ICANN

Moderator: Brenda Brewer
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11:32 pm CT

Coordinator: Recordings are started.

Thomas Rickert: Thank you very much for that confirmation. Hello everyone good morning, good evening good afternoon.

This is Thomas Rickert speaking the GNSO appointed co-chair to the CCWG. And I would like to welcome everyone to this call Number 75 on 7 January 2016.

We have a couple of substantive discussions in front of us. As discussed previously this is going to be a call of three hours length maximum.

We are going to go through the first three agenda items now and after that we're going to have a ten minute break. It can be a little bit longer depending on what the feedback from the group is. And after that we will reconvene for the two remaining substantive discussions and the AOB.

As usual we would like to do the roll call based on the remote participation room and therefore I would like to ask you whether you have any updates to

statements of interest? I'm sorry whether there's any one on the audio bridge only who is not in the Adobe.

So there doesn't seem to be anyone on the audio bridge only which is why we're going to take the participants from the AC room.

Let me also know whether there are any updates statements of interest?

There don't seem to be any. And since there are some comments in the chat that there is an echo maybe it's because I am working from inside a cave.

But no, actually there shouldn't be an echo from my side. I have all my speakers muted. But for everyone else can you please ensure that your lines are muted when not speaking?

With that I would like to hand over to my fellow co-chair Mathieu for the first substantive discussion.

Mathieu Weill: Thank you very much Thomas. This is Mathieu Weill speaking. Welcome to this call Number 75.

The first substantive item in first reading on our agenda today is Recommendation 1. And you have received a document that highlights the main discussion points and that the first one is the inspection rights description.

As you know this has been a very important aspect of the community empowerment discussion. And it's been recognized that there is an important need for the community to access relevant information if it wants to be in a position to make informed decisions about the community powers.

And the inspection rights were part of our deliberations when deciding to move from the member the sole member to sole designator model.

We have received quite a lot of support for that but a concern that was raised is by the ICANN Board which we do understand that there's a concern that ICANN would - might be overwhelmed or at least receiving many requests which would lead to a requirement to dedicate a significant amount of resources to managing those requests to the prejudice of the ability to operate normally.

And we have also in the meantime between the publication of the third report and the closing of the public comments received a memo from our lawyers.

If you go - on the document - and probably if we can have the document for Recommendation 1 on the screen that would be very useful.

If you are - if you go to Paragraph 22 which is on page - okay you have scroll control which is on Page 5 of the document.

You will see that we have taken in document the - an extract from the board comments in bracket and another extract from the lawyers memo in another bracket to have the complete proposal before our eyes before we discuss.

If we - to organize this discussion there are three actually three discussions to have a Recommendation 1 that we'll take one by one the first one is about this group and limitations of the inspection rights. Those are certainly useful things to clarify.

The second one is a discussion on what are the criteria to - within which the sole designator would be taking decisions to use these inspection rights.

And the third one is not related to inspection rights and it's more of a place holder at this point that regarding Recommendation 1 we need to make a note of concerns that were raised regarding the role of the GAC as a decisional participant as well and we need to also take note of the GAC input that we've received on this question. But it's probably not going to be something we can fully discuss at this point.

So those are the three items to discuss. Those were my introductory remarks.

In terms of scope and limitations of the inspection rights the lawyer memo actually provides some useful clarifications that inspection rights do only apply to certain types of documents which are the books and records of accounts and the minutes the member meetings which do not have any relevance in our case.

And so we are - we have been provided by lawyers some clarifications on that which we could certainly usefully insert into our report and that would address some of the lack of clarity concerns from the ICANN Board.

And on this spot and this spot only I'd check whether there are any questions or concerns with that approach to clarify what the scope and the limitations of the inspection rights are about.

I'm seeing some support in the chat at this point on this. Jorge your point on the admissibility of the GAC to the empowered community is going to be on our third sub item I'd say.

I don't know if we have Bruce in the room or any other board member to comment on...

Bruce Tonkin: Yes I'm...

Mathieu Weill: Yes, you are Bruce.

Bruce Tonkin: I'm back here yes Mathieu. Not sure what other board members are on. One of the things on the inspection rights that when we looked at it was the text in the California law is really just a single sentence it doesn't really define terms.

So it mentions minutes of meetings which I think is pretty straightforward and there mentioned the (unintelligible).

And so accounts in a draw form I think traditionally that's basically illegible. You know, like before you had online accounting systems you would have basically gone into an office and you would see a written ledger.

And a written ledger basically gives you the who you've paid and where you've received income from. And that's basically all it is.

So I think part of why we want to provide a bit more clarity is we're expecting that that's not just what the community is expecting because we can obviously do the equivalent of that.

We can see ICANN uses an accounting system called Priceline. And we could literally give you as part of those inspection rights the right to look at general ledger which will have a whole bunch of accounts codes, and it will give you the name of the supplier, and the if we've paid somebody and the name of the payee if we've received income from someone.

But I doubt that really helps in any way. And so that's why we're trying to provide actually more than that so it actually provides some basis for how requests are made and the topics that those requests are made about and actually provide essentially produce documents that provide the information that might be required by the community to make a decision.

So that's really what we're trying to do is actually not limit rights. We're actually trying to make them useful.

Mathieu Weill: Thanks a lot Bruce. Probably the ideal way forward on this would be based on the text provided by the lawyers to check whether additional clarity on the extra amount of some clarity the board would be prepared to provide could be added into this deck because what I'm sensing is that the minimum inspection right description is okay and there's even more that the board is prepared to provide and if we can capture this in the document that's going to be even better. Is that...

Bruce Tonkin: Well I think...

Mathieu Weill: ...an appropriate way forward?

Bruce Tonkin: Yes but - well probably the way forward I think Mathieu and again maybe this comes into bylaws drafting but we've got to be looking at this not as it would looked by a California court we've got to look at this as it would be looked by an independent review panel which may not even have any lawyers from California on it. And so I think probably the key is we need to be able to define the terms.

And I think if we can define the terms a bit more clearly in the bylaws then I think we have a better way forward.

Mathieu Weill: Thanks Bruce. So I think the definition of terms was attempted by our lawyers. So probably - and that was not the material that the board was able to fully consider because it was provided slightly after publication of this third report.

So probably just a review on this is - should do - should enable us to find a way an appropriate wording. Is that okay?

Bruce Tonkin: Yes look I know we've got other board colleagues looking at that. But we'll continue to provide feedback.

But I suspect if the responses you think what you've got is good enough I don't think that's where the boards at.

So I think what we need to do is perhaps look at maybe providing some specific redline text that we think might address our concerns in your final report.

Mathieu Weill: Okay. Thank you very much Bruce. I think that's encouraging for this first item.

The second item is actually raised by the - is actually the question of what the type of support or conditions that would have to be met for the sole designator to consider to transmit a request of inspections to the ICANN Board.

The lawyer memo we had received was suggesting that this - the sole designator would consider would transmit requests when they are supported by one SO or AC.

And the ICANN Board comments does suggest that this follows the same path as any other community power with the level of support to get community forum of two SO ACs and a requirement to have at least three SO ACs supporting this request.

And I think that's a difference view that is - that we need to reconcile here. And I would like - I know Jordan I don't know if you're on the call.

I noticed you made a contribution on this aspect on the list. Would you like to recap this to...

Jordan Carter: Sure, I can do that Mathieu. Can you hear me?

Mathieu Weill: Yes, perfectly Jordan.

Jordan Carter: Great thanks. Hi everyone, Jordan Carter (unintelligible) CCNSO member the CCWG for the record.

You know, all I said on the email list was that I thought that of the two positions that have been mentioned the lawyers and the board the lawyers made more sense.

And the whole point of an inspection right of whatever the board is that it is about information gathering. And it might be information that is relevant to the exercise of the other community powers.

So to me it makes no sense logically to set a very high threshold for at least for those powers. And that's about a relatively high threshold.

I'm sorry Mathieu I just need to go and get this call which is (unintelligible) joining me through my room.

Mathieu Weill: Okay. While you're taking the call I am seeing Alan's hand is up. And it would be interesting also to have a board member maybe explain the rationale behind the board's proposal on this aspect. Alan?

Alan Greenberg: Thank you very much. Clearly the answer to this depends on what exactly what we have inspection rights to.

The more sanitized things are that we can actually get our hands on I think in my mind it reduces the threshold we should have to pass to get it. So the two are somewhat linked.

My position is somewhat in between what we originally said and what Jordan is supporting and at least what he supported in his email and what the board is requesting.

I think going through the full-fledged three step process is overkill by a large amount. Now we're also talking about shortening that process by combining steps. And again if we shorten the process then there's an iterative thing that we're going to have to look at.

But the one thing that I don't think is reasonable -- and I'm giving this is a personal opinion this is not an ALAC position we haven't discussed it the one - the one thing that I think is unreasonable is to allow a single AC or SO and particularly one of the registry SOs to request things.

The - among the few things the California law is clear on according to our lawyers is that this shouldn't be something for essentially commercial or business purposes.

And in both cases of those SOs they are either controlled by or almost completely controlled by specific business interests. So I think having them make the request gets us into a very shady area.

So I think we need at least two ACs or SOs to allow this to go ahead and perhaps an AC or an SO or something like that to get out of the business aspect of this.

So I think the board is overreacting but I think ours is somewhat too liberal and leaves it open to misuse. Thank you.

Mathieu Weill: Thank you Alan. Jordan would you like to close your intervention before we move to the rest of the queue?

Jordan Carter: If I could that would be great. Thanks Mathieu. Can you hear me this time?

Mathieu Weill: Yes.

Jordan Carter: Right, okay thanks. Yes so what I was saying was that I supported the lawyers approach because as a matter of principle this power should be easier to use than any of the other community powers.

It isn't really a power it's just sort of an added benefit that came with the membership package that we moved away from on the understanding as

discussed very explicitly in Dublin that this would be incorporated as part of the compromise.

And it is it's impossible to see this particular power as being on the same level as the others. That's not to say we don't need to work out an implementation framework but that is an implementation detail to make it workable.

And in the practical sense I don't agree with Alan and what he just said. And none of the SOs or ACs are going to use this power frivolously to get any of the councils involved.

I mean you look at the complexity of GNSO decision making, if you look at the slowness of CCNSO decision making certainly the registries are no threat here.

And as long as we've got a proper protocol worked out about how this should operate which we've all said we need and it doesn't make sense to me that set two hoops to - or two SOs and ACs to exercise it.

That's putting it on the same level as the other accountability powers which doesn't have any logical coherence to it in my mind. Thanks Mathieu.

Mathieu Weill: Thank you very much Jordan.

I have Edward and Greg on the list. And would like to encourage board members to chime in - I see Cherine on the list. Thank you very much Cherine for - that you have the board's perspective as part of our deliberations. Thank you, Ed first.

Edward Morris: Thanks Mathieu. I agree with Jordan. One of the things we need you to be sure that we do at conception is to keep everything pretty simple and keep the language in the bylaws simple as well so when we attempt to use and exercise this power which is going to be used for example when we except fraud, when we expect impropriety we don't want to allow the board of the staff for that matter to be able to twist the language.

For example in the board's proposal the boards related to the exercise of the community powers as a lawyer I can tell you that you give me any request I can use that language, twist it, turn it and delay it. We need to have bylaw language with conception that's simple to the point so that it can be used.

That also goes forward in terms of who can request an item. I want to bring an example in recently from a DIDP I did last year.

This was for portions of a contract that ICANN had some people from Westlake. And those of us in the GNSO wanted to make a representation that perhaps the work product didn't comply with the contract.

And ICANN wanted to give us this information. So Sam Eisen and I worked together, I filed a DIDP I got when I asked for.

By making it too complicated by making two SOs have to bind together to make the community mechanism have to come into play at first instance eliminates the ability of ICANN and the community to work together for the community to get information or a single SO to get information now all agree we should have that no one's opposed to.

So the lawyers proposal the proposal worked out by our experts in California law is simple, it is to the point and would allow the bottom up community to access to information.

And then if ICANN says heck, you know, that's not appropriate then we trigger the community mechanism. I think that's a lot simpler, a lot easier to operate and a lot less bureaucratic. And that's why (unintelligible).

Mathieu Weill: Thank you much Ed. Before turning to Greg I would note a comment by Holly that said that if the requested information is reasonable and related to community power right than Alan's concern about improper use of inspection rights is addressed.

And my understanding of the legal memo was that there could be a way to implement this by saying that by providing some ability to monitor improper use for business purpose in the way we implement the power the inspection rights I should say. Greg, you're next.

Greg Shatan: Thanks Mathieu. And I'll kind of follow on what Holly said there. First I think you slightly misquoted what she said.

I think, you know, she may have mistyped slightly too. I think she meant to say that if requested information is reasonably related to a community power or right Alan's concern is addressed.

So in any case I just want to say that I think Alan's concern is based on an overbroad misreading of the advice from counsel.

And I would certainly, you know, invite counsel to actually speak up. And I think as a general matter this speak only when called on rule that we seem with counsel is kind of silly but I digress.

And I think, you know, further that the idea as several have said that somehow, you know, these are just a bunch of commercial puppets sitting in the GNSO, you know, is troublesome especially, you know, or if controlled by the contracted party.

They're obviously, you know, structural issues that are way out of the scope of this discussion that we could discuss but I don't think that it any way disqualifies the GNSO or the CCNSO from, you know, initiating a request for inspection.

And I, you know, I think it might be helpful to have Holly clarify. My understanding -- which may also be a misreading -- is that we're talking about using an inspection right to gain a particular business advantage for a particular business, you know, vis-à-vis its relations to ICANN in some fashion and not the fact that somehow maybe commercial in the broader sense.

Since, you know, like it or not there is a very commercial aspect to the entire domain name system. Thanks.

Mathieu Weill: Thank you Greg. And I think we have discussed already but the scope of the inspection rights anyway is limited to its quite limited to the accounting books and record of the corporation and the minutes and proceedings of the board of directors committee of the board.

So I think we already have quite a narrow space. Cherine would you give us the board perspective Cherine.

Cherine Chalaby: Thank you Mathieu. Can you hear me?

Mathieu Weill: Yes I do.

Cherine Chalaby: Okay. So I want to give you a board perspective on why as mentioned two SOs and ACs as a minimum. The idea was that the board saw the inspection right as a community power not a designator model power. It's not a designator power it's the community power.

And also so that the - this community power is tethered and goes along with the other community powers and as you said in your opening remarks is this information decision about the community power to improve that how to support that.

So if the community wanted to exercise one of its powers let's say veto the budget but needed some more information than that is fine because it goes together with the community power.

And therefore given that all the other powers are described so that the minimum of two SOs and ACs that should kick the process and then three SOs and ACs supporting or blocking we felt that this should be married the same thing and goes along the same route.

So that for the - if you want the accounting books of record that you mentioned. But the board also supported additional information.

And has said for example if there are concerns and there's a need to investigate any potential fraud or mismanagement financial mismanagement to ICANN it has nothing to do with the other powers that the board would also support another process where a third party firm could be retained, that could undertake all the investigation required by the committee by the community and then would publish to the community the findings and the information that the community acquired. So that's what the rationale from which the board came. Thank you.

Mathieu Weill: Thank you Cherine. And indeed I think we did not mention that part of the board comment which is quite - fall in to it was sort of a proposal for an additional right.

I think it will - investigation right to be awarded to the community to trigger an investigation. And that's something we'll need to capture at some point in our discussions.

Can I just check with you Cherine whether you have clarity on the rationale of those who spoke earlier that feel that there's a need for a SO or AC went it's start kick starting a process probably to access information with a slightly lower level of support or consensus at the beginning of the process, is that something that is clear?

Cherine Chalaby: Yes. Can I respond? Yes I heard it clearly. But it didn't come across to me that this inspection right is aligned, and associated and tethered with the other powers.

So it felt like if someone wanted something irrespective of exercising the powers that were agreed and transferred to the community they should be able to do so.

And the board felt that this wasn't exactly what the board felt is the right way of going about it. And that the inspection right should be attached and tethered with the community powers.

And in addition there was something separate which is the inspection facilities in case there is a fraud investigation or something else.

Bruce Tonkin: If I can comment also Mathieu when you're ready?

Mathieu Weill: Yes, yes please Bruce.

Bruce Tonkin: Yes. I just thought the example that Edward gave was instructive because he was talking about looking at the terms of the contract and presumably what the performance requirements were in the contract of weather an external party had, you know, delivered on their contract.

The accounts managers could tell you that. The accounts will tell you how much we've paid that supplier.

And so that's kind of an example of really one is an accounting requirement which we could certainly tell you how much we paid that supplier.

But I think he's really talking about wanting to have the - a document inspection right being able to complain about whether that contactor had done their job properly or not.

So it's just an example of different things. I think the reason why there's a threshold and I think an earlier speaker sort of might have been yourself

Mathieu but the balance here is between what information is requested so this is what's the threshold to request that information?

So I think if we're purely talking about the accounting records some actually I think a threshold of the single SO AC was reasonable.

A think the second part that Cherine talked about was to say if there is a fraud or a much deeper investigation which, you know, in the equivalent of a sort of a police level investigation that you would have a higher threshold to initiate that.

And then you would use an external party to come in and investigate the matter and identify if fraud is occurring.

Mathieu Weill: Thanks Bruce. So what you're saying is that maybe we could sort of some common ground with a lower threshold for purely the accounting books and records and the minutes which are largely already available anyway and the higher threshold as described by the board comments for this new investigation right power which I must say was a very constructive proposal which is actually adding to the accountability mechanism discussed by this group with a new interesting layer.

So that sounds to be quite an interesting way forward. And I have Holly in the queue for maybe some clarification. I have apologies if I have misquoted you Holly.

Holly Gregory: No. You've gotten it absolutely correct Mathieu in characterizing our advice and Greg as well. And I would say just in listening to the exchange with Bruce I wonder how much maybe there's been some confusion by using the term inspection right.

It sounds kind of like an investigation. But the California code concept of an inspection right was simply the right to ask for - and receive certain books and records - accounts and onboard and board committee minutes.

I don't think there was a contemplation of the kind of investigation powers that Bruce has raised but which would clearly be very helpful to the community at a time where there were concerns about significant financial fraud.

So agree that if the boards willing to go to that, that would be a wonderful thing for the community to have but it was not what would have been included in the inspection rights under a California code approach where we were trying to mimic what members rights would've had in a designator system.

Mathieu Weill: Thank you Holly. Greg I think that's an old hand if I'm not mistaken. Yes so that's Kavouss and Steve. And then we'll try to wrap this up. Kavouss? Kavouss if you're speaking we can't hear you.

Okay Kavouss is either muted or having an audio issue. You made a suggestion to categorize the inspection indeed that's the way forward I was describing between the basic inspection and the new sort of investigation rights that the board is describing which have different threshold. So that was your suggestion. I think we're in line with this.

While Kavouss is maybe fixing the audio issue can we go to Steve? Steve?

Steve DelBianco: Thank you Mathieu, Steve DelBianco with the CSG. On the assumption when we were seeking to give the designator the same statutory rights that a

member would have had under 6333 the scope derived from the language that this support level is something we have to be (unintelligible) on.

If in fact we were a member a sole full member that sole member would have been the only one who could've exercised the 6333 inspection right.

So if we want to give the same rights and bylaws to the sole designator then what would be the structure that you used to (unintelligible) of the sole member?

That is why earlier in this discussion I was watching the chat and there were several folks who were amazed at the idea that the sole designator would have to meet certain thresholds in exercising the power of inspection.

But that's being consistent with giving bylaws rights that were similar if we had been a sole member because if we are a sole member or a sole designator and as a single entity we still have to find a way to gauging the level of support and making sure there's not too many objections to exercise our power.

So there's no effort to constrain it any more than it would be grained if we had all the law succeeded at getting what we wanted which was a member power we would still be having a conversation on how do we know when the member has sufficient support to exercise the document inspection right? And let's just try to remember that perspective. Thank you.

Mathieu Weill: Thank you very much Steve. Thomas - Kavouss sorry you appear to be satisfied by the answer that I provided. So if I want to recap I can say that we would try and update the document to encapsulate the low threshold for inspection rights on accounting groups, and records and the minutes.

And then capture the investigation right proposal from the board with the highest thresholds as proposed by the board as an extra paragraph.

And also make mention of the need to - for the implementation to make sure that fictitious claims or abusive claims are being handled properly.

And Kavouss is back with his hands up, so Kavouss?

Kavouss Arasteh: No. Thank you very much. That's okay with me.

Mathieu Weill: Okay.

Kavouss Arasteh: If you categorize that's okay, thank you.

Mathieu Weill: Thank you. And thank you for the suggestion Kavouss. I think it's very, very useful.

Good. So we'll move forward as this is going to be our sort of first reading conclusion and we'll update the document along these lines.

The last item in this agenda point is a note that about Recommendation Number 1. We have received formal GAC input yes consensus input from the GAC that indicates that the GAC is intending to participate to the escalation phase.

There were however - and that was in line with the minority view submitted by Robin. Some comments asking for the board expressing concerns about the GAC being a decisional participant so that is part of Recommendation 1

potential update or suggestion at this point until we receive formal GAC input is not to go into deeper discussions on this and this point.

And that's I think some - it has been planned for further discussion later in our deliberations on the comments.

I just wanted to make that note so it's clear that this inspection right discussion is not the only aspect of the discussions on Recommendation Number 1.

And I see Robin's hand is up. Robin?

Robin Gross: Thank you. Can you hear me okay?

Mathieu Weill: Yes. Please Robin.

Mathieu Weill: Okay thanks. Yes I just wanted to raise a little bit of caution about what will happen to our proposal if we have to go before the Congress or the NTIA and what we've done is we've changed our GAC's role to a decisional authority with respect to the community powers.

I think that we might be undermining the entire accountability proposal and perhaps even jeopardize the (unintelligible) by going too far by giving GAC the option to be a decisional authority with respect to the community powers.

So I think that even those who might be comfortable with doing that from a philosophical or substantive viewpoint might want to take a look at it from a practical perspective.

And we might want to reconsider the extent to which particularly in light of the additional empowerment given to governments under Recommendation 11 the extent to which we may really need to pull back on what we've done on Recommendation 1 and giving GAC a decisional power or decisional authority with respect to the community powers. Thanks.

Mathieu Weill: Thank you Robin. I think you' starting to kick start exactly the discussion that I announced would be taken further down the road of our deliberations in another meeting.

That has raised Kavouss interest. And Kavouss you have the floor.

Kavouss Arasteh: Yes.

Mathieu Weill: But I think after that we'll close and acknowledge that this discussion that took place already in our deliberation will be taken on later on. Kavouss?

Kavouss Arasteh: Yes. As you have properly mentioned you have to wait until the GAC take a more formal position. And that would be after 22nd of January. So if we want to discuss this issue again it should be at the time we have received that.

Second to my distinguished friend Robin there is a big difference between Recommendation 1 and Recommendation 11. They are two different things. One is talking about the advice the other is talking about exercising the power.

There are many things to discuss. I prefer not to discuss in a business sense. But I give one simple example.

Suppose that Article 11 relating to the GAC is going to be changed. And if you do not allow the GAC to have - to exercise its power GAC should accept whatever other community decides for that.

I don't think it's fair Robin so you should reconsider. You insistently continue to oppose to any action taken by GAC.

And you refer to the government there is no further additional role of the government. They prefer to remain advisory.

But if their rights are touched or other state they should have the right to come in and express their views and they should be heard.

So I think we should maintain this multi-stakeholderism but not exclude anything. But once again let us wait for the GAC and (unintelligible) after 22nd January.

But please Mathieu if you want to track any other meeting it should be after you receive the GAC formal position if any.

I don't know whether there would be in a position to have a formal position. But I cannot agree or disagree that before 22nd you will discuss that. You have to wait. Thank you.

And thanks Robin for your insistence that GAC should have no role at all in the current community. Thank you.

Mathieu Weill: Thank you very much Kavouss. We'll not get that any further. I will conclude on this item to answering one point in the chat to avoid any confusion.

The inspection rights are just what we've been discussing. The document information disclosure policy claim is CIDP is accessible not for the sole designator or the SO AC but for everyone.

And it's a fully other process which is not a community power process. So we should not confuse those two in our deliberations and probably will try to make this very clear in the document as well.

And I think with that we've covered some useful ground on Recommendation 1 already. And I will know turn to my fellow co-chair Leon for Recommendation 2. And let's escalate into Recommendation 2 Leon.

Leon Sanchez: Thank you very much Mathieu. This is Leon Sanchez. And Recommendation 2 is the one about engagement, escalation and enforcement.

And so far we have received some comments about the different deadlines and the different periods of escalation throughout this process. And we have heard that some of them or maybe all could be a little bit tight.

So the key discussion points for this part of the call would be those that we have at the top of the document that we circulated earlier.

And the first one is to address the concerns expressed by many that the escalation timelines are too tight and aggressive.

And for this we can explore four options being the first one notice and opportunity to comply (unintelligible) period, the second one extension of deadline, the third one empowerment of counsel or chairs for the initial steps and the fourth one we could also explore the removal of (certain) proper steps.

This would mean to simplify the problem as it stands in our third draft proposal and well what we need to do now is exactly this call is how we could do these or which of these four alternatives would be most suitable to address the concerns on the tight timelines that have been established.

And one thing we need to keep in mind is that while we don't want to have very long timelines in the process because of course we need to have an expedite process to exercise the powers.

We also don't want to have such tight timelines that would not enable fair and inclusive participation from all SOs and ACs involved in this process.

So I'd like to hand over the floor to - well of course we'll go through the other points which are discussing here like objection to threshold adjustment in case the number of decisional participants is lower as depicted in Paragraph 62 (unintelligible) the document.

And of course this caused the board to adjust their amendments related to the threshold percentage as a basis in case the number of SOs and ACs would change.

And this is on Page 11. And of course discussion point would be discuss the concerns raised about equal weight between all SOs and ACs which have been also a subject that has been long discussed and widely discussed among the CCWG.

So I would like to hand over the floor to Jordan Carter which has been rapporteur for this working group.

And he'll be able to walk us through the different alternatives. And of course after this I would open the floor for comments and questions to the rest of the group. So Jordan could you please take the floor?

Jordan Carter: Sure. And can you hear me?

Leon Sanchez: Yes we do.

Jordan Carter: Great thanks. Hi everyone I'm Jordan Carter (unintelligible) here again. So I think what Leon is asking me to do is just to talk about the four options under number one in the paper in front of you which is how we deal with the concern about time frame.

You'll recall earlier on I think in our work we were talking about 15 day deadlines for a range of these steps. And then in Dublin we expanded the number of steps involved in exercising any of the community powers.

And so we face a kind of dilemma if you like. If we keep short deadlines on lots of steps we may make it impossible for SOs and ACs to participate properly, to consider the decisions that they need to make and so the powers may become just imaginary because no one can use them.

On the other hand if we extend the deadline to a long and generous set of deadlines for each step and there are lots of steps then it could take 18 months to use any of these powers if we did it in a very long winded way or even a large number of months that's not as extreme as 18 months.

So I think the question that we face is how to reconcile those two tensions to give enough time to each SO and AC to make the consideration and decisions

of the (unintelligible) powers and to without blowing out the total time frame that it takes to use any of these powers.

And the paper from the co-chairs sort of talked about four ways to do that. And it's of notice and opportunity to comply with extended periods which I think is about just making sure that people are aware of the coming decision as early as possible and can start setting up their decision making within the SOs and ACs.

There's extending the actual deadline which probably realistically we will need to do. And there's the empowerment of councils or chairs for the initial steps which I think is to suggest that the chairs of an SO or AC as an example could be the people who made a decision about a conference call rather than going through the full decision making process of each SO or AC. And the fourth suggestion is the removal of certain process steps or a simplification.

So the - and that could be any of the ones that we've done. And it could be the, you know, the merging for example of some of the steps.

So having looked at all of those and the feedback that I've seen the most likely or the most reasonable impression that I've got is that merging the conference call and forum steps might be the way to go ahead. And we're going to have to lengthen some of the deadlines anyway.

And when we're thinking about this whole escalation process it's really important to remember that none of these powers I don't think are suddenly going to emerge out of the blue.

If there's a concern with the whole ICANN Board for example or if there's a concern with the budget these concerns will already be apparent in the

community and people across the SOs and ACs will already be speaking with each other.

So it isn't entirely obvious that we need to turn every step in that discussion into a bureaucratic bylaws based process with deadlines and time frames that everyone needs to meet because we know intuitively that some of the conversations will already be happening.

So just to finish off my introductory point to me the most logical way to go is to merge the four and the conference call step.

So if there's a threshold reached to invoke a community power in other words if a petition happened you can rely I think on that SO and AC having spoken with other SOs and ACs to see if there's some interest in using the power.

And then you can move to a community forum where there's a full discussion among the community.

And in doing those things you can lengthen the time frame. You might be able to get up to 30 days to allow a petition and another 30 or 40 days to get to the decision point with a forum held in the middle of that.

So we have a slightly longer timeframe in place for people to make the decisions after due consideration.

And we acknowledge the realities and formal discussion but we don't try and set out every step with long deadlines in a way that means it takes six months or so to exercise any of the powers. And with that I'll hand back to you Leon.

Leon Sanchez: Thank you very much for this information Jonathan. And I see Kavouss hand is already up. So Kavouss I know that you have made a couple of comments in the chat box but please do take the floor and please comment on what we are discussing.

Kavouss Arasteh: No. I give up my time and give it to the others. My comment is already in the chat. Thank you.

Leon Sanchez: Thank you very much Kavouss. And at this point I would like to open the floor as I said for comments. I see Alan Greenberg's hand is up. Alan?

Alan Greenberg: Thank you very much. I'll just note and someone can answer along the way if it's important. Item 1C says empowerment of council.

                   But I understand what empowerment of chairs means but empowerment of council. I would've thought the councils and the committees are the only groups with any power to begin with. So I'm not sure what changes that would imply?

                   However with regard to what Jordan is proposing at least as I understand it of merging the things. I think we specified - I think we were micromanaging and specifying the detail level that we already did.

                   And I certainly have no problem with compressing it somewhat or eliminating the detailed stages and providing a similar overall amount of time to make the decision.

                   My only concern is without the what we're calling the conference call we need to make sure that as we go forward with single community petitioning how that information gets socialized and spread to the other otherwise we will

call the community forum and no one will attend because they really don't understand what's going on at that point.

So we just make - need to make sure that we have reasonable processes not necessarily laid out in the bylaws but reasonable processes to socialize the intent to exercise a power. Thank you.

Leon Sanchez: Thank you very much Alan. And I see Kavouss your hand is up. So I just want to double check whether you want to comment because I don't want to skip you? Now your hand is down again so I assume that you give up your time.

So maybe one way forward is to try and include in the recommendation to socialize the topic of course and to view the relevant material before the community forum is held.

And we could do these in the next draft or the next amendment to the proposal. And we could also go with go forward with Jordan's approach.

So we would be preparing an amended document for everyone to review and discuss it in our next call that we will be a good addressing these recommendations.

So the next point of discussion is the discussion on the ALAC objection to the threshold adjustment in case the number of decisional participants is lower.

So for this I would like to hand the floor over to Alan Greenberg so you could provide the group with the ALAC's position as to this objection from the ALAC so we can of course further discuss with other members of the (unintelligible).

Alan would you be able to provide us with ALAC's position to this...

Alan Greenberg: Yes.

Leon Sanchez: ...issue?

Alan Greenberg: Yes certainly. Just for the record...

Leon Sanchez: Thank you.

Alan Greenberg: ...I'll note that the comment on page I think 13 of the document distributed the comment W4 incorrectly describes the ALAC's position.

The ALAC said we could not support reducing the count the threshold count for removing the entire board.

We said we explicitly support it for one of the powers and that we have concerns with the other powers. The power that we supported it for was changing fundamental bylaws.

And because we also had a concern that it would be too hard to change the fundamental bylaws. And we could consider it for the other two but we didn't actively support it.

Okay so our concern which by the way is not only said by the ALAC the board also said quite clearly that they could not accept lowering the threshold for removing the entire board, at least that's the way I read there comment. So it's not just the ALAC.

Removing the entire board is about as revolutionary as one can imagine. And that simply has to be something which is going to be supported by a reasonable part of the community. And reasonable in our case I believe four is reasonable.

On top of that we also pointed out that as worded the recommendation makes really little sense because it says that if three ACs or SOs supported removing the board one of them objected and one abstained the power would go forward and the board would be removed.

On the other hand if all five participated but two of them abstained it could not go - it would not go forward. I'm sorry if only three participated and supported it and two abstained it would not go forward.

That says the power can be exercised by three ACs and SOs with one objection but cannot be exercised by three ACs and SOs with no objections.

That just doesn't make a lot of sense. So I think the idea although I understand why it came about was not well thought out.

It results in something which is just in my mind doesn't make a lot of sense. And on top of that I think the - it's exercising a crucial power with far too small a part of the community. Thank you.

Leon Sanchez: Thank you very much Alan. Are there any other comments in regards to these issues? I see Tijani Ben Jemaa hand is up. Tijani?

Tijani Ben Jemaa: Yes. Thank you Leon, Tijani speaking. I think that removing the entire board is (unintelligible) if you want. It's something that will really serious. And we don't have to use the threshold for this kind of power.

I think that even unanimity would be good but not producing this to see to - so this is something that we cannot accept and this - for this power.

But also for the other balance I didn't agree with the rationale of this modification because they say there is only four participating. No if one is abstaining and an abstention is a participation.

So I believe that we don't have to change our first document as it was done for the final document published. We have to stick to the threshold we had before. Thank you.

Leon Sanchez: Thank you very much Tijani. Next in the queue I have Andrew Sullivan. Andrew?

Andrew Sullivan: Hi. Reluctant as I am to take up everyone's time I'm just concerned that we're attempting narrowly here to apply true value logic to a true value system.

If you have positive support and negative support what you have is a three value system in which you have to count up the positive support in favor.

And people often say well abstention counts as negative, that's not actually true. What it is, is that the abstention doesn't count as positive and so what you're requiring is positive support.

And if you don't get that positive support then for whatever reason the motion or the objection or whatever it is we're talking about doesn't pass.

So I think - and there's been a little bit of confusion in the discussion about this. I personally don't actually care how this works out. But if what you're

going to say is that people can abstain and you're not going to count only positive support as the necessary condition for passing, then you've just got this confused system in which you've effectively got really only two values but a - but you've got a three-value system.

So I think that you've got to have - you've got to have the positive only. And what Alan has argued is that three positives and the presence of an objection should not be more powerful than simply three for.

I don't agree. The question is merely do you have positive support or not. And if the answer is no, then you've failed to meet the threshold. That's all there is to it. But it's - once you've introduced abstention as a possibility of the three-value logic system and you can't try to apply two-value logic rules here.

Leon Sanchez: Thank you Andrew. Next in the queue I have Jordan Carter.

Jordan Carter: And thanks Leon. Jordan here. And the scenario that gave rise to this was not so much an abstention. I think we've all accepted that SOs and ACs may decide to support the use of the community power and to object to its use. They may decide to abstain.

The issue was more trying to deal with the situation where they couldn't decide anything at all. Now we haven't really defined in our system where - whether you have to do something to record an abstention, whether abstaining itself has to be a positive act.

But the fear here was that with a (discussion on the floor) to remove the Board should you require unanimity. And the answer of the CCWG has always been that you shouldn't require unanimity.

And the fear was as an example, and this isn't the only example, if the GAC was a decisional participant and couldn't by consensus arrive at any kind of decision, should that mean - on the question of whether to remove the Board, should that mean that all of the other parts of the ICANN community had to be unanimous or not?

Now it's a relatively unlikely I think scenario to come to. But that's what it was designed to address. And that's why it was included in the third draft proposal.

Now I think that the logic stands up. I don't think it's a do or die issue. But I just wanted to re- sort of assert why we did this in the first place. That's the kind of scenario it was designed to deal with. Thanks.

Leon Sanchez: Thank you very much Jordan. Next I have Steve DelBianco.

Steve DelBianco: Thanks Leon. I'm picking up on what Jordan said in explaining the rationale of what we came up with in Dublin. And that was substantially the decision model and thresholds that made the way into our third draft report.

The first is that we agreed in Dublin that we wanted to move to a strong support - showing strong support in the absence of substantial objection. And that model is used by a few ACs and SOs today. And that was used to replace this notion of (voting).

Second is that we anticipated that any AC or SO could pick one of four ways to participate. It could support the exercise of the power. It could oppose. It could (abstain) or it could simply advise the community of what it thinks. And again, we're advising the community in this case, not the Board. The Board's not even part of that. So those are your four alternatives.

And finally I wanted to mention that abstention could well be because of scope. As an example, the ASO might consider that the exercise of the power that's completed related to them naming functions of ICANN is outside the scope of the ASO.

And they could in that case simply abstain. It's not the best of outcomes but I have to respect their decision to do so. That's one of the reasons that we cannot make these thresholds so high that they require the active participation of every single AC and SO that has said that they want the option to participate. Thanks.

Leon Sanchez: Thank you very much Steve. Alan Greenberg.

Alan Greenberg: Thank you. With regard to what Jordan was saying of the, you know, the GAC or somebody could not make a decision, I don't think we really want to or can psychoanalyze our ACs and SOs as to why they did not come up with an answer.

Sometimes you don't come up with an answer because you're - because you can't come to a conclusion. Sometimes you simply run out of time. There's all sorts of reasons. And I really don't think we can start looking at the motives and assign a rationale for why someone gave no answer. I really think that's a dangerous road to go down.

The latter point I made really says how can you - how can you rationalize taking an action with three groups deciding to take it and one objection but not taking the action if those same three groups decide and the other two abstain or they don't say anything?

You're ending up there with almost strategic voting that, you know, someone who wants to oppose it does - deliberately doesn't say no because if they say no, it will go ahead. But if they don't say anything, it will not go ahead. It just defies logic I'm afraid.

But that's the implementation if you're to go with it for anything. And I think that would have to be addressed. In terms of Board removal, I think it's a too crucial an issue to take lightly and to lower the threshold period. Thank you.

Leon Sanchez: Thank you very much Alan. Next in the queue I have Jorge Cancio. Jorge, might you be on mute? We cannot hear you.

Jorge Cancio: Hello.

Leon Sanchez: Now we can hear you.

Jorge Cancio: Okay. Can you hear me?

Leon Sanchez: Yes Jorge.

Jorge Cancio: Okay. Sorry. I was typing with my iPhone. I think the discussion on the thresholds and also discussion we were having on the chat are somehow related. And I'm a bit (sorry) as (unintelligible) we have come back to the discussions on the participation of the GAC as if the participation of the GAC would be a problem, would be a danger, would be something bad we have to avoid.

We're seeing (unintelligible) hearing these discussions that other (pretends) to be authorizing that or authorizing the GAC to participate or permitting the

GAC to participate whether it's admissible for the GAC to participate. I think this is a bit - it's a bit (sorry) to hear these kinds of expressions.

But going back to the concerns expressed by Alan, which are concerns, which we have shared in the past. Would like to remind (unintelligible) about the exercise of community powers. And that exercise of community powers only has a meaning and only is sensible if this exercise is really supported by the community at large.

And if we lower the threshold, it will be only a fraction of the community which will be exercising that community power. So it will not represent the community as a whole any longer.

So I think that lowering the threshold means that the first step to kick out of the community some parts of this and we are seeing and I've said it before that there are very decided moves to kick out the GAC from the exercise of the community power. And this is (unintelligible).

Although perhaps the proposer, and I mean Jordan, may not have anything to do with this (kind) of intention. This is (laying in the) ground for (this more). I think this would really undermine this exercise if we would lower the chances for a high participation.

And it would prepare the path and the way for decisions on very, very important issues, which would not be supported by their representation of the community but only by a fraction of the community. Thanks.

Leon Sanchez: Thank you very much Jorge. I see that we have on the queue Mathieu Weill and Tijani Ben Jemaa. I would like to close the queue after Tijani unless we

have of course one Board member that would like to comment on this point as Alan has commented on the chat (book).

It would be especially useful to receive any feedback or any comments from any Board member at this point. So should there be anyone from the Board willing to speak on this point, please go ahead and do so. And next on the queue I have my co-Chair Mathieu Weill. Mathieu.

Cherine Chalaby: (Unintelligible) I would like to be on the queue as well. Thank you.

Leon Sanchez: I'm sorry. Who was that?

Cherine Chalaby: This is Cherine for the record. I'm already on the...

((Crosstalk))

Cherine Chalaby: ...on the queue.

Leon Sanchez: Yes. Okay. Cherine, I will place you after Tijani. Mathieu.

Mathieu Weill: Yes. Thank you. Thank you very much Leon. And I think this debate is quite useful and we - I hear agreement on the concern that the threshold for changing fundamental bylaws might be so high that it might create some difficulties in actually changing those bylaws in the future, which is a priority or lack of ability to evolve (unintelligible) changes that has been a concern in the past in our group.

And the fundamental bylaw power is very special because it's a prior approval threshold instead of a veto threshold. So what I'm hearing is that we have agreement that this is a concern.

One way to address this without going into the special case that we were describing in Paragraph 62 would be to only lower this threshold to minus one so three and keeping the standard bylaws similar.

So the standard bylaw is a veto power and it needs three supporting the veto, which is likely to be - which is unlikely to block changes within ICANN. And the fundamental bylaw is a requirement to get approval - positive approval by at least three and a minimum - maximum, sorry, of one objection.

And so I think we could - that could - that would still make a fundamental bylaw sufficiently hard to change but also mitigate the risk of policies or inability to change as ICANN evolves in the future.

So that would be I think a way forward considering the various arguments that have been discussed so far in this meeting. So that's the suggestion I wanted to make Leon. Thank you.

Leon Sanchez: Thank you very much Mathieu. And these suggestions seem to be very reasonable. And well of course I would be calling for objections after finishing listening to the rest of the queue. So next on the queue I have Tijani and after Tijani Cherine. And with that we will be closing the queue. Tijani, could you please take the floor?

Tijani Ben Jemaa: Thank you very much Leon. Tijani speaking. It seems that we are reconsidering our philosophy of Dublin regarding decision. We said, and I remember very well when I think Steve was writing on the board, we said this is decision what the Board is or whatever the position are.

And now we are reconsidering that take as if we have abstention to change. But it is more strange is that we are considering one abstention but not more than one abstention.

So in my point of view that (such is) the position and we said in Dublin we are considering the support and the objection only. The abstention is a position. And it is not - it is not participating.

It is a participation by a position, which is abstention. So it is not a support. It's not an objection. And we have to keep - in my point of view we have to keep the threshold as was decided in Dublin and not change it because if we follow the same (unintelligible) we will have to decrease the threshold if we have two abstentions also. Thank you.

Leon Sanchez: Thank you very much Tijani. And last on the queue is Cherine (unintelligible). Cherine.

Cherine Chalaby: Yes. Hello. Can you hear me? This is Cherine.

Leon Sanchez: Yes Cherine, we can listen to you.

Cherine Chalaby: Oh, okay. Good. Thank you. Yes. I just like to offer support what (unintelligible) said and also to give my rationale for my reasoning. I think we need to recall that SOs and ACs might as well have (unintelligible) (within it). And even before an SO or AC can (either) indicate its support of a (unintelligible) and there will be some level of disagreement within each SO or AC.

So it means that most likely those areas that we support never - they never have - never I think (unintelligible). So that alone is some level of leverage

that (I'm giving). Now a level of exercising the power. For that it gives into the pressure means that they are entirely disconnecting the whole set of communities, which is itself (unintelligible).

And so I think whenever we're considering these (unintelligible) power, we should as much as possible have more (unintelligible) thresholds. I am in total favor of unanimous for removing the entire Board.

Suppose the (unintelligible) actually put the ability to remove the Board members (in practice) but again, since that is not widely supported, before (unintelligible) nothing else like that. And everything from the (next bylaw) is (supported critical).

I don't see why the thresholds for that will also be (reviewed). I think we should consider (unintelligible) if we commit an entire community from (unintelligible).

The other thing I want to comment on is on the participation and the fact that GAC (unintelligible) that that is actually (unintelligible) they would participate in this process (because that) community powers is the (out) (unintelligible) as indicated as well. It means that we're the outside. Why are we still talking about this (unintelligible)? That I would like to get clarification on. Thank you.

Leon Sanchez: Thank you very much Cherine. And the way forward that I would suggest we take is that we as co-Chairs redraft the document that we - the proposed amendment by Mathieu and we would circulate this to the list and of course set (the deferred) view of these suggested amendments and discuss the proposal in the list so we can have a better view on this issue as proposed by Mathieu.

So with this I would like to go to the next discussion topic, which is the concerned raised by the Board on their suggested amendments related to the thresholds presented as a basis in case the number of SOs and ACs would change in the future.

And for this I would like to ask some Board member in this call to actually explain their views on this issue. So someone from the Board could you please kindly...

((Crosstalk))

Bruce Tonkin: ...happy to talk to that one then Leon.

Leon Sanchez: Bruce please.

Bruce Tonkin: Yes. The concept is that we say that ICANN may evolve over the future. Who knows? We might even get an advisory committee on human rights given the great interest in that topic on this list.

And so the idea was just that rather than specifying thresholds with six numbers whether it's three or four SOs. And in addition to that it's probably useful to put in a percentage threshold as well that basically aligns with that number.

So, you know, if currently we have the equivalent of 75% threshold, then that's also say, you know, a minimum of four or minimum of 75%, you know, whichever is greater or whatever the right wording is. But it's just really just trying to take into account that the organization will continue to evolve.

ALAC for example was an advisory committee when ICANN was present nor was their second choice. So both of those were created subsequent to the creation of ICANN.

Leon Sanchez: Thank you very much Bruce. I note that Jorge Cancio's hand is still up but I'm not sure if that's an old hand or a new hand Jorge. Could kindly confirm. Okay. So now - it's now down. So next in the queue I have Alan Greenberg. Alan.

Alan Greenberg: Thank you very much. I did distribute a chart in email last night on the impact of using percentages. It may be worthwhile showing that. Among other things, it demonstrates that the percentages the Board suggested would not work if we lowered - if we went down to four ACs and SOs instead of five. It does work reasonably well going up.

However, I have a - I have no problem suggesting it as a default or something like that. If and when we actually add ACs or SOs, I think there needs to be a conscious decision on how the voting - the thresholds are impacted, not simply follow the prescribed percentage blindly.

It's going to depend on the circumstances. We could have an advisory committee that might have very, very limited scope. And for some reason we call it an advisory committee but it's not of the same type as the others. And we might not want it to have that same level of control.

We have had a case before. As Bruce said, things have changed. We used to have only one TLD SO. And it became the CCNSO and GNSO. The GNSO could split into multiple SOs in the future. And it might not be that we want to composite amount to be the majority of ICANN, the majority of the SOs just because they have chosen for whatever internal reason to split.

So I really think that we should not be casting things in concrete right now because we don't know the nature of the future ones. I have no problem with using it as a guideline or a default. Thank you.

Leon Sanchez: Thank you very much Alan. Next in the queue I have Jordan Carter.

Jordan Carter: Jordan here. Just to - it's my pleasure to agree with Alan. I think that it should be a case-by-case decision. And I don't think writing percentages and/or not writing percentages is going to make any difference, the fact that people will use the numbers in the current table as a guide and as a reference point to start. So I think percents doesn't add anything to that at all.

And it's the principle as we should look at it on a case-by-case basis, which I support, which we'll have to do anyway (based on the need) to change the bylaws to incorporate any new decision on SOs and ACs; that's the way it should stand. Thanks.

Leon Sanchez: Thank you very much Jordan. So next in queue I have Tijani and I will close the queue with Tijani so we can move forward because we are approaching the break - the program break for this call. So Tijani.

Tijani Ben Jemaa: Thank you very much Leon. I do agree with Alan. But I also agree with the Board that we need to put something to say that this threshold has to change with the change of number of SOs and ACs in ICANN. But do not impose a percentage. We need to say that it evolves with the change of the number of the SO and ACs. Thank you.

Leon Sanchez: Thank you very much Tijani. So I think that our probable way forward would be for us - co-Chairs to draft a solution for this after the suggestions that we

have heard. And by this I mean that we should have the percentage suggestion as a default discussion basis but we would also need to evaluate the different circumstances in which this situation should arise.

And we could also modify the thresholds as the case may be in case the number of SOs and ACs should change in the future. So I think this could be a probable way forward. And we would (hold these stats) for the co-Chairs and of course circulate the amended report for everyone to review.

And I note that Steve DelBianco rose his hand. So Steve.

Steve DelBianco: Thanks Leon. Picking up on this notion of adding or dividing ACs and SOs in the future. Please keep in mind that if the organization were to create or divide ACs and SOs, that is a bylaws change - a regular bylaws change.

And that would be subject under our entire plan -- talking about the sole designator -- at the same time as the language of that new AC and SO if there's proposal to change the threshold, the threshold's a part of the fundamental bylaws whereby the sole designator must approve those changes.

So we have already designed a mechanism by which adjusting the number of ACs and SOs and the thresholds themselves are already subject to the community approval or blocking and both with the mechanism we have. So there's no need for percentages to be locked into the bylaws. We can make these decisions when the circumstances arise. Thank you.

Leon Sanchez: Thank you very much Steve. And that seems reasonable. So I would state that we would be taking that into account at the moment of redrafting the (formula printed) in the report before we circulate it to the rest - at least to of course listen to the feedback anyone would like to provide.

So with this I would like to move to the next discussion point. And maybe once again I would like to call on the Board representative to check whether this approach that has been suggested is okay or in line with the view or concerns raised by the Board. So I don't know, Bruce, could you please (signal with us as) to whether this approach would be addressing the Board's concerns?

Bruce Tonkin: Yes. I think we need to just see the (unintelligible) the proposed language. Beyond that we'll have a Board call next week and then I can give feedback after that.

Leon Sanchez: Okay. Thank you Bruce. So the next discussion point is the concern raised about equal weight between all SOs and ACs. You can refer to Page 11. And I note that one important hurdle for this discussion at this point is that we are still waiting to get the GNSO input. And this is of course obvious I think for discussing this topic.

So I would suggest and I wrote to Robin on the list that we had knowledge that we have this issue pending and that we of course discuss this issue when we get the GNSO input so we can of course consider all the views from the different stakeholders and the different comments from the different constituencies that have raised concerns as to these very important issues.

So if we have no objections on this, I would defer these discussions for when we get the GNSO input. And at this point, we would be able to go into a break just in time as programmed. And at this point would anyone like to do any comment? I see Jordan's hand is up but I'm not sure if that's an old hand or a new hand Jordan. Okay. So that was an old hand.

Okay. So we have finished just in time for the break. And we will be reconvening in 30 minutes. That would be 15 minutes before the hour. So enjoy your break.

Thomas Rickert: Hello everyone this is Thomas Rickert speaking. We have 15 minutes to the top of the hour and I'd like the Operator to get the recordings restarted please.

Coordinator: The recordings are started.

Thomas Rickert: Thank you so much. And we would now like to continue our conversation with the next agenda item on another community power which is the community power on budget and we're talking about the IANA budget in particular.

And in front of you on the screen you see the four key discussion points on the budget community power and we're going to discuss those one after the other. And I would suggest I will do a quick introduction on the questions including a way forward and then we will try to seek confirmation with the group and afterwards we're going to put in writing the agreed way forward so that we can further discuss it on the list if necessary and confirm the suggested way forward during the subsequent meeting.

Now the first point is to confirm the clarifications requested by the CWG regarding (conspiracy) rationale (unintelligible) CWG's stewardship and elaborating the process for IANA budget.

And those bullet points you will find on pages 5 and 6 of this very document and in the text is a point that has been included in our second report but for reasons that I can't entirely recall at the moment we have dropped this language.

And a question is whether we are okay with reintroducing what is now Paragraph 10 of this document in our final report. Do we have any opposition to reintroducing this point in our report?

I'll pause for a second to allow everyone the opportunity to take a quick glance at it for those that haven't taken a look at it earlier. And Kavouss' hand is raised. Kavouss the floor is yours.

Kavouss Arasteh: (Unintelligible) have you considered the comments made by ICANN saying that the budget of the IANA the community involving that and the outlying the four communities need to decide only but not other communities.

What did you answer to that and how - and either you could convince the board that no it is entire community that has the right to do that and how Bruce could convince us that only those four categories that we have mentioned must be involved in the IANA rejection. Thank you.

Thomas Rickert: Thanks very much Kavouss and the point that you're raising is actually to be included in the second question that we're going to discuss after we have reached a conclusion on this question.

So I'm confident Kavouss that we will sufficiently cover that point in a moment. I'm seeing at least one comment in the chat that it makes sense to re-add what is now Paragraph 10 and I have not seen any objection to the re-introduction of that language.

And therefore I suggest we move on including this what seems to be uncontroversial language in Paragraph 10 and move to the second question to

which Kavouss already spoke and that is to discuss and refine the operation communities in the IANA budget veto as suggested by the ICANN board.

And take into account the IAB specific inputs according to which the IAB doesn't want a direct voice but it wants to seriously be heard. If you take a look at Page 6 and Paragraph 22 you will even find the suggested way forward and was able to read out.

It's not a lot of text but it should respond to the point that Kavouss raised during his latest intervention and the suggested way forward would be to say as an implementation instruction in implementation any process through which a portion of the whole of the IANA budget is subject to rejection must include the words of the operational community served by the IANA function.

These operational communities include the GTLD registries, (RIR), the (CCWG) registries and the IETF. The process must also be implemented in such a way as to ensure that they will continue delivery of the IANA function.

So by including that additional language in Paragraph 22 we take note of the boards comments. We include the comments that you find in the markup section of this document.

You will see the other groups that have chimed in on this point and we hope that this is to everyone's satisfaction. There is a queue forming and let's hear the first speaker which is going to be Alan.

Alan Greenberg: Thank you very much I thought someone was head of me. I just wanted to make a brief comment that if IANA's budget is vetoed or if there is a substantial problem with it that this is of concern to the entire community not just those who have day-to-day interactions with IANA.

So the concept that only the operational communities have a stake in this I think is just downright false. So I just wanted to go on record as saying that. Thank you.

Thomas Rickert: Thanks Alan. Maybe just to clarify we're talking about a community power here. So this is a matter for the whole community so no one is excluded. We're just suggesting as an instruction to those that are going to drop the implementation language that when it comes to the IANA budget the individual operational communities must also be heard.

So this is actually not an exclusionary approach but it is more inclusive.

Alan Greenberg: Thomas I was not critiquing what language you're suggesting I was commenting on the concept that I believe the board proposed that only the operational communities should be involved in the decision. Thank you.

Thomas Rickert: Okay thank you very much for that clarification Alan and just as a heads up I would really like to invite one of the attending board members to comment on the suggested way forward which we hope is capable of bridging the gap between the comments and the various concerns from the board that have been made. Izumi is next.

Izumi Okutani: Hello everyone. I just wanted to elaborate a little bit on (unintelligible) about the numbers communities because we are considered as one of the operational communities.

So in short on we believe that the third version of the CCWG (unintelligible) already sufficiently addresses our needs and involvement. We are able to

participate in the process as the ASO which the (RIR) can also provide feedback as needed.

And actually our needs about the fees for the IANA numbering services are sufficiently addressed by the SLA to the extent between (RIR's) and ICANN.

So we're actually happy with what is being proposed at the moment. At the same time we don't necessarily oppose to language that would add additional involvement participation by the operational communities.

As long as it's by incorporating in making these changes. It would not affect the progress of our proposal only to a (blocking) process by other SO's or AC's in approving this element of the proposal.

So that's an observation from the ASO thanks.

Thomas Rickert: Thank you very much Izumi. We have Jordan, Andrew, Cherine, Kavouss and after that let's pause and try to take stock. Jordan.

Jordan Carter: Thanks Thomas it's Jordan here. Look, I thought this was a helpful intervention by the board in this proposal and I think it reflects and earlier discussion that WP1 where we did think about whether to get the decision right over at the IANA budget directly at the operational community.

But that didn't fly in the discussion there which included those communities and now it's clear from the (IOB's) comment that they aren't keen to have a decisional role and the numbers community will already have one if it chooses to exercise it through the ASO as Izumi has just described.

And those pieces of feedback came in after the board lodged its comment. So I'm hoping and maybe reassuring that the director could tell us whether in light of the desire by the (unintelligible) not to give a decision or participate on this budget.

And the IANA comment whether we're okay sticking with the status quo of the decision being made by the general system that we've developed here. I think that would be the easiest and least time consuming way to approach this.

Also just to the point the language in the paper in front of us, the recommendation for the paper isn't quite the same as what the budget and as what the board's comments said.

Definitely any of the operational communities will have the chance to comment and participate if they like in the community forum that would discuss any vetoes because it's open to everyone and hopefully they would make their views known if they had them.

But what the board has specifically said was that decisions about the IANA budget be delegated to the four operational communities and once again I find myself agreeing with Alan in saying that I don't think that's quite the right way to go.

So (unintelligible) from this board about what they're thinking is that given the new info that's come to hand.

Thomas Rickert: Thanks very much Jordan. Next is Andrew.

Andrew Sullivan: Hi, thank you. So I'm pretty uncomfortable with Paragraph 22 here. And so I noticed in the chat there was maybe a little bit of confusion about this and so maybe people don't fully understand how this works.

The relationship between ICANN and the IETF that is the IETF and the IANA leaders is basically managed and supervised by the IED. So to the IED's comments about this was effectively that it doesn't want to be involved in direct negotiations about the budgetary matters of IANA.

And the reason for that is because we already have an SOA. And so it's from the point of view of the IED, ICANN is an IANA service provider. And just like if we were dealing with any other vendor, we do like for instance we deal with ANS to do secretariat (unintelligible).

We don't, you know, if they have an internal budgetary problem we don't get involved in that. What we have is a question, you know, can you solve this. And under those circumstances some do come back and say well we got a little problem because I don't know the bank went broke and so there's, you know, bankruptcy and it's three months before we can do this is that okay.

And under those circumstances that wouldn't be - that wouldn't be, you know, that's the sort of thing that you do on a case-by-case basis but I don't think we want to make rules about that.

But what we don't want to do is get involved directly in the budget stuff itself. Instead it's just a sort of, you know, can we take this variance from the contractual obligations (unintelligible).

And that's the kind of thing I think is consistent with the IED's comments and that would be acceptable in the future. I will note that the IED suggested a

different approach in draft two and I'll just draw this to people's attention and I have to say I don't especially care which way you go.

But the other approach that the IED suggested was that the budget for the IANA operations be frozen from time to time, you know, with particular increases and work plans and so on over the course of the lifetime of some agreements.

So for instance the IED and the IETF includes a supplementary agreement with ICANN every year about the IANA functions. And so you could do that annually during the preparation and you could say well, you know, this is how the SLA is going to work and this is what the preparations are.

And then the community could review that and say yes well we're okay with that. And then having already agreed to it now I am currently living in the U.S. and I am aware that in the United States that once you've budgeted for a thing you automatically pay for it if you're (funded).

But everywhere else in the world once you've already agreed to such an agreement, you know, you just presumably are budgeting for it and that's just one of the things that you have.

So that might be a thing that you could do and build into the caretaker budget and that would be another way to solve this. So that was another thing that the IED suggested in the comments to draft two.

So that would be a (unintelligible). But I think that Paragraph 22 probably the IED would not feel comfortable with this because it involves the IETF directly in discussion about whether the budget - how the budget grows and so on.

And I think that that's not really the relationship that we have with ICANN.

Thomas Rickert: Thanks Andrew. Just a quick follow-up question for you. Would you like the language if we did amend it to just the need to make sure that to take note of the views of the operational community without any of those?

Andrew Sullivan: Well I think the key thing here at least from the IETF's point of view the issue is not what's the budget the issue is what obligations does ICANN already have contractually.

And that seems to be really from, you know, outside the corporation. I mean if I pretend that I don't care at all about what goes on inside ICANN so I have that hat too but if I stand completely outside of it this is a straight forward service provider arrangement and so it isn't my views about what your budgets are that ought to count right.

It's can't you deliver the service that you said you were going to. And I think that maybe if this is couched in terms of assuring the contractual responsibilities of ICANN or the PTI or all of the above then that might be a different way to tackle this because that includes those views right.

Presumably the IETF and either ICANN or PTI whatever the arrangement ultimately winds up the key point is that they negotiated these things outside of that and presumably the ICANN side that's negotiated that in keeping with the budget that's it knows it already has.

Now I agree that you want to protect against case where for some reason, you know, ICANN promises to refund the IETF to the tune of $10 million a year but I think if we have that problem we got other kinds of issues too.

Thomas Rickert: Thanks very much Andrew. Cherine.

Cherine Chalaby: Yes. So let me tell you what the board's perspective on this and where we're coming from. The idea was that we honestly agree with everything that's been developed with Jonathan and the community in terms of the veto power on the budget.

And on the IANA one we felt that the IANA is an (alternative) to certain customers and it would make sense to involve those customers and give those the right to block the IANA budget if they wanted to.

But I think this is a personal comment I'll take Alan Greenberg's comment into account and also to point out to Andrew that even if the IETF which I would say is the operational community quote external there are other operational communities external in ICANN.

They should also have a role in actually blocking the veto - blocking the IANA function. So I on a personal level would be comfortable with Paragraph 22 and would also be comfortable if the world IETF is excluded from it and that makes Andrew and the IETF happy with that.

Thomas Rickert: Thank you very much Cherine. Kavouss is next and then Bruce.

Kavouss Arasteh: Yes Thomas I wanted to sort of tighten this thing. I have no difficulty that for IANA board we take a different approach. Our basic approach up to now was the community powers were exercised by SO's and AC's.

Three of the four people mentioned by ICANN they're already an SO or AC. The only one that is not is IETF. If IETF directly or indirectly to (unintelligible) should be presented and they may have a different approach

for IANA budget including a mixture of SO AC and operational communities because we could not limit it to just these four mentioned for ICANN board.

Other communities must also be in plus IETF or IED and so on so forth. Thank you.

Thomas Rickert: Thanks very much Kavouss. Bruce. Bruce you might be on mute we can't hear you.

Bruce Tonkin: Yes, sorry I am on mute. If I look at the first sentence I think that sounds right that's certainly the input the user is taking into account in the community decision process.

I think the last sentence is probably the key one and might need to be enhanced a little bit but I noticed in the chat forum one of the things that we discussed as a board was trying to understand how the caretaker budget fits into the, you know, broader ICANN budget.

If I give an example it could be that the IANA function operator is requesting, you know, a series of face-to-face meetings around the world with all the users to function and that may need a $3 million additional budget for that.

That's certainly something that you can imagine the broader community might say well, you know, is that the best use of our resources when we need to spend some money elsewhere.

That's something that certainly wouldn't be in that caretaker budget. But if there was a requirement to put in a firewall for including the security to make sure we have secure and stable delivery of the IANA function then that to me

is something that could impact the actual secure operation of the IANA function.

And that wouldn't be something that, you know, should just be sort of treated in the same line of okay we don't want to put in the firewall we want to have a meeting of some other part of the ICANN community.

So I think the key in the last sentence is really sort of elaborating that a little bit further I think and saying that there needs to at least be a caretaker budget out of the IANA function that allows us to deliver on its contracts.

And as Andrew Sullivan mentioned and allows it to ensure the secure and stable operation of that function. So I think it's the last sentence that needs to be elaborated just a little bit.

That's what we were fearing is that there might be a request to reduce the budget in some way by other parts of the community and reducing that budget would mean that we'd fail to deliver on our commitments to deliver stable and secure operation with that function.

Thomas Rickert: Thanks very much Bruce and with that I recommend we try to take stock of where we are. It looks like the essence or the notion of what's currently in Paragraph 22 is well received by this group what we should be doing is come up with a revised draft for this paragraph which ensures that we'd be using -- and I'm using the language that Jordan Carter has been using -- slightly paraphrasing what's been said here is that the operational community should not be ignored but that they should have a voice.

We will also make sure that we don't spell out individual operations but just make reference to the operational community and we will specify that the

implementation needs to be such that proper delivery of the services and of the SLA is not jeopardized.

So instead of doing work on this as a group exercise I noticed that there were some direction about should, must or other language. We should take this to the mailing list and discuss an updated draft.

And since Bruce made reference to the form that the caretaker budget should take I guess that's the nicest way to the third question from the group which is actually a discussion on the exact or clearer guidelines under caretaker budget or whether we can safely leave it to the implementation phase.

And you will remember that in our first draft report we mentioned that the details are under development and there has been direction with ICANN to (unintelligible) and his team so that work is in progress.

And I would like to hand it over to Jordan to offer a little bit more background on where we are with this discussion before we open up the queue that's currently forming.

Jordan Carter: Thanks Thomas can you hear me?

Thomas Rickert: Yes we can hear you all right.

Jordan Carter: Yes great thanks. So this is on the caretaker budget clarity point right?

Thomas Rickert: That's correct.

Jordan Carter: Just confirming. Yes sorry we had an audio problem when you were talking. I don't actually have a lot to add to that. There's, you know, we've

had a bit of a discussion just now with Bruce about what needs to be clarified in that previous point about the IANA budget.

We know that there has been some work done with the (unintelligible) about the detail of the caretaker budget and the principles and so on. To me there isn't a lot of difference between those two options whether we need to provide clearer guidelines in this proposal or whether we keep developing them in the implementation process.

But I do want to ask if Jonathan Zuck has any thoughts to add here because he's been a lead fire in doing those discussions and maybe if we got Cherine as well to speak on that.

Personally I don't have firm views. If we want to put more details in this version of the report we should get onto it quickly and if we're happy to leave it to implementation then that's fine by me as well.

Could we ask Jonathan if he wants to take just supplementary points on the initial comment?

Jonathan Zuck: Sure hi, thanks Jordan. I guess my feeling on the document that's been created this far is that the principles that are in it for the most part are ones that the community would agree on and are pretty straightforward.

There is currently in the document a lot of redundant text with text that's already in the proposal. So it's just not a sort of refined enough document. That wouldn't be terribly difficult to do but I also agree with Jordan that a lot of this is going to be purely logical, dictated by contract et cetera.

And it's the definition of the caretaker but it's really going to be largely uncontroversial and the most appropriate for the implementation phase.

Thomas Rickert: Thanks very much Jonathan for the clarification and they're just asking a question in the chat. The question about where we are. We're actually discussing the third out of four questions we discussed on the budget community part of IANA and the caretaker budget and there is no specific reference in the document below.

The question is whether this is the point that we can lead to the implementation phase. We have started this discussion Bruce basically with - among other (unintelligible) interventions that we need to ensure that whenever our budget community power is touching both that the proper delivery of the IANA services and the fulfilling of the SLA is granted.

And so maybe a way forward would be to hash that out a little bit more as is suggested in the details of implementation. Let's hear Cheryl now and then Cherine.

Cheryl Langdon-Orr: Thank you very much, Cheryl Langdon-Orr from ALAC AP regional member. I just wanted to have a very brief intervention and remind all of you this is following on from (Bruce's) comment on the last sentence regarding the possible need for bolstering that on the aspects of the caretaker budget. Those of you who are not also engaged in the CWG work and the ongoing work of what's called DT Zero or the drafting team zero which it's focusing specifically on IANA budget issues.

There is a lot of focus in that work continuing as we are continuing to work and they are continuing to work and there is a lot of focus in that group on the caretaker budget.

I would strongly recommend we go lightly on the words. Make them clear and unambiguous. Leave all the gory details to implementation because the CWG DTO work with ICANN accounts and finance leadership is working very, very specifically in this area and we would possibly trip over each other. Thank you.

Thomas Rickert: Thanks Cheryl. Cherine.

Cherine Chalaby: So I agree with Jonathan about the approach to deciding the caretaker budget and I also agree with the comment made earlier about the sentence in Paragraph 2. I think that would be good.

One extra point - interested in Jonathan response on that and that is the board has made in its comments and said that the - once we define the caretaker budget, the approach to it, and agree it all among ourselves, it should be then part of the fundamental bylaws so that we create some form of stability going forward, that we don't have to reinvent the wheel every time if there is a veto by the community.

So we added that recommendation on Page 10 of our comments. We said that the caretaker budget - the approach to it should be embedded in the fundamental bylaws and including the responsibility of the CFO to establish that budget in accordance with a defined approach.

Jonathan, you and I have not had this discussion on whether this should be part of the fundamental bylaw or not. But do you see any - any issues? I think it's a good thing to do for us as a community.

Thomas Rickert: Thanks, Cherine. And I let Jonathan respond to that immediately who has conveniently raised his hand.

Jonathan Zuck: Yes thanks, Cherine, and that's a good question. And I, I mean, I have a general concern about us dropping way too much detail into bylaws as a part of this process. And so personally I think if the bylaw really stuck to the language you just put out there in terms of there's a framework document that the acting CFO would use to (use) a caretaker budget and the bylaws suggest that the CFO is empowered to define that budget. I think that makes sense to put into the bylaws. So I certainly wouldn't put any of the components of the framework itself into the bylaws.

Thomas Rickert: Thanks very much, Jonathan.

Jonathan Zuck: That make sense?

Cherine Chalaby: Makes sense.

Thomas Rickert: Great. I wanted to ask Cherine whether that makes sense to you and obviously looks like we have clear instruction from the group both during oral interventions as well as in the chat. So at this point it's clearly for implementation as long as we ensure that we have some general guidance in the language of the report. So we will work on that, offer it to the list. But clear message is that this is going to be for the implementation.

With respect to fundamental versus standard bylaws, let's now focus our attention on the fourth out of four questions and that is a comment that has been made by (Mira) and (unintelligible) who were suggesting that the budget community power should be a standard bylaw. And we've heard earlier that

there was a strong wish, particularly from the board to be even more explicit on making it fundamental.

I would also like to put - to direct your attention to the CWG requirements on budget. Also we have presented the budget community power as a fundamental bylaw to the community in previous reports. So it is the co-chairs' assessment at the moment that these views are minority views, not sufficient to jeopardize the overall consensus on the budget community power needing to be a fundamental bylaw.

Nonetheless, we wanted to bring this point up in this group and see whether there's more traction to make it standard. But let's not forget the point that is made, i.e. we would probably jeopardize CWG conditions as well as what I would deem overwhelming community support for the community power as a fundamental bylaw.

So there's a queue forming. I'm not sure whether Jonathan's hand is an old hand. And if you are raising your hand to agree with what I've said I think we could maybe make some time and move on. So I would really like to hear from those that are in favor of making this a standard bylaw because that would be then probably reason to reopen the discussion on that point. Alan.

Alan Greenberg: Thank you. I'm half where you said I should talk. All things being equal, if we were starting all over again I might not want to make it a fundamental bylaw, but it is one of the powers - the powers we started off by saying will be fundamental bylaws so they cannot be revoked. And to make that change right now sounds like close to suicidal unless we have some compelling reasons. Thank you.

Thomas Rickert: Thanks very much, Alan. Any further contributions on this point? That does not seem to be the case. And that actually allows us to move on to the last substantive discussion point which is going to be chaired by Mathieu.

Mathieu Weill: Thank you very much, Thomas. And this is the last substantive point but not the least, definitely a point of discussion that we've spent considerable amount of time already on, which is the mission statement, Recommendation Number 5. Becky has provided a slide deck. And I will turn over the floor to Becky for an overall presentation of this slide deck. And please - and we will allow questions when she has gone through all these slides so we have a broad vision shared between each of us.

And once Becky has offered some straw man options for clarifications and refinements that we can consider so we can keep the discussion focused on finding a common ground way forward. And in doing this obviously it would be extremely helpful if we could avoid recapping previously mentioned positions and focus on considering ways forward in a constructive manner.

So, Becky, with that being said, you have the floor for introducing this very easy topic. Thank you.

Becky Burr: Thank you very much. And I apologize for departing a little bit from the format that we've been using. I think that I've had the sense that people's eyes glaze over when we start talking about some of these mission statement issues so I was going to try to make it a little bit more concrete with the deck. Can I get control over the deck? Or can we move to the next slide? Okay, it looks like I have control.

Okay so first of all overall summary on the comments and thanks very much to the staff for putting together. Most of the comments were extremely

supportive of the proposed mission statement, including the limited - the clarification that articulates ICANN's limited mission and including the regulatory prohibition.

That said, there were several commenters who expressed pretty strong or serious concerns. In addition to the board, obviously, we also had strong concerns expressed both by the GAC and by ALAC. So, you know, we are in a space where we have to, you know, really examine the level of consensus and resolve these issues. And I think that's doable with clarifications and understanding.

Some of the commenters continue to urge for the inclusion of competition, consumer trust and choice in the commitments and core values. That's sort of not precisely on this topic but I included it in the deck. GAC and ALAC both sought a legal opinion on constraints on the ability - the board's ability to act on GAC advice and continuing ability to enforce PICS and other negotiated registry provisions. I wrote that very carefully because I want to focus us on sort of the precise issues.

And then the ICANN board continued to object to the language of the regulatory prohibition. This deck - this slide is a little bit wrong. What they did - they conceded that ICANN should not regulate content and should not be a regulator. But they objected on global public interest counts to inclusion of that provision in the mission statement of ICANN. So I think that it's kind of a narrow but important objection that they made.

As we have been discussing on the list, the GAC specifically stated that changes to the mission statement should not constrain the board from accepting and implementing GAC advice. Now if we have thought this, right,

we have not changed ICANN's mission because nobody was setting out to change ICANN's mission.

So assuming that this means that, you know, that ICANN should be able to continue to accept and implement GAC advice consistent with its mission as it has been, there's not a disagreement. But if the portent of the GAC's comments are that indeed the ICANN board should be able to implement GAC advice even if doing - if the manner in which it implements that advice is inconsistent with the bylaws then I do think we have a sort of more fundamental divide.

So as Jordan has said in the chat, and as I think various people reiterated, I think there is acceptance that the GAC can give advice on what it wants to. ICANN must engage in accordance with the bylaws. But to the extent it implements GAC advice it must do so consistent with the limitations on mission in the bylaws.

The ALAC wants assurances that the PICS and other negotiated provisions of the registry agreement, and the registrar accreditation agreement, remain valid including for unsigned registry agreements and that they may be renewed without change.

As you all know, the current text prohibits the imposition of regulations on services that use the Internet's unique identifiers or the content that such services carry or provide. And of course that language is not - is not included in the proposal as bylaws language but is subject to drafting by the legal experts and subject to the drafting notes that accept that, you know, consideration of the use of names as (natural) identifiers is not prohibited, issues within the picket fence are by definition excluded from regulation, and the grandfathering provisions, more about that later.

As I said, most common there was support of the current formulation but the board objected to this language in the mission statement on public interest grounds and suggested that the permissible scope of registrar - registry agreements and the registrar accreditation agreements - could be addressed in another portion of the bylaws. It didn't have a suggestion as to where but, you know, the two obvious possible places are one in the GNSO provisions and the other in the general provisions where contracting is arranged.

The next slide the board comments continuing. The other thing that the board said is that it felt that the mission statement as currently drafted did not address ICANN's operational role. And they proposed language that would say that ICANN - they had proposed language regarding - including the allocation and assignment of names in the root zone as a result of the bottom up policies to cover ICANN's role with respect to allocation and assignment of names.

As we have seen on the list, this formulation may raise some CWG separation issues which we should discuss. And then also while the board asserts that ICANN is not a regulator it feels that the current language is unclear and not appropriate for the mission statement. So just going through the specific changes in the language I've provided a side by side on names.

They did not propose any changes to the port parameter protocol section. They did propose some changes to the number section, which we'll talk about. And they did propose language for the root server - for the RSAC portion. RSAC has said in its comments that it will propose language by the 10th of January so I propose that we not discuss that until we hear from RSAC on that.

But ICANN proposes - the board proposed to change the reference to ICANN's mission to scope. And to say that ICANN's scope includes the coordination of the development and implementation of domain names - domain name policies including allocation and assignment of those names in accordance with the root zone - in accordance with those policies.

And then it proposed to strike the two provisions for which uniform or coordinate resolution is reasonably necessary and the bottom up policy development process. We have had significant conversation on the list with respect to this. I think that there are two things to notice. One, the - our language that we have included in both first, second and third draft reports, state that ICANN's mission, or scope or role or whatever you want to call it, is to coordinate as opposed to the looser - looser statement about including the coordination. So that's one potential expansion.

And then the removal of the two languages, we don't have an official board view on this. It is not - this proposed change is not something that the board suggested it had a public interest objection to. And as Bruce pointed out, this is something that ICANN has agreed to in the contracts with registries and registrars, for example, since ICANN's beginning.

With respect - continuing on with specific board recommendations on names. The board does not appear to have a public interest objection to the requirement that ICANN act strictly in accordance and only as reasonably appropriate to achieve its mission, nor does it obviously have an objection to the language regarding the ability to negotiate, enter into and enforce agreements with contracted parties in service of its mission.

But what it does clearly object to, and its objection rises to the level of a public interest objection, is to the inclusion of the regulatory prohibition in the

mission section of the bylaws themselves. Then with respect to sort of miscellaneous not just the board's concerns but concerns with respect to the test in general, the ALAC waived a question with respect to both the drafting note that read, "The issues identified in Specification 1 to the registry agreement and Specification 4 to the accreditation agreement," which are the so-called picket fence, "are intended and understood to be within the scope of ICANN's mission."

Now the ALAC comments asserted that this implies that ICANN's mission is limited to the areas within the picket fence. I think that's - that is a misreading both of the text of the note itself and of the, you know, the mission is very clearly set out as we said above, with respect to names. Sorry for making everybody seasick. This is ICANN's mission. It's coordination, the development and implementation of policies for which uniform coordinated resolution is reasonably necessary, etcetera.

And so I think that that reasonable reading is that the reference to the picket fence in the drafting notes are for the avoidance of doubt and they are by their term without limitation but articulation of things that are within but not a comprehensive articulation. So I understand ALAC's concern but I do think, and obviously we will have time to talk about it, that there should not be any misunderstanding that the picket - that the specifications themselves are a statement of ICANN's mission. ICANN's mission is in the bylaws.

Going on to the miscellaneous concerns on the drafting notes, we did have the language in black on the left for the avoidance of uncertainty. We had the grandfathering. That is the language that was in the draft report. However, we subsequently, on the list, talked more about what this meant. And the language that I have in blue here is the result of the conversation which basically says that, you know, the grandfathering - it means that that - the

parties that sign these agreements and tend to be bound by them and that neither a contracting party or anybody else should be able to bring a case that says these provisions on their face are outside ICANN's mission.

But it doesn't modify the right of any person or entity who's materially affected, for example, by ICANN's interpretation, in any particular case from challenging whether that's within its mission. And I raise that because there are two points here. First of all, several commenters agreed with the grandfathering language but wanted to make sure that the text that we discussed after that makes clear that we're talking about (unintelligible) challenges should be part of our final proposal.

And ALAC has asked for assurance that negotiated language in contracts and PICS may be included in unsigned new GTLD agreements and may be renewed without change without concerns about whether on their face they violate ICANN's mission. Now earlier today in emails I sent around the standard PICS. And it may be easier for us to sort of think about those than to think about the universe of the thousands of spontaneously generated PICS that are not standard. But we'll talk about some possible ways of dealing with that.

Okay so I tried to sort of set out a few questions for our conversations and some strawman, straw people, straw propositions, for - to try and guide our debate. So the first one is in what way does or should ICANN's mission statement constrain the board's ability to comply with GAC advice. And I believe that we agree that the GAC can provide advice on any matter it sees fit. And ICANN has to duly consider that advice in accordance with the bylaws. And if it decides to follow that advice it must do so in a matter that is consistent with ICANN's bylaws including its mission statement.

So I see that we have some folks raising their hands. And I suspect we will hear from them on this. If you don't mind, I want to just quickly go through all of the kind of questions and propositions and then we'll go back.

And then the second question is how does or should the mission statement limit the permissible scope of ICANN's agreements with contracts parties? And I think a fair reading of the language as proposed is that ICANN's agreements with contract parties may reflect bottom-up, consensus-based, multistakeholder policies on issues for which uniform or coordinated resolution is reasonably necessary to facilitate openness, interoperability, resiliency, security, stability of the DNS, and other provisions in service of that mission.

That begs the question of who should be able to challenge whether or not a contract provision is in service of that mission and under what circumstances.

And another way of putting that is to what extent should contracted parties be free to propose or voluntarily accept an obligated-to-comply-with if they do accept or propose contact provisions that exceed the scope of ICANN's mission, for example, to serve a specific community and gain the support of that community for a community application or to proactively address a public policy concern.

And in the course of our discussions, we've had this side conversation that says okay, it's fine to say voluntary but, you know, if you allow voluntary commitments to exceed the scope of ICANN's mission, how do you ensure that those commitments are truly voluntary.

Now, I have a proposition here, and I know - I'm saying in advance that I know Milton's going to disagree with me. But it's just a proposition for

discussion purposes. And that is that, you know, individually negotiated commitments such as individual one-off PICs should be deemed to be voluntary. I don't know of a way of testing in a real way whether they are or not.

I know from my own experience that some of them truly are. Existing registry agreements and RAA language - including the standard PIC - would be grandfathered as defined in the (node). And so that means they are (facially) valid; they could be challenged on the basis of implementation.

And that going forward - and this kind of fits in with ICANN Board suggestion that we could deal with the regulatory or prohibition and the scope of contracting in a different section - that there should be - maybe we should have a mechanism that would be available to permit contracted parties to enter into agreements without waiving the right to challenge them collectively as a group.

A contract provision on the grounds that it exceeds ICANN's mission and was extracted by ICANN on an other-than-voluntary basis. By that I mean, you know, using its unique monopoly authority here to let people add names to the route or register names on, if you're a registrar. That's a straw man that I'm putting out there for discussion purposes. I'm trying to, you know, come up with a kind of sensible approach there.

Now I just want to say, of course, none of this would affect any individual or group that is materially affected by a provision in excess of ICANN's mission to challenge that prohibition under the appropriate circumstances.

And then, finally, just as this is the last slide before we get into the discussion. The ICANN Board asserted that the prohibition on regulation of services is

not appropriate for inclusion in the Mission Statement and went on to suggest that the (TCWG) should direct the Bylaws Drafting Team to incorporate limitations on the reach of registry and registrar contracts in another part of the Bylaws.

So one question is, you know, what's the impact - what would the impact be. If the impact is acceptable, where would we put it - in the GNSO's section or in the General Provisions where contracting is discussed? And should it include challenges - a challenge mechanism to test voluntary-ness.

So I think we should stop there. This is really the sort of the hard part of them. These are the hard parts of the Mission Statement. Now, if everybody has full control - I don't know if they do - these last three slides are sort of the questions that I think are - that would move our conversation forward if we can really focus on that.

So there are lots and lots of people who have their hands up. Mathieu, shall I hand this back to you to speak?

Mathieu Weill: Yes, thank you. I will try to manage that and please be conscious of time. Obviously this is not a final discussion on this recommendation because it is way too much to be handled in one single meeting. But we'll go to the various speakers in the line. What I'm looking forward to is concrete proposal on how to move this forward and find ways to address the different concerns.

So Kavouss first, please?

Kavouss Arasteh: Yes, Mathieu, thank you very much and thanks, Becky for a very comprehensive explanation. My point is a pragmatic one GAC make - or

made - some statement saying that the ICANN mission should not be so and so, and should not make any constraints - first constraints.

Did GAC identify in existing definitions of the mission without making (changes) any area that constrains the ICANN to accepting implementation of GAC advice, and is there any language in the current Bylaws that reduces providing advice for the GAC?

If GAC found any area in the current language, we expect that they propose a concrete suggestion how to modify to prevent any reduction and any constraint, because currently they just make a statement.

My problem is that how we implement. What is the modality with that? Unless we receive a concrete proposal either from the GAC or from the group we cannot just take into account the statement. This should not be like that; this should not be like this. How to do it, unless you put all this language in the (bylaw), which is almost impossible. And I told in my email to the GAC in others that all issues should be accepted by the (CCWG).

So I suggest that there should be a language to meet the requirements of GAC if there is any area that constrains the ICANN to take that part of the GAC or reducing the GAC authorities or responsibilities to give advice. However, all of these things can have some more relevance in the (ALT 1011). In the GAC advice, but not here in the mission. But they have no problem if defined a language to do that.

The second question I would like to be more quick, not to take the time of everybody. The other is that the ICANN Board proposes that the mission should be precise, concise and high-level, and any other issues relating to the scope of (unintelligible) should go to the scope - or any other activities should

go to the scope - meet me at found - or did you find any way how to distribute this in a high-level in the mission and remaining part in the scope.

I am just asking either Becky or (Rose) whether there is such arrangement that reduces the difficulty of discussion and I thank you very much for that.

Mathieu Weill: Thank you very much, Kavouss. Bruce?

Bruce Tonkin: If you just getting off on mute. Yes, look, I think Becky, I just want to just correct one thing, as Becky made a number of comments that the Board objected to things on public interest grounds. We didn't.

We provided reasons in each case why we thought we'd like to see some change in the proposals, and then we said that, you know, if our comments were ignored then we would - then have to consider whether there are public interest issues. So we haven't actually done that yet.

But coming back to the specific comments the Board has made, really what we're trying to do is, as I think (Trevor)'s articulated is we want to keep the mission simple and clear for clarity purposes.

So I think the first part of that is to have a clear sort of one-sentence description of the mission that you can use in various forums besides, you know, we're focused on the Internet's unique identifiers and then to have some clarity on what the scope of those responsibilities are. And we listed those.

And then I think Becky's noticed that a couple of those that limit the scope that come from a current language that we have in registry and registrar agreements. So I don't have any specific objection to including that.

But the more you sort of get into detail that's very specific to the GNSO and GTLD environments, Becky, I think the best place probably is under the GNSO section of the Bylaws where we're defining the role of ICANN with respect to GTLD policy development.

Because at the moment, the GNSO is very generic. It just says the GNSO looks at policies related to new GTLDs, and the Bylaws provided to the GNSO don't really provide any constraints on where those policies connect. And I think the Board's principles is where I think - aligned with the CCWG principles - that we think one of the constraints is that ICANN should not be getting into content regulation or content development.

So I think in very simple terms we'd like to see a clean, single-line statement that says this is what ICANN mission is, we'd like to get a clear sort of clarity on the current limitations of that mission - and I think we can reach agreement on what that text is.

And if I have any specific objections to incorporating the lines about the content of policy limitations. I would think that they're probably better incorporated under the GNSO section of the Bylaws because they're fairly specific.

And then the only other consideration is whether they are fundamental or not. And I assume that the CCWG would want them to be fundamental so I'm not quite sure how things get labeled as fundamental or not. But I think the specifics that you get into the details or what the GTLD contract can do starts getting into more details than what you'd normally have in the mission.

Mathieu Weill: Thank you, Bruce. I now think if we had agreement on that - those principles, we can leave this to implementation drafting for actually reviewing this. Because otherwise it's another working meeting at this point. Then next is Alan.

Alan Greenberg: Thank you very much. I've got a number of points. I'll be brief and we'll elaborate if anyone cares. On the issue of consumer trust - and for the record, the ALAC was not mentioning competition and choice, but clearly they can all go together since they were mentioned that way in the AOC.

Slide 3 talks about what that - what paragraph 3 in the AOC means. That's not a fact. That's an interpretation. And even if that's what the original drafters meant, it stands on its own basis right now, and it means what people read into it or what an (IRP) decides it means. So we feel very strongly that consumer trust is indeed something that should be enshrined within ICANN's mission, and we use the word "mission" there carefully.

We are using the term "mission" and "violation of mission" very loosely in much of this discussion. Article 1 of the Bylaws includes the mission and now includes core values. The proposed version also includes commitments. Many of the potential violations we're talking about are not at all in the mission but in the other parts of it.

The one that concerns the ALAC most - and I suspect concerns the GAC - is the new provision that everything must be done bottom-up. Especially with the new GNSO policy in implementation rules that have been applied - have been approved by the Board, bottom-up does rule, but there's lots and lots in the contract right now which is not bottom-up, and the fact that someone could potentially argue with it - and PICs are an example.

PICs may be our policy and should have been designed bottom-up, but they weren't, and they're part of the contracts right now, and we don't want the provision that says everything - the commitment that everything must be bottom-up - to be a reason for invalidating the PICs. And the same could be true for other things that have been added over the last little while.

So the - calling Article 1 the mission - Article 1 is not just the mission. So you can have violations of the Bylaws in Article 1 without having violations of ICANN's mission. I think that's important to remember.

The reference to the picket fence - and I have no problem incorporating it in other parts of the GNSO specifications - the picket fence refer to policies that happen to have certain qualities that they can be changed by a PDP, but they're only particular things within contracts, and I see absolutely no need or desire to reference those within the mission. So I really feel that we need to eliminate from the mission references to things like that.

And I think that is about all I wanted to say. Thank you.

Mathieu Weill: Thank you, Alan. Becky wants a quick follow-up. Very shortly, Becky, because we're really running out of time.

Becky Burr: Okay. Two things. First of all, Alan, no one is suggesting that we're going to reference Specification 1 (and 4) in the Bylaws. Those are notes to the drafters. That's what they have always been. But I take it we agree on the - that the suggestion of that is that they could - that they encapsulate the entire mission is not correct.

Two, the mission - the current language that we said, that the mission is to implement - develop - coordinate the development and implementations of

policies that fit this bill on a bottom-up manner, and can enter into contracts in service of that mission.

I think that it would help this discussion for us to be clear that what we need to talk about is contract-in-service of this mission that encompasses your PICs and negotiated non-bottom-up issues. So I understand your concern, but I actually do think we have a handle for addressing that. That we have addressed it; we just have to tweak that to work.

Mathieu Weill: Thanks, Becky. The queue is closed after (HO-CHI) and I'll try to conclude this item (going) around. So, next is Milton. Milton?

Milton Mueller: Hello. Can you hear me?

Mathieu Weill: Yes, Milton. Please.

Milton Mueller: Okay. All right, thank you. I think the first meta-point that needs to be emphasized here is that the idea - the current basis of the mission statement has widespread consensus. It's gone through three rounds.

And indeed the principle of defining a narrow, limited mission had been discussed from the beginning and had been one of the main foundation - a pillar of the accountability process. We are not debating whether the mission should be narrow and limited. We are debating how to do that in a practical way, and how to do it in a way that doesn't cause problems.

So I think some of the discussants here are really kind of trying to throw the whole thing open and reopen that issue, and I think it's pretty much a closed one. I can't think of any serious challenge to the idea that ICANN should have a narrow and limited mission, and I think if you move away from that, you are

going to lose so much consensus - so much support for this entire transition that the whole thing will be in trouble.

Now, with that being said, I want to go to some of the more detailed points. First of all, I'd like to...

((Crosstalk))

Mathieu Weill: You want to go through everything, eh?

Milton Mueller: ...create Becky - what's that?

Mathieu Weill: I'm just saying that we won't have time to discuss everything and conclude, so...

Milton Mueller: No, no, no. I have three simple points I want to make. First of all, I agree with the implication of Becky's analysis. I really appreciated her analysis on the slides. The current reference is just stability, security and competition are completely sufficient to cover the concerns about consumer choice and trust.

Secondly, I want to address the GAC concern about their advice. I just don't have trouble - I think I've asked this question on the list several times, and I don't think I've ever gotten an answer. Maybe a recent message has added it, but do GAC members really believe that there should be no mission limitation?

Because it seems to be the implication of their concern that they could offer any advice they wanted, and if ICANN Board agreed with it, then the ICANN Board should follow it regardless of mission limitations.

And I'm sorry, I think that's off the table - that idea is really quite bizarre. I mean, do the governments advocating this have a constitution and laws? Are the powers of their own governments enumerated and limited? What is it about the (ITM) environment that makes you think that there shouldn't be a constitutional limitation on what ICANN can do?

And finally, in terms of what is voluntary and what is not, I think this goes back to the GAC advice. If a registry proposes something - a new TLD - and advice from GAC comes and says we don't like this proposal unless they do X, and X would be requiring this registry to do something outside of ICANN's mission or requiring ICANN to enforce things that are outside of its mission.

And if then ICANN says they're not going to approve this TLD unless they comply with this GAC advice, I think that's a clear case of an involuntary situation. And that is an example in which it should be challengeable whether you call it a PICs or GAC advice or anything else. I think that's exactly what we're trying to prevent by having a defined mission. Thank you.

Mathieu Weill: Thank you, Milton, and I think what I was trying to say is that we're not going to be able to close this discussion, so the kind of substantial example you're providing is totally, I'm afraid, going to be lost on many of the attendants that are currently leaving.

So Malcolm, if you have a very concrete proposal on the way forward, I want to hear it. Otherwise, the substance of the discussion will have to go on through another call anyway. And can (Lisa) had to close the queue with - I'm sorry about this. Malcolm?

Malcolm Hutty: Yes. I agree with most of what Milton has just said, so I will get to the concrete specifics in the (real) time. I'd like to thank Becky for what she's done, and I agree with most of the (unintelligible) propositions that she's made, but there is one that is a problem, and that is on this notion of voluntary commitments. Now I'm afraid the whole...

Mathieu Weill: Malcolm, we're not doing the discussion now. We're not doing the discussion now.

Malcolm Hutty: I thought you asked for a concrete proposal.

Mathieu Weill: I'm asking for concrete proposal on the way forward and the process, because people are leaving now. We can't make any decision.

((Crosstalk))

Malcolm Hutty: Only a process point on the question. Okay. In that case, I think we need to - in terms of process, I think we need to work through both things which might be - we might reach consensus on, and separate out those things which - as Milton has just been referring to - simply, you know, there is not going to be agreement from that part of the community.

                   As Milton had said earlier, certain things, I think, we've already moved past, and there's going to be no chance of that. We need to identify those and remove those from consideration if we're to move forward.

Mathieu Weill: Thank you, Malcolm, for being short, and I'm sorry for interrupting.

Okay, point will capture the interchat asking for an impact assessment. I would ask staff to kindly capture (HO-CHI)'s point so that they can appear in the notes in the interest of time.

And I would offer that the discussion really needs to be taken onto one of our calls next week. There would be a need for - I should think - a specific call to (startup) staff separating issues, at least, and clarifying the views and position. And we would ask Becky in her role as work party (to reporters) if she would be prepared to try and organize such a thing.

Obviously we will also update in the next call, but it's obvious that this issue is now very complex and far from finalized with the list of questions that are raised. So we'll need to find a way forward in terms of dealing with all the concerns one by one in the next few days and weeks.

I'm sorry we can't really go any further at this point, but we've had a long call already. So let's keep it going on the main list and try and organize a call - which would be open to anyone, obviously - to touch triaging the various items. And with that I will move to Leon for last-minute announcements in AOB. Leon?

Leon Sanchez: Thank you very much. A few, and thank you for all who have stayed until this point in the call. And on any other business, we the Co-Chairs would like to announce that we have received a reply from (Theresa Swinehart) for the request that we raised on our last call in regard to the face-to-face meeting in Marrakech.

And the third reply from (Theresa) is that we have received authorization to go ahead and hold these meetings on March 4th, so now everyone can of

course go ahead and proceed with arranging your travel to the Marrakesh meeting.

Of course, GAC will be providing help along with currency (transfer) and travel for those members of the CCWG travelling to the face-to-face meeting in Marrakech, and more details will come in the list, and for now that would be, of course, the announcement on the holding our face-to-face meeting in Marrakesh. So with this I would like to thank everyone again, and this meeting is now adjourned. Thank you very much.

END