the ability to do that. So this is another significant problem with this one.

Yes, Chris?

CHRISTOPHER WILKINSON: I would go further. There is no evidence to my mind that the competition authorities in the US, the EU, or Canada or elsewhere are really prepared to take this on. ICANN was created in order to create [inaudible] competitive conditions in the DNS market. The recent statements and decisions by ICANN trying to absolve themselves of that responsibility and to pass it on to the competition authorities in the member states is completely wrong. That was not part of the original deal. The original deal was that ICANN would be self-regulating [pro] competitive regulator.

And I think there is correspondence from the EU saying that the vertical integration decision was suspect. There was correspondence with the

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consumer protection authorities in Canada to the effect that it is ICANN's job to make sure that, for example, dot-sucks, wasn't it, [inaudible] properly.

This business of ICANN absolving itself of its original responsibilities and passing them on to unresponsive national authorities is nonsense. [inaudible] completely wrong, Alan. We have [evidence] to that effect.

ALAN GREENBERG: So, Chris, what you're saying is you're agreeing with us. You're saying that that clause should not be removed and ICANN should still be able to make judgment calls on competition issues.

CHRISTOPHER WILKINSON: Absolutely. Decisions on competition issues. [inaudible].

ALAN GREENBERG: All we're trying to do is maintain the status quo. I don't think we're in a position to change that. That's a substantive decision that is not related to accountability. So I don't think...

CHRISTOPHER WILKINSON: That's your call, Alan, but I don't hear anybody else speaking on this conference call to the opposite effective. Thank you. Good luck. Yeah, seriously, you've got to stick to that.

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ALAN GREENBERG:

Next slide, please. One of the current bylaws or terms in the bylaws is preserving and enhancing the operational stability, reliability, and security of the globally interoperable Internet. If anything, that is at the root of ICANN's [inaudible].

The proposed text says preserve and enhance the neutral and judgment-free operation of the DNS as well as the other things.

We have raised the issue that this is a rather daunting concept. That is, if some country decides to block a TLD, does that mean we have a responsibility to make sure the judgment-free operation of the DNS? Because they're clearly adding judgment into the DNS in their country.

And on push pursuing the matter, it was claimed that this is an NTIA requirement. That is, the NTIA has committed to doing this. On checking, it turns out the NTIA committed to Congress among other places to saying the transition will ensure the neutral and judgment-free administration of the technical DNS and IANA functions. That is a much restricted thing compared to the operation of the DNS which implies the worldwide DNS. The ALAC strongly supports the original NTIA words, but believes that the increase to the worldwide DNS is somewhat of mission creep and probably one which is not only not doable, but something that is so politically fraught that we don't want to come anywhere near it. So this is a pretty strong one from our point of view.

Seeing no hands, next slide, please. The next one is in the Affirmation of Commitments which is being subsumed into the bylaws – and we'll talk about that as a separate item in a moment – there is a reference to

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consumer trust. That reference did not make it into the text in the bylaws.

The claim is that it really wasn't a commitment. It was just a commitment to look at consumer trust with regard to the gTLDs. When you read the article three, it really is talking about why ICANN is there. And we believe that consumer trust is one of the things that ICANN has not necessarily [sufficiently] focused on, but given that it is one of the major concerns with the new gTLDs, given that consumer trust is one of the missions [within] the mission statement of compliance, we believe it does belong in the bylaws. That's one of the questions, though. Is this something that we would not ratify over or is it something that we simply want to push hard to get? That's one of the important questions we need to ask before we finish.

If anyone has any thoughts on to what extent we essentially die on our swords over this, do we get in the way of transition because these words are not there or is it something that we can waive?

One of the things that lessens its importance is there is an upcoming consumer trust AOC review and the AOC review has the ability of recommending bylaw changes. So even though consumer trust is not there now, there will be an opportunity should the AOC review decide that it's really necessary that it could be added at that point. Christopher?

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CHRISTOPHER WILKINSON: I think we should not lose sight of this. I would also say that I assume – perhaps now [inaudible] – but I assume that among the chartering [organizations] there will be sufficient questions, if not explicit position. I do not expect any explicit opposition. But I think there will be enough questions and comments and suggestions about improvements on the final outcome coming from the chartering organizations that there will yet be another round of discrete and formal highly political but authoritative negotiation.

I don't think we need as ALAC just to say yes or no or die in a ditch. I think we need to hold open what we want, what we think we could get, and what we need to say to the other chartering organizations about user interest and the stability of ICANN and the DNS.

I've said in my comments there are elements in the CCWG proposals which are potentially highly destabilizing, if they're implemented in bad faith.

ALAN GREENBERG: Cheryl?

CHERYL LANGDON-ORR: Thank you, Alan. As you know, I have a particular focus and soapbox when it comes to the consumer trust part of all of this. I think you've practically channeled me in what I was going to say in terms of die in a ditch over it or not. I think it is vitally important. I think it is an absolute essential focus to the organization and a primary aspect of the



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important work that ALAC and the At-Large community does, along with the other groups who have vested interest in public interest and consumer aspects such as the GAC and some of the civil society people working within ICANN.

However, I am a firm believer that it is not to die in a ditch over and that we can work positively and very effectively through the upcoming consumer competition trust and choice review team. It'll have its own individual powers and I think that is where we can get our major work done and done successfully, in a timely manner, and without derailing the possibility of the transition. Thank you.

ALAN GREENBERG: Thank you very much. Olivier?

OLIVIER CRÉPIN-LEBLOND: Can you hear me?

ALAN GREENBERG: Yes.

OLIVIER CRÉPIN-LEBLOND: Oh, excellent. I'm not going to move now. So you mentioned the possibility of polling – and this was just a note for staff. I guess that poll which will arrive a bit later on this call [inaudible] red line issue if it is not transcribed from the AOC to the ICANN bylaws.

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ALAN GREENBERG: Assuming we have enough time, we will do that.

OLIVIER CRÉPIN-LEBLOND: Okay. It's just for staff to know because they're standing by. They do have the ability to launch a poll with [inaudible] options.

ALAN GREENBERG: Thank you, Olivier. Next slide, please. The next one is an issue on recommendation six on human rights. There have been people who have claimed that with the absence of oversight by the US government, then there is no longer anyone watching us who is committed to human rights. Although we do have provisions saying we will honor international agreements, it is not explicitly listed.

This has been a discussion that's gone back and forth many times in the CCWG. The proposal that is on the table today says we will put a bylaw in which says we will continue to work to figure out exactly what words are necessary to support human rights, but we will not put those words in until we understand them properly.

Many people within At-Large have said they can support this. There are a small number who have said they do not want to see anything at this point.

There is a very real commitment, however, in that the wording that is being proposed says in no event later than one year. That is, the new

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words will be there [inaudible] one year. That I find very problematic because, again, deadlines with no penalties. Other than if it is not done within one year, ICANN is in violation of its own bylaws. It is not clear what kind of review panel cases could be taken out, finding that ICANN is in violation of its bylaws and requiring it to do things because of that.

So the deadline is certainly problematic. There are people who would prefer to see nothing in human rights, but to be quite candid, I think the chances of the CCWG completely eliminating any reference to bylaws to human rights at this point is virtually nil. So I think we have to be somewhat pragmatic. Any comments?

Seeing nothing – oh, we have two comments, Olivier and Christopher. And please, both of you, try to keep this really brief or we're going to run out of time.

OLIVIER CRÉPIN-LEBLOND: Could ICANN be [inaudible] violation of its bylaws?

ALAN GREENBERG: ICANN can have an IRP, a review panel, that will find it in violation of its bylaws. And yes, ICANN could be sued by directors, by the attorney general of California, by a number of other groups because of the violation of its bylaws. So yes, in theory.

Christopher?

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CHRISTOPHER WILKINSON: I think this is a relatively simple matter. In the survey, I [inaudible] reference to human rights without comment. This is a matter of principle, image, and indeed ICANN and indeed At-Large, even GAC and [inaudible] rewriting human rights [inaudible].

I would just say maintain the small text that ICANN respects human rights principles. I don't see where the problem is. If there is a problem, it's coming from [inaudible] sources of bad faith.

But above all, don't try and define in great detail what is or is not human rights within the context of ICANN's mission. The principle has to be there without [inaudible] definition. It's certainly without controversy, because if there's controversy among the stakeholders, it will drift up into the GAC and then [inaudible]. So we're going for glory.

ALAN GREENBERG: Christopher, you're fading out, I'm afraid.

CHRISTOPHER WILKINSON: I'm sorry. I got a request from the interpreters to speak less loudly. But I said what I needed to say. [inaudible] be established. It is not ICANN's job, and not even At-Large's job, to define the details.

ALAN GREENBERG: Thank you. I think you're supporting what we're saying at this point, though.

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CHRISTOPHER WILKINSON: I thought you wanted some support from time to time.

ALAN GREENBERG: No, I just want to confirm that that is what you're saying. Thank you. Anyone else on recommendation six? Can we go on to the next slide, please?

This one is a relatively simple one. ICANN currently has an independent review process that is deemed by many people to not work very well. There is general agreement it needs to be fixed and the proposals are largely supportive of that, and the ALAC supports them.

We have one little [inaudible] that is the current proposal says that the review panel can address cases of conflicting panel decisions, but it doesn't describe what the review panel can do if it is given such a case, and we simply are pointing out that this needs to be fixed, because otherwise it's a loose end hanging there. It's not a substantive issue. Next slide, please.

TERRI AGNEW: Just on that last recommendation, your audio was cutting in and out a little bit.

ALAN GREENBERG: Okay, I'll try again. Recommendation eight is improving ICANN's request for reconsideration. The current reconsideration process – that's where the board considers whether errors in process were made in any

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decision – has generally been found by all parties to be failing. At one point, there were not many reconsideration requests. Every few months, one would come in. The finding would always be ICANN did not make a mistake and the request was rejected.

With the new gTLD process, there have been – I don't know if it's dozens or hundreds, but probably dozens – of reconsideration requests, and virtually all of them have been rejected.

The problem is that people are requesting reconsideration on the substance of the decision, not on whether their policy was followed in general. The process has not supported that.

The new reconsideration process is not perfect, but it fixes a lot of the flaws that have been perceived by various people. It changes the scope, the process, and the transparency of the process.

It includes, for instance – likely will include – the ombudsman instead of staff, lawyers, doing the initial evaluation. It's a much improved process and the ALAC has supported it. Unless there's any comments, we'll go on to the next slide.

If you remember correctly, if you were following at the time, the Affirmation of Commitments was a landmark agreement between the US government and ICANN replacing the previous memorandum of agreement which essentially allowed ICANN to function under the jurisdiction of the US government.

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The Affirmation of Commitments is a different sort of document in that ICANN is no longer essentially working for the US government, but has simply committed to doing a bunch of things. The current agreement is cancelable by either party on a relatively short notice.

It was felt that as part of this transition of IANA, we should remove the tie with the US government, and moreover, lock the commitments in into the bylaws so that they can't be walked away from.

To a large extent, the details of the Affirmation have been rolled into various parts of the ICANN bylaws. The reviews have been incorporated into the bylaws. And with the exception of the one item that we noted earlier that we feel was an omission, overall we believe it has done relatively well.

The ALAC did have one concern with how the review on WHOIS was incorporated. The original wording used the exact wording from the AOC, which many parties, including the ALAC, thought was out of date. It was talking about WHOIS, whereas we know we may be moving away from it. Moreover, it committed us to doing things that are illegal in many jurisdictions. That is, making WHOIS information available under certain rules where it is legally not even possible.

So the wording was revised to something which is more accurate and current, and the ALAC fully supports these changes. Comments? Next slide, then. We're getting towards the end.

This one is an interesting one. Much of the discussions of the CCWG have been focused on ensuring accountability of the board, and it has

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done this by saying the ACs and SOs, which are the constituent parts of ICANN, can effectively oversee the board – second guess the board, if you will. The question that then obviously comes up is who’s overseeing the ACs and SOs. How do we know that the ALAC is really answerable to the user community? How do we know that the ccNSO is answerable to the ccTLD community and so forth?

That’s a really relevant question, because simply saying we’re going to turn it over to the ACs and SOs when they may or may not be answerable to their communities – and for instance we know that within the ALAC and At-Large we do have some specific problems where the communication channels between the ALAC through the RALOs to the ALSes is not as effective as we want it to be.

This is a recommendation that says we must work on the accountability of the ACs and SOs. It is largely something that’s going to be focused on in the future, not in this particular incarnation, but it is referenced here and it does start saying that as we do periodic reviews of the ACs and SOs, accountability of them to their various constituent parts is something that must be reviewed and the ALAC strongly supports this. Next slide.

This one is, again, if we try to go into it in detail, we would get involved in a discussion that will go on for hours.

The stress test 18 was one which was required by the US government that essentially says it controls the criteria under which the board can reject GAC advice.



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Right now the bylaws give the GAC relatively special treatment in their advice. That is, if the GAC gives advice, the board can reject it, but if it does, it has to go through a certain process of discussing the issue with the GAC and seeing if they can come to some middle ground. And if it ultimately rejects it, it rejects it.

This stress test says that the GAC advice, for it to be eligible for the kind of consideration I just described, it must be consensus advice, according to what is essentially now the current definition of GAC consensus. That is, a position taken by various GAC members and not opposed by anyone. That's the definition of consensus that's used in the United Nations.

The way that translates is it says a consensus position of the GAC cannot be claimed to be a position if any of its constituent governments are strongly opposed to it. They can be silent. They don't have to support it, but they have to not oppose it.

That says the board is not going to be put in a situation where the board has to evaluate which governments and why do some support it when other ones object to it. We do not want the board to be in a position of deciding which governments are more important than other governments. That's a deadly position to be in.

This stress test has been subject to a lot of controversy. There have been strong objections to it within the GAC. The ALAC I think has wisely said we are not going to weigh in on this other than to note that it is an NTIA requirement and somehow we must come up with words that

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meet the NTIA transition requirements. Next slide, and the last one in this series.

Recommendation 12 says what do we do for work stream 2? You may ask: what is work stream 2? Well, everything we've described so far is work stream 1. They are the changes that we believe must be in place to satisfy the community within ICANN's belief that ICANN is accountable, and satisfied the US government that ICANN is accountable.

However, along the way, we have come up with lots of other things that we want to fix, and these have been identified as work stream 2 work. So assuming all of this gets approved, we then have more work ahead of us looking at the details in work stream 2.

I'll leave it up for a moment. You can look at some of these items. It includes the further definition of human rights. It includes further work on accountability of the community. It looks at issues such as diversity, which ICANN clearly has a major stake in but doesn't necessarily do a good job in. Looking at the ombudsman's role and function to see whether we can strengthen it and [inaudible]. So there's a number of interesting issues there. Next slide.

Okay. This one actually is out of date, I'm afraid, slightly because we have already done the first step. We have already sent to the CCWG an intent of which issues at the time we sent it, which was Monday night, were really important to us. Essentially, they're the ones that I've identified in the last hour and a bit.

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Our final comments must be submitted no later than December 21<sup>st</sup>. That's five days from now, four days from the webinar that will be held tomorrow morning, which is the same webinar but for people in other time zones.

So we still have a bit of work to do. We have to finalize the statement and the ALAC has to approve it. That's going to happen by the end of Monday. Or maybe the ALAC won't approve it, but that's the intent. Next slide.

This is the overall timeline we're working to. We are right now in the middle where it says 21-day public comment period which ends on the 21<sup>st</sup>. We then have three days that staff will summarize what the public comments are. The CCWG working parties will have a week, rather inconvenient week for some people between Christmas and New Year's, to analyze them and decide how we're going to address the comments, because among – these comments may be coming from regular people, but they will also be coming from the chartering organizations. And if the chartering organizations do not largely approve this process, then the whole thing is for naught.

So addressing the issues that are raised by the chartering organizations, including the ALAC, will be a critical part of this. Presuming there are changes – and it's hard to imagine there will not be – a new report will be published on the 7<sup>th</sup> of January, and we then have an approximately two-week period by which the chartering organizations have to ratify – or not – the report.

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And if we can make it by the 22<sup>nd</sup> of January, then we have a moderate chance of the transition going ahead. If we miss that date, then we are told that the process in Washington will overlap too far into the presidential election and will remove almost all certainly of a transition happening at this point. Next slide.

Now, that was where we were up until a few days ago. At this point, we would like to open the question as I've alluded to several times. The decision that the transition group made, the IANA Issues group made, several weeks ago is that we would, in our comment, essentially put red line issues. Red line issues are those that, if we cannot fix them, the ALAC may well decide not to ratify. The implication of not ratifying is if more than one group do not ratify, then the transition cannot go through. If only one doesn't ratify, it's not clear what's going to happen. It's an important issue.

So we decided we would not in this version put everyone's personal interests, but really things that we had come close to closure on that were red line issues.

By red line issues, let's be clear. These are issues that there's a high probability that if they are not addressed, the ALAC will not ratify. In some cases, there may be associated ones that we would also identify, but make it clear they are not the red line issues.

In the last couple of days, we've had a number of suggestions from people that we change that position and that, indeed, in this document

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we identify other issues that the ALAC or people within the ALAC, would like to see.

I'll be quite blunt. My personal position is that I believe we should not enter into this like bargaining in a bizarre where we set a really low price, the seller sets a really high price and we try to haggle for the next while. I think we have to be honest and say what our real red lines are and simply identify them. But there are other people who have different opinions and we have to come to closure.

One of the things we'd like to do in this webinar is take a poll on some of these questions. We'll come back to that in a moment. Next slide.

Now, assuming we can come to closure on all of these things, how will the world unfold? Well, as I said, if we can approve the CCWG report within the right timeframe, it gets sent to Washington and hopefully the NTIA does its work, Congress does not object and the transition goes ahead.

There are a couple of problems. The board has on a regular basis said they have some problems with the CCWG proposal. The CCWG has changed significant parts of the proposal in line with previous board comments.

So the fact that we are now looking at the designator model instead of a membership model is at least partly as a result of previous board comments.

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However, the board has made another set of comments and they sent those in about a week ago – maybe a little bit less – and the challenge now is how does the CCWG analyze and potentially integrate them without altering the timeline.

Some of these changes are quite significant and it is not clear just how we will come to closure within the timeline that we have been looking at. I wish I could tell you what the answer is to that, but I think that's the state of the art as it is the last I heard.

I'd like to open the floor to overall questions and then we'll go back and do a few polls on some of the specific questions, issues, that we have been talking about.

Anyone have any general comments to make on how we should go forward? Overall, how do you feel about this overall thing? Is there anything we're missing in our comments that we should be incorporated? I'm not looking for specific issues, but are there any general messages that we want to be sending? Nobody? Am I still here? Sebastien, go ahead.

SEBASTIEN BACHOLLET:

Thank you, yes. Thank you, Alan. Just for one question. It seems that there is also in the [broad] position but also in other comments that there are places where people want to have just the one concern to be able to say something on the subject.

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I am very [inaudible] with this because it seems to me that it's the reverse of the registry stakeholder system where we are able to say [what on any subject]. Specifically for ALAC and At-Large, it seems that it's the reverse of what we need then.

It's a question and I am concerned about how we can deal with that. I don't know if it was clear, but if not, ask me.

ALAN GREENBERG: Yeah. I think you're saying that we should not be restricting the statement to just the answers, but allow other people to give input into the statement and have it reflected in it. Am I interpreting properly?

SEBASTIEN BACHOLLET: No, sorry, Alan. No, it was not the question. Clearly, it was not clear, and I will try again.

ALAN GREENBERG: Please.

SEBASTIEN BACHOLLET: It's also one of my positions, but that's another topic. I have seen the board that is, for example, the technical community must be the only one to talk about IANA. You have people like Kavouss will say public policy must be just [inaudible] by the GAC because it's just a question of government.

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I have the impression that we are coming – and that’s not the only example – we are coming more and more with people who are saying that if you are not directly concerned, you don’t have say on this issue. I really think that it’s way to destroy ICANN and it’s a way to [inaudible] voice of the end user put aside of all those discussions. [inaudible].

ALAN GREENBERG:

That is clear. Sorry, I misinterpreted. I think we have done moderately good on that. On the CWG, there were certainly many attempts as we went forward to say only the registries or only the affected bodies should have control. And I think in the end we managed to get all of the really important decisions have to be made by the community. And with IANA, the major ones are budget related and this nebulous separation. And in all those cases, although there are component parts of it where just the registries have a stronger position, ultimately decisions get made by the community. So I’m comfortable with that.

In the CCWG, you’re right. At this point, we are now hearing some things should be only the GAC and some things should be only technical community. We have successfully fought them, those pushes, up until now and they’re not in this proposal. You are correct that there are a number of people now saying that we have to change some of the rules.

So, for instance, the only people who should be able to veto an IANA budget are the registries, the ccTLDs and the gTLDs. And I certainly – if that comes to the floor, they’re going to get some objection from us... At least some of anyway. So I think we support what you’re saying.



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We're an advisory group that is allowed to advise on things that were not – to be honest, we're not the experts on, but we're allowed to voice that opinion and have that opinion considered. And I think we want to make sure that that continues. So I'll certainly support you on what you're saying there. Christopher?

CHRISTOPHER WILKINSON: [inaudible] of these committees recognize that At-Large and the GAC are the primary counter-balancing of a balanced process. Then actually, we by accepting one vote here and there condone the prospects of a cartel. This could be taken down by antitrust in five years' time. Unless registries and registrars recognize that they need us more than we need them.

It is a really basic question of the balance between public interest and the commercial interest in a self-regulatory system. And some of our colleagues who have been playing sorcerer's apprentice in this affair, some of our colleagues either through ignorance or lack of education and economics, refuse to recognize that and it's a very serious risk because if ICANN goes down this road of being dominated by the commercial interests of some of the stakeholders, sooner or later it will come to [inaudible].

ALAN GREENBERG: I don't think anyone can disagree with you. All I can say is we're doing the best we can, and hopefully we will get there. Olivier?

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OLIVIER CRÉPIN-LEBLOND: Yeah. Evidently, you cannot hear me. Hello?

ALAN GREENBERG: Now we can.

OLIVIER CRÉPIN-LEBLOND: Okay. On the point that Christopher has made, is it worth mentioning this in an ALAC statement? Mentioning this concern officially so that it's on the record.

ALAN GREENBERG: Are you saying in this statement or a statement?

OLIVIER CRÉPIN-LEBLOND: This statement as closing words or as a separate paragraph. I don't know. I'm just asking. Is it worth [inaudible]? I guess I'm asking everyone here the question. That's all.

ALAN GREENBERG: I guess my opinion is there's nothing in this proposal as it stands right now which is moving us in that direction and I would limit my comments to what is in the proposal right now. That's my inclination. Other people may have other positions.

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There was a question from Garth Graham. I'm not quite sure. I'm going to try to read it entirely, but I think the gist of it is are we indeed going to be accountable as the NTIA has implied to the global Internet community when in fact most of the accountability mechanisms here are really focused on the ICANN community internally?

I think the answer to that comes in recommendation – I don't remember the number now, 11 or 12... Sorry, 10. Enhancing the accountability of supporting organizations. The real question is do we really represent users? Does the GAC (Governmental Advisory Committee) really represent governments? Does the ccTLD represent the community – the ccNSO represent the communities associated with the ccTLDs and not just the ccTLD operator itself? The same is true for the GNSO.

I think the answer that we're giving is we believe that they are not quite up to speed right now, but that is where the improvement has to come to make sure we are answerable to a wider community than just the insiders within ICANN. It's not a wholly satisfactory answer, but I think that is the general one.

Garth, I don't know to what extent that answers your question and I don't know whether you can speak or not. If you can speak, please put your hand up, though. Christopher, yes, you have another intervention.

CHRISTOPHER WILKINSON: Yes. It's not my role to support my own proposal, but I think we have a problem vis-à-vis governments and vis-à-vis other aspects of civil society

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who are not necessarily present in At-Large, and something needs to be done to raise the profile of what they're saying on behalf of our members.

Furthermore, I said it in my comments to the survey, I think it is a mistake to postpone accountability of the SOs and the ACs to work stream 2. I think that our own accountability mechanisms are very important and [inaudible] to the recognition of our positions vis-à-vis outside interests including the rest of civil society and consumer interest, governments, and indeed other associations who are concerned by what is going on.

Otherwise, we will be perceived as having failed to maintain the balance that most people expect to see.

ALAN GREENBERG:

Thank you, Christopher. If there are no more general questions, then I'd like to raise a number of things for a straw poll within this group and do that before people start drifting away. Sebastien, go ahead. Sebastien and Alberto. Okay, we defer the poll. Sebastien, go ahead.

SEBASTIEN BACHOLLET:

Yes, thank you, Alan. I want to just make another overall issue or statement, if I can. It's the question, if you take, for example, the recalling of the entire board, from my point of view it's the end of ICANN in one way or another. And who will be the loser? It will not be the registry. They will find another home somewhere. [inaudible] home

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that [inaudible]. gTLD registry have already Domain Name Association. The only real loser will be us, end users. And we're really to be careful on some of the power we want for the community that are not [inaudible] against the organization, and therefore the voice of end users. Thank you.

ALAN GREENBERG:

I cannot argue with you at all. The only thing that comforts me is the process by which we could exercise the powers we have is such that it's going to be very difficult to exercise these powers. That's the only saving grace I can offer. Alberto? Is Alberto speaking?

ALBERTO SOTO:

Alan, do you think you could repeat from "Good morning, good afternoon, and good evening" because from then on I didn't really understand anything. This is just a joke.

But more than a question, this is sort of a thought that I have. I couldn't really follow all of these updates, but I see there are some problems that can really impact in the timeline if they are not solved quickly.

We probably should see if there are issues that we can leave aside so that we don't really break the timeline and we can get the IANA transition without process.

The same applies to the fact that tomorrow we have a meeting with Fadi with all ACs and RALO leaders – and I think I'm forgetting someone. And I'm going to repeat it again. I think there are a few issues that are

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[not] important for the transition, so that we don't break the timeline, maybe we should leave them aside. Thank you.

ALAN GREENBERG:

Thank you, Alberto. There are many people who have said that along the way. We are not likely to lose a lot of these issues at this point. There are various people who are supporting each of them and I don't think we're going to be able to widen or [inaudible] the scope.

As you just heard, Christopher believes that we should put accountability of the ACs and SOs back into work stream 1. I think we are where we are and have to live with it.

Any more hands? All right. I see a number of comments of things we want to talk about here in terms of the straw poll. The first one is do we want to continue on the path we were on right now and limit the issues that we're focusing on to the ones that the ALAC at this point believes are the critical ones which will stop us from ratifying?

Now, I see a question in the thing that I don't know is related to what I just said. Sorry, I don't know the origin of question one and I don't know what it's about. Could either staff or Olivier who I know had a hand in writing it explain?

OLIVIER CRÉPIN-LEBLOND:

Can you hear me?

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ALAN GREENBERG: Yes, we can.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks, Alan. The answers which are here are answers which one is able to click on. They're mostly the same for all of the questions to ask. So when you [inaudible] question and say, "Do we support your recommendation number one?" the answer is, well, it's either a red line issue that should be in the ALAC statement, or it's an important issue that should be in an ALAC system but it's not a red line issue, or it's an issue that should not be in the ALAC statement, or it's an issue which they don't have any interest in so it's a little bit like abstain from answering, basically.

That should be able to provide you with a temperature of the room with regards to each issue that you are bringing forward. Does that make sense?

ALAN GREENBERG: I was looking for a temperature of the room on should we be including things that have not been identified as absolutely crucial to our ratification.

OLIVIER CRÉPIN-LEBLOND: That's a different question that would require a yes or a no, I guess.

ALAN GREENBERG: That's correct.

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OLIVIER CRÉPIN-LEBLOND: Ariel, maybe you might wish to comment to this because that's between you and Ariel.

ARIEL LIANG: In fact, Olivier just provided the wording for question one. It's about, I think, consumer trust related. Do you want us to put that question in the poll to start?

ALAN GREENBERG: No. The question I would like to start with is should the ALAC statement in response to the comment period be restricted to items that are critical to our ratification of the proposal? It's a yes or a no answer.

ARIEL LIANG: Can you give staff a moment to finalize the poll? Because we need to do that from scratch. Just one moment.

CHERYL LANGDON-ORR: Ariel, don't worry about the questioning. Just do a yes or no poll – yes, no, or no vote.

ARIEL LIANG: Oh, okay. That sounds good. Thanks, Cheryl.



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CHERYL LANGDON-ORR: It's quicker and easier, darling.

ARIEL LIANG: Great suggestion.

CHERYL LANGDON-ORR: And then if Alan has other [inaudible] issues, you can put that up. And if it's a [inaudible] of issues, you put [Q1] up.

ALAN GREENBERG: If there's a way I can see the answers, that would be nice also.

CHERYL LANGDON-ORR: As a host, you will.

ALAN GREENBERG: I don't know if I'm a host or not. At this point, I'm not a host.

ARIEL LIANG: The poll is ready and is in the bottom right corner. Alan, I think you have been upgraded to a host.

ALAN GREENBERG: I have been. So the question is should we restrict this statement to issues that are critical to our ratification of the proposal? How many non-staff people do we have on this call roughly? Anybody? Staff?

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ARIEL LIANG: [inaudible].

CHERYL LANGDON-ORR: 20-odd, about 20.

ALAN GREENBERG: 20-odd, okay. We have 12 people voting so far. Give it another moment. So, yes, if you believe we should restrict the statement to things that are critical to the ALAC. In other words, bring to the attention of the CCWG things that will stop us from ratifying – or closely aligned issues. Is there anyone who is still trying to vote? We've got 14 people.

CHERYL LANGDON-ORR: I can't [inaudible] more like 16 when I took out the additional interpreters. So you're pretty close now.

ALAN GREENBERG: All right. So we have 14 now. We'll consider it closed. The poll is 12 saying yes restrict, two saying no. So I think the answer is pretty clear on that one.

CHERYL LANGDON-ORR: Definitely. Next.

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ALAN GREENBERG: Next question. Yes or no stay. Can you erase the results please? On the issue of consumer trust not being included in the wording, do we push and say this is something that is absolutely critical to us or do we mention it softer as Cheryl has suggested with the hope that the review team can add it later should the review team decide that that is necessary?

CHERYL LANGDON-ORR: Alan, I'm sorry, but you've framed that as a question which doesn't get answered by yes or no.

ALAN GREENBERG: I'm sorry. Would you care to do it properly? Let me try. Should we push it as an absolute requirement, yes or no? The no answer implies we'll follow Cheryl's advice. And if the CCWG is not put in easily, then we will hope that it [inaudible] put in later on. So, yes, we make it a red line issue.

We have 11 people voting so far.

CHERYL LANGDON-ORR: It's amazing how hard it is to properly frame [Boolean] questions, isn't it? [inaudible] one little bit of a sentence extra.

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ALAN GREENBERG: It really depends on how few hours sleep one has had.

CHERYL LANGDON-ORR: Tell me about it, my dear. And how many conference calls you've been on in a row. [inaudible] whole half hour off this morning. I was feeling very spoiled.

ALAN GREENBERG: We have 14 answers, yes we should push for it as an absolute five. No, nine. So we keep it soft.

Now, remember, we're going to have another conference call where we're also going to ask the question. We'll try to ask the same questions and word them the same way. I hope someone is listening to this who will remember what it is we said next time.

Soft [inaudible]. So we have five versus nine.

Now, Olivier or anyone else, are there other issues that we said we would ask questions about? I have lost track at this point. Does anyone else have any that we have talked about?

How about Christopher's question of do we want to make a statement that we are in danger of ICANN becoming an industry cartel because we are lowering the importance of the ACs in relation to the registry related SOs? I'm not sure I phrased that properly. I'll take input from someone who wants to do it another way.

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ARIEL LIANG: Sorry for interrupting. I tried to capture the question and it's noted in the discussion notes to the left of the chat box.

ALAN GREENBERG: Do we want to make a statement that we are in danger of ICANN becoming an industry cartel because we are lowering the importance of ACs in relation to registries, the registry related SOs?

Christopher, does that come close to capturing what you wanted to say?

CHRISTOPHER WILKINSON: Yes. [inaudible] take the floor, but since you [inaudible].

ALAN GREENBERG: All we need is a yes or no.

CHRISTIPHER WILKINSON: I think that's fine. That's good. I think it has an echo more widely. I didn't say [inaudible], but a board member told me a year or two ago that there was concern within the board that without significant demographic control the amount of money flowing through ICANN was an invitation in certain circumstances to [malpractice]. I think that expression is valid.

On the process, the thing on the right-hand corner of the screen still says Q1. I think which Q are we voting for?

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ALAN GREENBERG: We are on Q3 right now regardless of what that says.

CHERYL LANGDON-ORR: Just ignore that number.

ALAN GREENBERG: Ignore the number please. Okay. Just for the record, the wording in the question is not what would go into any statement. I'm certainly not going to have the ALAC using words like cartel in a statement that we're making that would get us into real problems. But I have the intent of what you're saying.

CHRISTOPHER WILKINSON: Okay, I agree with that. But on a previous occasion, just as most of the CCWG proposals have been referred to, lawyers cognizant of corporate governance – internal corporate governance, and particularly has a track record of [inaudible].

ALAN GREENBERG: Christopher, we're running out of time right now.

CHRISTOPHER WILKINSON: Yeah. Should be referred to competition lawyers.

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ALAN GREENBERG: This question, for the record, is effectively the same question as should we comment on people trying to lower the import of ACs in the voting structure? The two end up being effectively the same thing. Okay.

CHRISTOPHER WILKINSON: Okay. We're on the same page, Alan.

ALAN GREENBERG: The answer we have is 10 versus 2 right now on that. So it says include a statement. We have two minutes left. We are really tight. Sebastien, you had your hand up. I hadn't noticed because I had scrolled it off the screen.

SEBASTIEN BACHOLLET: Yeah, Alan. It was a long time ago. It was [inaudible] question you were asking [inaudible].

ALAN GREENBERG: Yeah. When I was made a presenter, the hands disappeared off my little window. So my apologies.

SEBASTIEN BACHOLLET: Just to say I know that [inaudible] and it will be vote again and I guess you will have the result. Just understand that if we don't include within the ALAC statement everything from our member, they will go outside. And it's not me saying that [inaudible] will do that. But you have this risk

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and it's why I was in favor of including all our members' points of view saying we have an ALAC position and we have members who say that and that because we will be more included. That was my comments prior to the vote. Now it's done. Thank you.

ALAN GREENBERG:

One of my concerns, Sebastien, right now is, given the timeframe, when we say we'll open it up to other people, we're really going to open it up to two or three people because those are the only ones with the knowledge and the time in this very short period to get something in and I'm not sure that's representative. But I understand what you're saying.

Olivier, you had your hand up.

OLIVIER CRÉPIN-LEBLOND:

But I put it down, Alan.

ALAN GREENBERG:

All right. We are just about out of time. Is there anyone who wants to make any very quick closing comments? Olivier, go ahead.

OLIVIER CRÉPIN-LEBLOND:

[inaudible] put my hand up. Thank you, Alan. Can you hear me?



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ALAN GREENBERG: Yes.

OLIVIER CRÉPIN-LEBLOND: I'm using Adobe now because the other line has just pretty much died down. There were some comments made in the chat with regarding acceptability of the proposal as being one that deals with the concerns of everyone out there. So to make ICANN answerable to the global multi-stakeholder community or the global Internet community. I wondered whether you wanted to ask a question on this. Should we make a point that we have concerns on whether this proposal provides ICANN accountability to the global Internet community?

ALAN GREENBERG: I would phrase the question somewhat slightly differently in that I would phrase it saying do we believe the ACs and SOs are sufficiently accountable to the global community to warrant giving them the responsibility we're giving them right now? I'm not sure we're going to be happy with the answer that comes out of it, though.

OLIVIER CRÉPIN-LEBLOND: The question is whether we should write something about this. That's the point made. Because I have heard some saying that it's tragic that we've moved the accountability of SOs and ACs to work stream 2. I've also seen a note in the chat, not to that extent, but also saying is this good enough for ICANN to be [inaudible] global Internet community or not?

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ALAN GREENBERG: Let me try to phrase a question very quickly. Should we emphasize in our statement the importance of accountability of the constituent parts of ICANN? Does that capture it, Olivier, in a positive way?

OLIVIER CRÉPIN-LEBLOND: I would say in a positive way it captures part of it. It doesn't throw a question mark over whether we think that this proposal is good enough to be answerable to the global Internet community.

ALAN GREENBERG: Olivier, I think we have to be careful what we're putting in print under our name.

OLIVIER CRÉPIN-LEBLOND: I realize that. Yeah, I realize that.

CHERYL LANGDON-ORR: Can I jump in here?

ALAN GREENBERG: Yes, please.

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CHERYL LANGDON-ORR: I think the question, if you want to ask a question allied to that, would be a balancing one, and that is can we ask the question do we think this proposal meets the requirements for work stream 1 IANA transition related activities? And I think then the answer would be, I hope, yes.

If you ask the other question in a positive way, I think the answer would also be yes. It's [bemoaning] the fact that that hasn't made the cut to work stream 1. But it is not a requirement for transition.

ALAN GREENBERG: I'm not quite sure where that leaves us. Cheryl, are you suggesting we ask the former question only or ask both of them?

CHERYL LANGDON-ORR: I would suggest ask both of them because they balance each other.

ALAN GREENBERG: All right, done. Okay, the first question is do the people on this call believe that we have met the requirements for transition? That is, we are going to end up with an ICANN which is suitably accountable, yes or no?

CHERYL LANGDON-ORR: Just to meet IANA transition requirements.

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ALAN GREENBERG: To meet the IANA transition requirements. Yes. That's why I said suitably accountable.

CHERYL LANGDON-ORR: Alan, I guess you could ask then the same question to meet ongoing and future requirements. That would be a very different answer, I would think.

ALAN GREENBERG: Okay, we have nine to two on this one. The last question is should we put an explicit statement in emphasizing – and this would be under recommendation 12 – emphasizing the importance of work stream 2 including the accountability? I don't think we want to denigrate other things like diversity.

So this is a question. Should we put in a question under 12 emphasizing work stream 2, including AC/SO accountability to whoever is writing the text?

Last question and then you can go home. The answers we have at this point are ten to one, so we will put a statement in assuming this is echoed by the second webinar.

Carlton asked in the chat what my opinion is on the red line issues. I'll give my opinion on all of them. I'm rarely reticent to giving my own opinion. On the red line issues, I agreed with the original decision of IANA issues to focus mainly on red line issues which was ratified by this group. Consumer trust, I really didn't have a strong position on and this

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group said, no, we probably don't want to push it too hard. On the issue of warning about denigrating the ACs in favor of SOs, I had already said my position was we should be silent on it. This group decided we should make a statement on – I can't even remember. Is ICANN sufficiently accountable based on this? I think it is. I supported this proposal.

And should we explicitly focus on work stream 2 and accountability? I would've been silent, but I'm happy to go along with it.

Basically, I agree with most of the positions, and the ones I disagree with, I don't think are critical.

I thank you very much. I see no more hands. At least I don't think there are any more hands. There are not. We can go on to the last slide, which I've kept for the finale. You can tell what my state of mind is right now.

CHERYL LANGDON-ORR: I love it!

ALAN GREENBERG: And with that, I say thank you all. For those of you I'll see in another eight hours or so or nine hours on the second webinar, it'll be nice to see you again.

CHERYL LANGDON-ORR: I'm going to [inaudible] out on that one. That's beautiful.

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ALAN GREENBERG: I'll even send you the font name.

CHERYL LANGDON-ORR: I'd appreciate the font. Thank you.

ALAN GREENBERG: How was your birthday dinner, by the way?

CHERYL LANGDON-ORR: My birthday dinner was delicious. I shall send you a photo of the feast.

ALAN GREENBERG: Oh, good. Thank you all for attending. You'll hear from us again soon.  
Bye-bye.

TERRI AGNEW: Once again, the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

**[END OF TRANSCRIPTION]**