

ICANN

**Moderator: Brenda Brewer
January 15, 2016
12:00 am CT**

Leon Sanchez: Can we please have the recording started?

Coordinator: Recordings are started.

Leon Sanchez: Thank you very much. Welcome, everyone, to this CCWG on Accountability meeting Number 77 on Thursday, January 14, 2016 6 UTC. I remind you to please say your name before speaking for transcript purposes. And if there is anyone missing their Statement of Interest we remind you to please kindly fill in your Statement of Interest. If you have any problems logging into the wiki or you need a wiki account staff will be happy to assist you creating an account for the wiki for you to log in.

The roll call will be as usual, taking in account those who are in the Adobe Connect room. And I would also like to call for anyone that is not in the Adobe Connect room at this point and is in the audio bridge to please state your name so we can add you to the roll call. Is there anyone in the phone bridge that is not in the Adobe Connect room at this stage?

Jordan Carter: Jordan Carter is here.

Leon Sanchez: Thank you, Jordan. Anyone else? Okay so the only person in the phone bridge so far is Jordan Carter, and has been added to the roll call. And I will now like to turn to my co-chair, Mathieu Weill for our first topic and next agenda item. Mathieu.

Mathieu Weill: Thank you very much, Leon. This is Mathieu Weill, the ccNSO-appointed co-chair. Sorry, I have a little more background noise than usual. I hope you're hearing me okay. Our agenda item number 2 is a second reading regarding the inspection rights recommendation. The draft conclusions have been circulated to the list after first reading.

They were about limiting the scope and clarifying the scope of inspection rights, clarifying the difference between DIDP and inspection rights and introducing an additional category or suggestion which was suggested by the ICANN board, which we named "investigation rights" so the right to trigger an audit. And the direction that abusive inspection right claims would be waived or appropriately mitigated was also confirmed.

There has been no specific comment to these conclusions on the mailing list. And I don't know if we have Bruce or any board member online who could provide some feedback on these additions? I see Rinalia's hand is up so to start this discussion if would be obviously very interesting to hear Rinalia whether that's addressing the board's concern. Thank you. Rinalia, we cannot hear you at this point at least. Or is it my phone line?

Rinalia Abdul Rahim: Can you hear me now?

Mathieu Weill: Yes, now I can hear you, Rinalia. Welcome and thank you for joining.

Rinalia Abdul Rahim: Okay thank you. So the board - I would like to convey a response from the board regarding the conclusion circulated after the first reading, redline component. The board fully appreciates the work by the community in addressing the public comments in the third draft proposal. On inspection rights, the board has the following reaction and input on the redline points.

First, the board agrees with an inspection right that is limited to accounting books and records. The board also agrees that inspection rights can be invoked by a single SO or AC. We believe that the inspection right should be a community right and not a right reserved to the sole designator. The sole designator can be used to enforce the community's right of inspection through the escalation process if ICANN errs in its response.

When a single SO or AC can invoke the inspection right, we believe that demand can and should go direct to ICANN. Requiring that demand to go through a community process to direct the sole designator is an added complexity and to our mind it's not necessary. Moreover, giving the sole designator the right of inspection as opposed to making it a right held by the community represents a significant and inappropriate change to the sole designator and we've explained this in our response to the public comments on the third draft proposal.

We have some text proposal to Paragraph 20 and 21. And I would like to paste this into the chat and then read it out loud for you so that it goes on the record. For Paragraph 20 what we proposed in terms of changes it would read - and the tweaks are quite minor.

“The CCWG Accountability recommends including in the ICANN bylaws the right for SOs or ACs to inspect as outlined in California Corporations Code 6333, although this specific article reference would not be mentioned in the

bylaws.” For Paragraph 21, “This inspection right is distinct from the document information disclosure policy, the DIDP. While any eligible party can file a request according to the DIDP inspection rights are only accessible to SOs or ACs. The scopes are also different as explained below.”

“Unlike the exercise of the other community powers, which require community engagement and escalation before making a request for action by the EC, the CCWG Accountability recommends that a petition for inspection be brought directly by a single SO/AC or by multiple SO/ACs making a written demand on ICANN for the requested materials. If the board refused or ignored the request the petitioning SO/ACs could then initiate an escalating community decision making process to enforce the demand on the board requiring community consensus.”

There are two additional comments and response from the board on investigation rights. The board agrees with the inclusion of an investigation right and notes that the language proposed in redline reflects the board comments. And finally on DIDP, the board reaffirms its commitment to addressing improvements to the DIDP in Work Stream 2 and thanks the CCWG for the clarification in the document on the differences between the inspection right and the DIDP.

That’s all I have on that, Mathieu.

Mathieu Weill: Thank you very much, Rinalia, for a very clear and detailed consideration from the whole board on short notice because obviously it was only a week ago so I really want to stress this because the board is really highly engaged in providing quality feedback in short notice on this.

I would like to - so my summary is that we are well in line. There might be some minor tweaks but it did not seem to me to be - raise substantial issues but I would like to check with the full group whether we can confirm that we're moving forward in that direction once we've heard this board confirmation which I expect will be circulated also on the list so that we make sure we got the tweaks properly? Anyone has any question for Rinalia or can we consider this moved forward ?

I have Brett. Brett, go ahead.

Brett Schaefer: Thank you. Can everybody hear me?

Mathieu Weill: Yes.

Brett Schaefer: Okay good. I'm a little bit confused. I understand that DIDP policy itself is going to be further discussed in Work Stream 2. But what doesn't seem to be addressed here or at least it doesn't seem clear to me is that there will be a independent appeals process for DIDP decisions expanded and that are clarified and implemented here in Work Stream 1. Is that in fact the case? Or am I misunderstanding this draft here which seems rather vague on the issue and on the board's comments which seem to take the issue entirely to Work Stream 2? Thank you.

Mathieu Weill: Thank you, Brett. So I would like to mention that the DIDP comment from the board on this aspect because we reintroduced and stressed the difference between inspection rights and DIDP but DIDP is not on the agenda if you will, of Recommendation 1, that's the discussion that we've had on Tuesday when discussing the scope of the IRP. So I think this question was raised whether there should be an appeal mechanism as part of the Work Stream 1 discussion on Thursday. And we'll reconvene this discussion next Thursday.

So I don't think, Rinalia, you necessarily have to answer that. It's a well-noted question, Brett, but it's not Recommendation 1 related at this point. And I hope you can accommodate and this patience while we discuss this.

Brett Schaefer: I'm sorry, when are we going to discuss it? I only raise the issue now because it was raised by the comment from the board just right now.

Mathieu Weill: Yeah, the comment from the board said - was reaction to the fact that we reaffirmed in this recommendation that DIDP is not the same as inspection rights. And the discussion we had on Tuesday was whether the appeals mechanism or DIDP should be part of Work Stream 1. There were several options. So it's going to be rediscussed in second reading next Tuesday when we go for this Recommendation 7 agenda item.

I know we're going through all the recommendations one by one and some of the topics - and sometimes confusing, even for people like me who get involved in that a lot so it's perfectly understandable, Brett, that there's some confusion.

Brett Schaefer: Okay thank you. I just wanted to make sure it did not slip through. Thanks. Bye.

Mathieu Weill: No, it did not slip. And if there's no further question I think we can consider this item agreed on for - and the concern raised so we're approving that moving forward. And we note that we are not totally through Recommendation 1 because there's still the outstanding item about decisional participants but we are - we discussed that we would wait until we get formal GAC input to rediscuss this but its nice step forward for the group to think that the inspection rights are moving forward.

I see Bruno hand is up. Bruno. No, it was probably an old hand or an AC glitch. So with that I am now turning to my co-chair, Thomas, for Recommendation 12 and Agenda Item 3.

Thomas Rickert: Thanks very much, Mathieu. And hello everyone. This is Thomas Rickert speaking. We're now going to do the second reading on Recommendation Number 12 which is dealing with the escalation timeframe. And there has been an updated document that's been sent to the list. There was also some communication by email on the list. And I would suggest that - sorry, I misspoke - its Recommendation 2 in fact and not 12, I apologize.

And I would like to ask Jordan, the rapporteur responsible for this area of our report, to maybe recap and take the discussion further. Jordan.

Jordan Carter: Thank you, Thomas. Can you hear me?

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

Jordan Carter: Great. Thank you. Hi everyone. It's Jordan here at dotNZ and one of the rapporteurs for Work Party 1. Look, what I did with the document that was circulated on the list, and I apologize for not doing the appropriate subject line, was to take the discussion around timeframes and essentially to look at what we agreed on the call last week to get rid of the conference call step and to lengthen the timeframes involved for SOs and ACs to make a decision by a week.

So the logic was all set out in the email that I circulated to you with a few typos that people have picked up so thank you for the feedback on that. And the essential point is that once a petition is lodged within 21 days of a decision

that could trigger a power being raised, the next item or the next event would be the community forum rather than the conference call. And what that implies is that you have to have a higher than one SO/AC threshold, if you like, to do the petition.

And so the logic for that is set out in some detail in the document that is in front of us. You can see the deletions on the third page of the document around the conference call and the summary. And then there are some track changes both from me and from the staff that are shown starting on Page 7 of the PDF that's in front of you.

And the petitioning phase would require two SOs and ACs to agree with three for the recall of the entire ICANN board acknowledging at as an extraordinary power. And within that 21 days there would then be another seven days after a petition was lodged for a second SO or AC to join, or in the case of removing the board a third one.

And we skip over the former stepper and the conference call on the understanding as we discussed last week, that there would be informal discussions going on between SOs and ACs anyway.

The rationale for giving some additional time for written reasoning for the use of the power, Step 3 on Page 7 of the PDF is simply to give the - it's a mimicking of the content that was already there, as I understand it. And to give a little bit more time once the SOs and ACs have come on board the petition for them to exchange views around why they would want the power to be used.

And after that point the process is the same as have been set out in our previous report. The main difference is the slight extension to the timeframe.

So if you are scrolling down to what is now Step 4 at the bottom of Page 8, top of Page 9 the community forum would be held within 21 days or three weeks of the petition being lodged. And that is a little bit longer.

We had allowed in the previous version of the report, the third draft, for there to be a deferral of a discussion until the next face to face ICANN meeting. And that remains here except for the budget. And I just want to draw your attention to that.

It doesn't seem reasonable to me that if there was a petition raised about the budget within 20 days of it being finalized by the ICANN board if there's a community complaint with that that's been raised in the consultation process and then is raised directly, I don't think we can have a situation where a decision around a veto or not is delayed by a month or two or three until the next face to face ICANN meeting. The organization needs a viable budget in place so proposed an exception to that on Page 9 of this document.

And then after the community forum there's a 21-day period proposed for the SOs and ACs to make their decision. So essentially what we're talking about is a elimination of one step, the conference call step, recognizing it'll happen informally. And the slight extension of the time between the petition and the forum and the forum and the decision from two weeks to three weeks. That's that I've tried to do here. A couple of you have caught typos and stuff and that's helpful feedback. I haven't had time to circulate an updated document.

But, Thomas I think I'd had over back to you to ask if there's discussion to go with this. I tried as best I could to reflect the discussion we had last week accurately in the document.

Thomas Rickert: Thanks so much, Jordan, for what I think was an excellent overview of what happened to the document. And also I think that the comment and concerns that have been raised have now been welded into the updated proposal. So let's double check with the group whether there are any remaining concerns or questions with this item.

So there is a comment from David in the chat. And in order to be able to have a discussion on that let me just read it out for you. Good progress, Jordan, on escalation timeline. Just a few remaining concerns. One, the community of format allows for a second or third session if needed because the community forum is the best chance to amicably resolve an issue that makes sense but won't add - but won't these added sessions need an extension as appropriate as 21 days may be inadequate?

Jordan, I suggest we take those one by one. Would you like to comment on this first question before we move to the second one?

Jordan Carter: Yeah, I can do that. I report said that the community forum might take one or two days. Now, you know, I like talking as much as the rest of you do, a little bit less than some of you I have to say in an affectionate way, and I cannot imagine a community forum taking one or two days. What I can imagine with that language around subsequent sessions is there being a community forum that has a start -- just randomly say 06 hours UTC and then has a session at 14 hours UTC and then has a session at 21 hours UTC to give a global coverage. And that's what I thought was meant by these multiple sessions.

The idea that any of these powers is so significant that you would hold a community forum and a couple of days later a second session and then a couple of days later a third session seems, to be honest, to me unlikely. The question really is should we provide additional time for that? The way I would

read that in terms of the drafting, David, and I know you're not on the call, the sessions may be - we'll set a deadline by which the start of the community forum has to be held within 21 days. And we will have set a deadline for when the decision has to be made after the community forum is finished of 21 days.

We haven't specifically said that community forum itself must only take one or two days. It may be helpful to bound that and say that sessions of the community forum have to be held within the course of a week or something. That would give flexibility for the meeting to happen on a number of days if you like. I confess it's something that I hadn't thought about very carefully. But 21 days isn't the duration, if you like. I hope that helps.

Thomas Rickert: Thanks, Jordan. Let's move to the second and third question from David before looking at the other questions and comments that have been made. Suggest Step 6 gets three days not one. There may be communication issues or human error.

Jordan Carter: Responding to that, I think that that's put there to be clear that the board will be advised. To be honest with you, I would be very surprised if the act of recording the decision of the SOs and ACs is going to be a public one. And if board members are not paying attention to that on the receipt of these accountability powers I'd be surprised, so in substance people will know.

In terms of procedure, I wouldn't be in favor of having a one day deadline in the bylaws. My reading of this step is that it's designed to signify that as soon as possible the board will be formally advised. So we should make sure in the implementation that (unintelligible) kind of problem.

And if you're not speaking could you please meet your microphone?

Thomas Rickert: Thanks Jordan. Third item brought up by David then is, could they days specified be limited to weekdays? Remember that holidays vary widely across the globe and August is virtually work-free almost everywhere.

Jordan Carter: And so on this point I don't agree with David. The numbers pretty clearly relate to calendar weeks. And the intention is not that there would be business days. So 21 days isn't meant to be 21 business days, it's meant to be 21 days, three weeks. If we start allowing for holidays and the fact that there's a seasonality, in other words if we want to extend the timeframe let's have that discussion. But in this document these are days of the week, they are literal days, 21 days is three weeks; 7 days is one week.

Thomas Rickert: Thanks Jordan. I think this has been very helpful. If I may suggest though, before moving to the queue and to the other comments that have been made, I suggest that we stick to the notion of weeks in order to keep things simple and straightforward, that we don't make a distinction between calendar days, workdays and holidays or what have you.

I think the point that's been brought up with respect to the community forum being on a day or multiple days, and such, I think what we might wish to consider is clarifying that the first there is encouragement, it's not demand, to socialize all the information required to the -- well are pertinent to the community power before the community forum is held. This goes back to a request that was reiterated by Alan during last week's call.

So we have removed them mandatory call but all the documents and information to be (closed) down and the community to allow for a discussion. I think the latest at this point the community will learn about the complexity of the issue and it will then plan accordingly whether it is likely that they can

discuss this and resolve the issues or at least agree on a way forward in one day or whether multiple sessions on one day or on different days are required.

I think we are not well advised to be too prescriptive on this. But shouldn't we leave the process as outlined in the document, that's the general rule, and allow for some flexibility should the community need it on this specific case.

Also with respect to the point that's been brought up by Aarti regarding the termination of the process, i.e., when a resolution has been found. I think we shouldn't be too prescriptive on that as well because there might be different arrangements that are reached between either that community or the community and the board on a way forward. So I think should the issue not be tackled to the satisfaction of a sufficient number of component parts of the community then we will have sufficient traction to move on in the escalation path.

So I think it's not necessarily required to be prescriptive on the format that a resolution needs to take at that point. So I hope we've covered the points that have been mentioned in the chat so far so let's move to the queue now. And should you have raised your hands to support the notion of adding a little bit of flexibility to the process, then I think we should consider maybe lowering your hand because I guess that's the point that we can add in the notes as a to do. Alan.

Alan Greenberg: Thank you. Two points. I think, if I heard you correctly, you said we should stick with the concept of weeks. Did I get that correct?

Thomas Rickert: That's correct.

Alan Greenberg: Okay. I would actually suggest that we talk about calendar days. As people noted in the chat, in some people's minds if you say a week then it is a week from Sunday through Monday - from, you know, Monday through Sunday or whatever it is whereas I think when we are talking about weeks we are talking about seven day periods from the event that triggers it.

Thomas Rickert: Okay Alan, Jordan is just confirming that he's happy to go with natural days so let's just move to days and not make a distinction between working days...

((Crosstalk))

Alan Greenberg: That's fine. All I'm saying is let's make sure that whatever term we use is not eligible for good confusion. The point I raised my hand for, however, is on the first -- is in Jordan's answer to the first comment. And that is particularly, is the community forum a multi-session? Is it multi-day? The words we use are, and this is in paragraph 15 of the document, it talks about that that community forum is the opportunity to resolve the differences between the community and the board. We know the board cannot make decisions on the fly in the middle of a public meeting.

So, if there is indeed any opportunity for resolution of issues during a public forum they're going to have to be multiple sessions with an opportunity for the board and perhaps the community to meet in private and discuss where we are and decide what the next step is. So I think it is virtually inevitable that it will be multiple session and perhaps over a multiple day period, if we are going to use this as an opportunity to perhaps resolve a problem as opposed to simply exercising the rights. Thank you.

Thomas Rickert: Thanks, Alan. Jorge.

Jorge Cancio: Though? Good morning. Do you hear me?

Thomas Rickert: Yes we can hear you.

Jordan Carter: Yes.

Jorge Cancio: Okay, thank you. This is Jorge Cancio, Switzerland, for the record. I just wanted to chime in on this question of the escalation and the timeframe, you know, also an issue for some GAC members. And I would like to understand a little bit how this reduction of phases it's affecting the whole process. So the first specific question would be, how many days and did the process before the changes at a maximum, for instance? And how many days would it have with the changes proposed by Jordan?

The first impression, although I'll wait for the answer to that question, is that we might be collapsing too much and the conference call was there for a reason. And jumping directly to the community forum has to be treated with care.

As to the community forum I just wanted to comment also on something that Jordan mentioned. And this is the meaning of subsequent sessions. That was included in the discussions we had before and after and in Dublin. And sessions that mean to have conference calls on the same day or meetings on the same day. I'm quite sure about that because I was in the drafting team.

And the idea as its reflected in the summary is to allow for further deliberation, further deliberation, and this is also connected with what I think Alan said (unintelligible) that for instance there might be a discussion. And if in that discussion the board or some SO or some AC comes up with a new reasoning or new solution for resolving the problem we have to go back to our

SO and AC and discuss how we can react to that proposal or to that new reasoning.

So a further session, if it's needed, in the community forum is very unlikely to take place at the - on the same day because we need more time to discuss in the SOs and AC in order to allow for meaningful deliberation. So if we connect that also that we are pressing the first conference call I fear that we are diminishing the element of deliberation and interaction within the escalation process.

So I would urge colleagues to treat this with a lot of care and in any case not to interpret that forum might be held on the same day. So those would be my inputs. And I would wait for the answer to the question on the maximum days of the process I mentioned (unintelligible) of my intervention. Thank you.

Thomas Rickert: Thanks, Jorge. Jordan, are you comfortable with giving an answer to this first question or did you need to dig into the archives?

Jordan Carter: Well just an initial thought in response if that's helpful. Can you hear me?

Thomas Rickert: Yes we can hear you.

Jordan Carter: Okay thanks. When you're talking through the phone you don't get a movement on your mic on the Adobe room so you don't know if you're actually talking or not.

Jorge, those are good points. Thank you for raising them. I think the - one of the issues is that in the previous process there were a couple of steps that only allowed for a week. So we were kind of rushing, if you like, SOs and ACs more than we would be under this proposed process. And you can see that on

Page 8 of the PDF. There would have to have been a conference call within seven days to make the initial discussion. And then after seven days after that call there would have had to be a decision about whether to hold a community forum.

So by deleting those two steps and by lengthening the period to hold the community forum to 21 days after the petition from 15. You're only saving a week but you're saving two decision points so you're making it much easier for SOs and ACs to interact with the system and you're not asking them to make a decision within a week.

In the chat I suggested that we would - should give a kind of timeframe within which sessions of a community forum on the use of a power could happen. We hadn't specified that I don't think it needs to be within a day. I suggested within a week so that would give some time for discussions to happen.

And also I urge us all to remember that what we are talking about in the report and in the rules is the formal structure around which these decisions are made. And around this formal structure there of course are going to be informal conversations going on, SOs and ACs aware of the issue, aware that the use of the community power has been petitioned for and so on.

So I think that we've built-in enough with the informal and formal things to deal with the issues that you've raised, Jorge. You may take a different view but I don't think that we've been -- this hasn't been trying just to save time, it's been trying to reduce the number of steps so that SOs and ACs are less rushed into making decisions.

I haven't done the math, as I did in my email, about the number of steps and the number of days altogether, but I would be surprised if this was much

shorter. What we've got to juggle here is the need for community dialogue and discussion on these things with a workable length to expedite any of the powers.

If we want to take three or four months to exercise any of the powers then we can include all of the previously proposed steps with realistic deadlines. If we want realistic deadlines and an acceptable period for the powers to be exercised we have to reduce some of the steps in the formal rules. And so my view is that what we've got in this draft in front of us is an acceptable compromise between the number of steps and the length of time that is allowed in the rules for each of them to be exercised. These are always going to be matters of debate and discussion.

I suspect that everyone would like more time. I don't know if everyone would like more discourse and dialogue than what we have here. There is a need for discussions between SOs and ACs to petition for a power. Written rationale is being presented, a community discussion at a community forum, and then another almost a month for SOs and ACs to make a decision. So we are really only reducing by one the number of formal discussion steps. I don't think in substance it will be reducing the amount of dialogue. And I don't think in substance we are making this problematic.

Thomas Rickert: Thanks, Jordan. I think we need to bring this discussion to an end soon so I'd like to close the queue after Bruno. Just before we moved to Alan, I sort of take issue with word (talk) that you've been using. You said that the initial call is oppressed. And I think that sounds way too negative, it's not like we are trying to make this process unworkable. But as Jordan rightfully pointed out, we are trying to streamline it and make it better workable for everyone.

And again, there is a consultation taking place prior to the community forum being held. That is a requirement also going into the documentation. So you can expect that there are discussions that the community forum is well-prepared and that at that point the community will now how much time are needed, how many sessions are going to be needed in order to be able to resolve the issue or to agree on a way forward.

So let's move to Alan and then Bruno.

Alan Greenberg: Thank you. I have one comment and one question. The comment is I'm not as worried as Jorge is on the new proposal. I haven't read it carefully and thought it through so I'm not sure, you know, I'm comfortable with all the details but overall I am relatively comfortable.

The reason I am is the original conference calls and the decisions to support going to the community forum out of the conference calls, there has always been a tone that said if I support going to a community forum that doesn't mean I support using the action, I just support getting to the point where we can talk about it.

So it's not clear that there would be heavy deliberations and, you know, decision on how we feel about exercising the power at the conference call level and the decision point associated with that. So I don't have a lot of trouble with making that a rubberstamp which essentially is what we are saying. And, you know, everyone says let's get to the point where we're going to have the substantive discussion. If I'm feeling moderately comfortable with the proposal.

The question I have is in the lead into Annex 2 areas Points 1, 2 and 3. Is this a session just talking about 1 or are we also going to be talking about 2 and 3?

The text said escalation time frames only so I don't know if we are doing 2 and 3 were not.

Thomas Rickert: I suggest that we continue discussing the first point and then you can please bring up the remaining points if you wish at the end. Bruno.

Bruno Lanvin: Yes thank you, Mathieu. Can you hear me?

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

Bruno Lanvin: Okay, so the - I want to share some comments from the board on the escalation timeframe. I want to preface this by saying that these were developed prior to the review of deadlines so they may need to be fine-tuned. But I think that we are very much aligned. So let me provide these comments.

The board will support the community in making reasonable adjustments to the escalation time frames to support the community's ability to take quick action to exercise its powers while still having the time it needs to socialize the issues appropriately. Where the community believes that some of the tight time frames might require adjustments by a matter of days or have flexibility to simplify some of the steps when broad community support is clear, these are all areas that the board can support adjusting.

As the CCWG works to finalize a revised proposal on this, the Board notes that it would not support an extension of the initial petition phase beyond 30 days and urges the timelines to be drafted with efficiency and quick action in mind.

On thresholds, the board supports the CCWG modification at Paragraph 62. On board removal, the board does not support the change at Paragraph 64.

The suggestion that where the CCWG had previously identified that four SOs or ACs are required to support the recall of the full board should be minimized to three is not acceptable.

Demonstration of all community support of the exercise of this ultimate power is essential and the board does not support a change to the threshold. The other areas where this reduced threshold is proposed, i.e., blocking budget, fundamental bylaws changes, do not raise the same concern. A proposed red line of Paragraph 4 to address this is the following. And the text I'm going to read out, I understand, has been posted to the list.

So the proposed text is the following. Quote, the CCWG Accountability also recommends that in a situation where youth of the community powers of either blocking a budget or approving changes to fundamental bylaws where only four decisional SOs or ACs participate, and the threshold is set at four in support, these two powers will still be validly exercised if three are in support and no more than one objects.

The CCWG Accountability came to this decision after considering the extended escalation process now proposed prior to the use of community powers and to avoid the risk of powers being unusable, parentheses, especially the risk of making changes to ICANN's fundamental bylaws effectively impossible, close the parentheses, end quote.

I hope this is clear. And again, this text has been posted to the list.

Thomas Rickert: No, you've already spoken to a point that's going to be discussed at a later point but we have your - or the board's comment on record, which is good. Let's try to agree on a way forward on the escalation timeframe item first. And my suggestion is that we continue the discussion on the list. I think there's a

common understanding that we tried to make the process as efficient as possible, and that we are trying to put some flexibility into the process to allow for, you know, allocating appropriate number of sessions and such.

It needs to be ensured that the documentation as well as conversations prior to the community forum are exchanged or held. There has been the suggestion of a webinar on the list so I suggest that we continue collecting ideas on that, refine as. I think we are all working towards the same goal in making this process as workable as possible and then let us please conclude this item during the next week.

Looking at that time that we spent on this topic, let us try to discuss the thresholds now. So that adds to the point made by Bruno. So Alan, I'm not sure whether you wanted to speak to the thresholds as well. If so I had announced to you that you should speak at the end of this conversation so you have the floor if you wish to.

Alan Greenberg: Thank you very much. I do wish to speak to it. And I'm going to bring up a brand-new issue that I know we're not supposed to be doing here but I think it's really important. In rereading the section on fundamental bylaws and, you know, looking at the suggestion that has been made that we allow the threshold to be lowered to three, I think we have a real problem in what we are proposing.

And specifically, if we ever get to the stage where a significant number of the five ACs and SOs that are able to take community action are defunct, inactive, cannot take any action for whatever reason, we will end up with an ICANN with bylaws - important bylaws that cannot be changed. I really think we need to consider an escape hatch of some sort that if the community doesn't

exercise its powers within a two-month period or whatever, that the board can act unilaterally.

And I'm not proposing detailed words. I just have a fear that we could end up with an ICANN where the bylaws -- the important bylaws could not be changed because there is not enough of the community that is active and can make a decision to allow them to be changed. So I just want to go on record as saying that and I think we really need to think about it. Thank you.

Thomas Rickert: Alan, I have a view on that but I'd like to understand your point better. What would be the fallback position that you were suggesting...

((Crosstalk))

Thomas Rickert: ...words on it but you might have thoughts on a way out...

((Crosstalk))

Alan Greenberg: Well I - I just gave one. Right now even with the modification that Jordan is going to be proposing we need three of the five to approve a fundamental bylaw or the Articles of Incorporation change if we go ahead with that change, otherwise we cannot change them. If, for whatever reasons, three of the five groups that have the power are not going to be able to exercise it, you know, they're dysfunctional, you know, I don't want to look at disaster scenarios, but if for whatever reason they are unable to then we have a frozen organization that can't be changed.

A potential one, and I haven't thought it through because I just came up with this idea this afternoon - this evening as I was reading the documents, is, you know, if the community forum is called and no one shows up and it's done

three times in a row or whatever, then the board can act without the community - community supporting it. You know, and I'm just putting ideas together right now. There needs to be some sort of escape hatch so the board can take action if the community is really close to defunct.

Thomas Rickert: Okay, Alan, on that point I think we've been discussing about the community going silent and not contributing. We also discussed this in connection with the stress tests. I would suggest that we take your point, see whether that is seen as a realistic scenario that we need to protect the organization against and should there be more traction to that notion let's bring it up again. But my impression...

((Crosstalk))

Alan Greenberg: That's fine. I was just - I was just airing the thing; I wasn't asking for a discussion on it or a decision on it, I was just raising an issue that struck me today and I don't think we've ever discussed it.

Thomas Rickert: Okay, thank you so much. I think that was an old hand from you, otherwise please do scream. Jordan has raised his hand. Jordan.

Jordan Carter: Thanks, Thomas. I'm happy to either respond to Alan now or to do on the list; you tell me what you'd prefer. To say that I don't agree with his proposed resolution to the problem that he's raised.

Thomas Rickert: My suggestion...

((Crosstalk))

Jordan Carter: The list is probably easier.

Thomas Rickert: ...whether this gets traction on the list. I have not seen any further support for working on this nor has Alan asked for discussion now. So let's see if this gets traction that is in line with our usual working method. So if Alan is the only one seeing that concern then we can remain silent on it. If it gets traction we'll bring it back to the plenary. That okay, Jordan?

Jordan Carter: Fine with me.

Thomas Rickert: Great. Bruno.

Bruno Lanvin: Hello. Sorry, I was on mute. Fine.

Thomas Rickert: Well I'm not sure, did you want to speak to Alan's point? I'm not sure what - fine was relating to, I apologize.

Bruno Lanvin: No, no I didn't want - I wanted to lower my hand and missed it. Sorry.

Thomas Rickert: Okay thank you. So let me just briefly check how we're doing in terms of time. Okay, can - or - we would like to hear feedback from the group whether the current threshold proposal that's in the document is enjoying your support, i.e. the point that only three for - three SO/ACs are required for the fundamental bylaw changes instead of a case by case approach to lower thresholds. Any contributions to that point? So it looks like there are no objections to what we have in the document.

So with that I suggest that we close this agenda item. And I'd like to hand over to Leon for the next point.

Leon Sanchez: Thank you very much, Thomas. And our next agenda item is on the budget. We had our first reading two calls ago and was circulated amendments that reflect the conclusions from the first reading. And we have also received on the list feedback from the board as to - as per the proposed amendments to this part of our report. And I would like to ask Bruce if he could provide us with the feedback that has already been circulated to the list or Asha. Asha, I see your hand up. Asha, could you please take the floor?

Asha Hemrajani: Okay thank you, Leon. Can you hear me?

Leon Sanchez: Yes we can hear you.

Asha Hemrajani: Okay. Good afternoon from Singapore. This is Asha Hemrajani for the record. So thanks, Leon. For the budget we have two comments that we have circulated. I'll just summarize that really quickly and then once small point I wanted to add to those two comments.

So the first one is relating to Paragraph 21. So the board is very supportive of this - of the text that is in Paragraph 21 because it addresses our comments and concerns that any process through which a part of a whole or entire IANA budget is subject to rejection it must include the voice of the operational communities served by the IANA functions.

And this is in addition we're, you know, very much supportive of the fact that the process must ensure stable and continuous delivery of the IANA functions. And that we are properly delivering contractual service levels to the respective operational communities that will be affected. So that's the first point.

The second point I wanted to make is regarding the fact that we wanted to make sure, I mean, I think this is just a small oversight but we just wanted to

make sure and remind everyone that are aware the caretaker budget is concerned it should be the whole of the caretaker budget that is embedded in the fundamental bylaws. So that's in accordance with what the board had given in terms of comments earlier on on Page 10, Paragraph 1E, in our comments. I'll just paste it here in the chat so that - okay, I think not all of it came through.

But I'll just read parts of it so that it's clear to everyone. So basically we're saying that not only the IANA caretaker budget but the whole of the caretaker budget, which means the ICANN caretaker budget it should be embedded in the fundamental bylaws. So that's the second point.

Then the third point, which is not in the text that Bruce had circulated, is a relatively minor point but I think it's also an oversight, a small oversight, which is in the paragraph between 19 and 20, if staff can scroll or - okay, I think everybody has control over that. So if you go to the paragraph between 19 and 20 it says there that the caretaker budget would be enacted and details regarding the caretaker budget are currently under development.

So that's for the IANA functions budget. What I was going to suggest is that perhaps we can have it in line with what we have in Paragraph 13 which says that the caretaker budget will be developed during implementation according to the guidelines set out within this detailed recommendation. So instead of currently under development we just change it so that it matches what we have in Paragraph 13 if that's okay - and that's what - that's what my proposal is - suggestion is in addition to the two points. Any questions or comments?

((Crosstalk))

Leon Sanchez: Thank you very much, Asha. Thank you very much, Asha. And I guess that my co-chair Mathieu had a comment on the suggestions made by the board. Mathieu.

Mathieu Weill: Thank you very much, Leon. This is Mathieu Weill speaking. It's more than a comment, it's a grateful - thank you for the board for the very constructive feedback. Indeed, the points that Asha mentioned are very valid. The caretaker budget considerations should kick in even beyond the IANA budget and also for the one-year ICANN budget. So that's a mistake in the drafting and the board's suggestion is welcome. And I think represents the intent from the group.

And so I think we could all in favor for approving the suggestions made by the board. And this way ensuring that we have alignment on the budget power which is a very nice conclusion for very constructive debate we've had so far on this issue. Thank you.

Asha Hemrajani: Thank you, Mathieu, for your comments.

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

Jordan Carter: Oh I can just - Mathieu, that's been a helpful set of comments. We got to a good place. I agree with the board's suggestions. Let's go with it.

Asha Hemrajani: Thank you, Jordan.

Leon Sanchez: Excellent. Thank you. Thank you. So I guess that we are all on the same page and we are in line with taking on board the board's comments and suggestions. And at this point I would like to call for any objections to

actually accept the feedback from the board and incorporate it to our next document. Okay so I see no objection. And I would also like to thank the board for this very clear and very substantial comments. It is good that we are making progress as Keith points in the chat box.

And it was scheduled to have a break after these - after these agenda items. But since we are ahead of time and I guess we all want to finish the call as soon as we can, I would like to turn to the next agenda item to my co-chair, Mathieu, and after that we can go to the break. So, Mathieu.

Mathieu Weill: Thank you very much, Leon. So this is a first reading item this time, Recommendation 3 regarding the fundamental bylaws as opposed to the standard bylaws. The comments that we've received are largely in support. However, there were two specific types of comments that we need to discuss.

Number 1, there was a request that we clarify that IANA function review provisions that will part of the fundamental bylaws only apply to IANA's domain name management function, and not to the numbers or protocols and parameters. You will recall that this is the CWG Stewardship requirement and as such it's the CWG Stewardship's remit to be only on the naming function. I don't think this should cause any issue.

Second, there was a request for clarification from - at least IPC and the BC to clarify the process for the change of Articles of Associations. We had received in November a specific memo from our lawyers that was strongly suggesting, but it hadn't been put in writing black on white in the document, that the Articles of Associations amendment process be aligned with the fundamental bylaw process that we are proposing. And as a consequence, we would like to also confirm with the group that this is what we would clarify in our report and that's the second discussion point.

So to start with I'd like to hear whether there's any concern, objections regarding Item Number 1, which is the clarification that IFR provisions only apply to IANA's name management function? I don't think they should cause that much concern.

Okay. And the second point regarding the request for clarification by IPC and BC about Articles of Incorporation and the recommendation by our lawyers to align this with the fundamental bylaw process. Any concerns on this approach? We will have to obviously make sure with the ICANN board that this is something that is agreed on since this wasn't really clear in the prior version.

So if here's no more debate my conclusion on this item would be that we take that approach as our first reading way forward and ask the board to confirm whether that's an acceptable way forward before our second reading. And I see that Bruce hand is up so that's perfectly appropriate. Bruce, please take the floor.

Bruce Tonkin: Yeah, Mathieu, this is not a point that we've discussed at a board level but just speaking personally that looks consistent. So basically we're saying that a change to a fundamental bylaw or a change to the Articles of Incorporation requires both a 2/3 vote of the board and support from the community, is that correct?

Mathieu Weill: That's correct.

Bruce Tonkin: Yeah, so I can't - I don't expect...

Mathieu Weill: Of course...

((Crosstalk))

Mathieu Weill: Okay. And I think with that we can consider this item closed for the first reading and move to our next agenda item. And I think I'm handing over back to Thomas.

Thomas Rickert: Yes, well the next agenda item the break?

Mathieu Weill: We can do the break now or maybe just try and move forward until 8:30?

Thomas Rickert: Okay. Let's continue the conversation then. So we're now going to discuss the scope of the community IRP and the separation power topic which is another aspect of Annex 4. And again, I'd like to hand over to Jordan for some introductory remarks on where we stand with this.

Jordan Carter: Sorry, I was stuck on mute. Its Jordan here, can you hear me?

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

Jordan Carter: And so I'm only unmuting myself to say that I am not the person who should be talking to you about the community IRP. I'm pretty sure that one's Becky.

Thomas Rickert: I'm so sorry. I'm so sorry. That's Becky actually. And Becky, there's no way we could save you. I tried my best.

Becky Burr: Oh I was really hoping that Jordan was going to take this one and...

((Crosstalk))

Jordan Carter: No such luck.

Thomas Rickert: Becky, fire away.

Becky Burr: Okay. Hopefully this will be fairly straightforward. The first suggestion - the first issue that we need to go over is the board's suggestion that the community IRP should require a higher threshold for SOs and ACs in support and no more than one objection. The current standard in the proposal is three in support and one objection.

I think that we did have some discussion on the list about some of the issues with this in particular we did have conversations about a variety of corner cases, for example, implementation of GAC advice and issues relating to that. Do we have any comments from folks about the higher threshold? Not seeing any interest in discussing this.

Okay I can just discuss it with myself I guess if nobody has thoughts on it. I think that the, you know, this was part of the carefully thought out threshold allocation that tried to balance the need for support but also flexibility here to bring a claim. And given the fact that IRPs could involve, you know, some parts of the community significantly more than other parts of the community this seems like the threshold - the proposal threshold seems like a reasonable proposal to me.

Would a member of the board like to articulate on its reasons for suggesting why an even higher threshold is appropriate?

Bruce Tonkin: I'll be happy to comment just generally. I think the comments that we made - so this - Becky, you're talking about the threshold to initiate a community IRP, is that correct?

Becky Burr: Correct.

Bruce Tonkin: I think one of the things that we were concerned about is that there's protections built in to prevent one part of - you know, three parts of the community ganging up on another part of the community. So specifically dealing with policy recommendations. So if an SO came up with policy recommendations we felt that, you know, it needed to be a pretty high threshold to initiate an IRP on a topic like that. So that's really where we're suggesting a higher threshold.

Becky Burr: So...

Bruce Tonkin: The specific text we had is that the board is concerned that there should be protections built in on the potential community bringing challenges against other parts of the community, for example, to challenge board action on policy recommendations arising out of an appropriately run policy development process. The board recommends that in those situations a higher threshold might be appropriate. So I think if we're just talking about a general community IRP I don't think there's an issue on the three but we felt there needed to be a higher threshold in situations where a community IRP is being initiated against a policy recommendation from some part of the community.

Thomas Rickert: Thanks very much, Bruce. And I'd like to encourage others to chime in what their thoughts on this board concern are. I see Mathieu's hand is up so, Mathieu.

Mathieu Weill: Thank you, Thomas. And this is to actually make a link between A and B here on the discussion points. I think the board concern that Bruce laid out that part of the community would try and challenge the ability for another part of the

community to, for instance, do a policy development process and have the board approve this is something that was mentioned in the comments we've received that we're requesting some form of ability, for instance, if the GNSO requires a decision for a policy action after a PDP from the board.

This - the approval of the PDP or - should not be subject to a community IRP unless the GNSO is part of the supporting SO or ACs supporting the community IRP process. So I think with the carve out that is being considered mentioned by the Registry Stakeholder Group, for instance, we could address the board's concern regarding the threshold.

And so if we had to carve out similar to what we did for - in previous cases then we could leave as is the threshold at three SO and ACs, and that would still address the board concern. So I think we -- that may be a way forward and I wanted to offer this suggestion. Thank you.

Thomas Rickert: Thanks, Mathieu. I guess that that's a very wise suggestion that you're making. Again, having understood better the rationale from the board leads to the conclusion that the fear that some parts of the community might go against other parts of the community to negatively impact what's on their turf and therefore B seems to be a solution that is more appropriate, more targeted and maybe less invasive than working under threshold entirely.

I see that there are no other hands up from participants of this call. Can we hear from Bruce or another board member whether this suggested way forward is acceptable to the Board?

Bruce Tonkin: Yeah, I think if you have an appropriate carve out around that I believe so, yes. I mean, we would need to see the sort of final text but we are just sort of making sure that -- so if I understand correctly you are suggesting you want to

have a minimum of three to initiate a community IRP but you're also putting in a carve out regarding policy development from one of the SOs essentially.

Thomas Rickert: That's the idea. So I suggest, and Mathieu has also asked for concrete language. Let's try to work on language for the carve out and review that language on the list. But I think that is good and encouraging to hear that we seem to have a way forward on this. And let me just check whether there are any volunteers for coming up with a draft for this. I think that, Becky, maybe you as rapporteur are an appropriate person to come up with a suggestion for this. Is that acceptable to you?

Becky Burr: Yes sir.

Thomas Rickert: Excellent. The let's mark that...

((Crosstalk))

Becky Burr: If anybody else wants to participate in developing with me I'd be very happy to have colleagues.

Thomas Rickert: Excellent. And let's also put on the audio recording that Cherine has also supported the idea of a carve out and David is offering help to you, Becky. So that's excellent. Let's continue the conversation on this way forward with respect to Points A and B. And, Becky, would you like to speak to C with respect to Recommendation 7 so that we can also agree on a way forward on that point?

Becky Burr: Yes. So the board raised concerns about use of the IRP to resolve issues with expert panels. I think that - I think we agreed that if an expert panel makes a decision that causes ICANN to act in a manner that is inconsistent with its

bylaws or exceeds its mission that is clearly fair game for the independent review panel.

That leaves us with the question of whether we would want the IRP, which is designed to be a constitutional court with limited mandates, to sort of resolve inconsistent outcomes and the like. And I think that we really haven't had that much discussion in the comment periods on this one provision that has been in there that sort of contemplated allowing the IRP to resolve these decisions.

Clearly we have learned that the policy development processes that employee expertise decision making bodies need to contemplate how to resolve variations in decisions that produce an even effect across the - in the case of the new gTLDs, across the applicant pool and across, you know, the effects on the community.

But perhaps, and I think this was what the board is saying, that it's really something that should be addressed through the PDP. And a constitutional court like the IRP should be really limited to addressing failures of the expert panels that take ICANN outside of or in conflict with its mission. Anybody from the board who wants to elaborate on that is welcome to do that -- to do so.

Thomas Rickert: And also others on this call, if you have comments on this please do yourself in the queue. So Bruce, maybe we can call on you as the board liaison.

Bruce Tonkin: I'll try. So this is the question about whether the IRP should (unintelligible) expert panels. I thought we covered that in the last call.

Thomas Rickert: Becky.

Becky Burr: I don't - I don't recall covering it on the last call but I do think that, I mean, we did clearly raise that as a discussion point. I mean, it doesn't seem to me that there is strong pushback one way or another. And I cannot say that there was strong feeling about that provision or that we really got much by way of comment over our three comment periods on this one particular function.

So, you know, I certainly, I mean, we certainly did design the IRP to be a limited function constitutional court and so the board comment does not -- it's not inconsistent with that so long as we I think agree, you know, to the extent those expert panels move us into territory that's in conflict with or the decisions essentially amount to causing ICANN to act in a way that violates its bylaws that is still covered here.

I see we have a hand...

((Crosstalk))

Bruce Tonkin: Yeah, I think our principle here is that the IRP should be used for violations of the bylaws or Articles of Incorporation. And what we didn't want to do was get into people making decisions about, you know, really the opinions of an expert panel. But I think as we discussed a couple of days ago we were talking around this topic, Becky, and saying there's a set of procedures that a panel must follow and they need to - and those procedures would be public and available to challenge that those procedures are consistent with the bylaws.

I think what you're talking about is a scenario where the panel effectively goes outside of those procedures and does something that's not consistent with those procedures. That's usually picked up in a reconsideration and then I guess what you're saying is if the board didn't fail to take into account the fact that I panel wasn't following its processes then the board's decision in that area

could be challenged. But really we think the IRP should be focused on the boards decision making and whether it's consistent with the Articles of Incorporation.

And the expert panel should generally be dealt with through an appeals process that relates to the topic in which that expert panel is related. So that's the thing that was missing from the new gTLD process. We had no ability to appeal a panel decision directly.

Becky Burr: I think we're in agreement.

Thomas Rickert: Okay, let's move to Alan and then let's try to move to the separation process.
Alan.

Alan Greenberg: Okay, thank you. Very quickly, this whole item on panel decisions was added because the ALAC brought it up. Becky's solution a few weeks ago had said that if in some future policy we ever want the IRP to be used to arbitrate between conflicting panel decisions the policy should be explicit as to say what kind of action the IRP can take.

What the board is proposing is roughly equivalent, that is any future policy that has panels must allow for conflicting decisions and how do we handle it. I think all of these are roughly equivalent and I'm happy with where we are going. Thank you.

Thomas Rickert: That's excellent. So we seem to be having a way forward on this. Let's then moved to Item Number 2, the separation process. And, Becky, would you like to speak to that briefly?

Becky Burr: Yeah I think that these are not controversial, they are clarifications that we need to make to meet the CWG dependencies as I understand them. So they have asked for - CWG has asked for the right to reject board decisions relating to reviews of IANA functions and then limited number of times. And that the bylaws drafting review process and separation process will continue to include involvement by the CWG Stewardship. Neither of those are controversial so I'm prepared to accept them. Any exceptions or objections to that?

And the ICANN Board has suggested clarification that separates - the separation process applies to domain name management functions to IANA only. I think if that is not clear it should be clear because that is what the separation process relates to. Again, I don't see that as controversial and I defer to anybody who wants to, you know, to raise that as a contention, point of contention.

Thomas Rickert: Thanks, Becky. So let's just confirm what the group whether there are objections and (confirmation) we're doing by asking for objections or concerns with this. There seems to be silence on the list on this point which is good and that allows us to move forward and have a 10 minute break now.

Thanks very much, Becky, for the excellent overview. Thanks to the whole group for including the board, for making good progress on this so we seem to have a way forward. The language on that carve out is going to be circulated on the list but as always you will also find the high-level summary of our outcome as we -- I think it's going to be sent over the next couple of hours.

Let's now do a 10 minute break and reconvene at 7:40 UTC.

Leon Sanchez: Hello, everyone. This is Leon Sanchez. Can we please have the recording started again?

Coordinator: The recordings are started.

Leon Sanchez: Thank you very much. So we hope you have enjoyed your 10 minute break and we are back for the remainder of our call. And for the next agenda item we have a Recommendation 5. And we would like to provide you with an update on the ongoing discussions. As you might be aware, there has been quite a large discussion in the list about the mission statement especially in regard to consumer trust. But I would like to ask a Becky if she could provide us with an update. And I do believe that we have a couple of slides for displaying which are already in your screens. So, Becky, would you like to take the floor?

Becky Burr: Thank you, Leon. Yes, so before we go into the update there are some specific provisions that I'm hoping that we can deal with. The first is that you will recall working with the numbers community we developed language that suggested that ICANN's role with respect to numbers and carrying out its stability and security mission was to coordinate the allocation of the assignment at the top level of Internet protocol and autonomous system numbers as described in the ASO MOU.

The ICANN board has proposed an alternative formulation of that and included - it has eliminated - it talked about roles as opposed to mission so this is consistent with its kind of scoping language which I think doesn't substantively or materially change things.

But it has added substantive role of ratifying at the global level policies developed that are reasonably and appropriately related to these IP and AS numbers which I believe is consistent with the MOU but this does create one issue which is that it creates as a fundamental bylaws a role that cannot be

changed readily whereas the MOU between ICANN and the RIRs provide for an alternative mechanism for changing this.

So we get into a little bit of a disconnect between the MOU provisions relating to how things are (unintelligible) and the fundamental bylaws. And I see Izumi has raised her hand so she's the perfect person to help us understand this change and the implications for the RIRs.

Leon Sanchez: Thanks, Becky. I see Izumi's hand is up. Izumi, can you please take the floor.

Izumi Okutani: Can you hear me?

Leon Sanchez: Yes we can hear you, Izumi.

Izumi Okutani: Okay great. So...

Leon Sanchez: We have a little bit of echo...

((Crosstalk))

Leon Sanchez: ...if you are not speaking please mute your microphone. And, Izumi, if you could speak up a little bit please because we can hear you but very very faint so it would be appreciated if you could speak up a little bit.

Izumi Okutani: I'll try again. Is this any better?

Leon Sanchez: I believe it is but still some people aren't able to listen to you. So I guess maybe if you go closer to the microphone.

Izumi Okutani: Yes. Maybe I'll speak louder. So...

Leon Sanchez: Yeah, that works.

Izumi Okutani: ...we had discussions online with Bruce Tonkin. And we have explained that we still feel it's important we keep this reference to the ASO MOU given that we are clearly defining ICANN's role in - related to the number resources based on agreement between both ICANN and the RIRs. And I recall response from Bruce was that the board is okay to leave this reference. So given that if there are no further concerns from ICANN board in keeping reference to the ASO MOU document our strong preference is to keep this language, the original language in the third proposal of the CCWG.

Leon Sanchez: Thank you very much, Izumi. Bruce, I see your hand is up. Could you please take the floor?

Bruce Tonkin: Yeah, thanks Leon. I think one of our comments here too was, you know, as much as possible we want the bylaws to be self-contained so you can see the text. And this might just end up being a drafting thing. So I think the correspondence I had with Izumi here - I don't think it's a deal breaker if that's absolutely critical to describe it in that way with the ASO MOU.

The alternative may be there's a paragraph from the ASO MOU which would be appropriate to insert here. So it's to say - whatever the paragraph is in the ASO MOU that describes ICANN's mission in this regard that might be better because then when you go and read the bylaws you can see the relevant text, you're not having to rely on linking to another document. But if it's possible that could be something that the lawyers look at when we're doing the drafting.

Leon Sanchez: Thank you very much, Bruce. So I see that we still need to iron out a couple of details here so I would like ask the board if they could reach out to the ASO and maybe come back with a proposal if need be. So I guess that would be the way forward. And I would now turn back to Becky for the next issue. Becky?

Becky Burr: Okay if we could have the next slide - I guess I can move this. Yes. So with respect to RSAC we have had language that has been essentially a placeholder for the language regarding root servers.

The current bylaws language says that with respect to root servers ICANN's role is to coordinate the operation evolution at the DNS root name server system.

RSAC has come back and proposed that it - ICANN's role is to facilitate coordination of the operation and evolution of the DNS root name server system.

And ICANN Board has come back with a - rather different language specifically citing an operational role as well as consideration of input from the communities dependent on a root server system.

Bruce's hand is up. I think it's from the last time but I wouldn't mind having a little more from the Board on this operational role, because that certainly is not reflected in the comments of RSAC.

Leon Sanchez: Thank you very much Becky. Are there any comments from the Board in regard to these - this difference in operations between what the RSAC proposed and the actual Board proposal?

Bruce Tonkin: So what was - oh I see. That's what you're getting there from RSAC there in the text.

((Crosstalk))

Becky Burr: Right. What we've got is that they just wanted the - that rather than the language that says coordinates the operation that ICANN's role is to facilitate coordination of the operation...

((Crosstalk))

Bruce Tonkin: Yes I think we support - so just to be clear that wasn't in the third draft proposal was it? That's...

((Crosstalk))

Becky Burr: Correct.

Bruce Tonkin: Yes.

Becky Burr: Correct.

Bruce Tonkin: Yes. Yes. Yes. Yes so we support that text there from RSAC. Just trying to see if there's anything else that's meaningful there.

Becky Burr: Well the question is whether you require that language regarding the operational role.

Bruce Tonkin: So coordinates the operation of the DNS - fine. Facilitates coordination of - look I have to take back up again Becky. We haven't sort of discussed that

change but certainly the shift from coordinate to facilitates coordination - we would support that advice from RSAC.

I think this is really just as clarity as anything else that as well as doing coordination we actually have an operational role with respect to the root zone.

So feel such coordination of the operation - Becky the general theme and this is probably coming from Staff as much as anything else is just not to preclude what we're already doing.

So the role that we perform with respect to the root name server system - we have an operational role. One of the things we do for example is operate the L-root server for example.

So we actually operate part of the root name server system as well as facilitate coordination of - but maybe if I put it back on you what's your concern with the language on - I suppose I don't understand your concern with the Board's proposal, which is really just to state what we're doing.

Becky Burr: In truth I don't actually have a concern about it. An operational role to the extent that, you know, it's referring to the L-root is certainly sensible. I just think we need, you know, somehow a sort of direct Board/RSAC - somehow we need to just get you guys on the same page.

Bruce Tonkin: Yes so the intent of our language there is basically just to - if we kept the change to the first sentence I think that's fine. And then the other thing is we just want to make clear that as well as facilitating we actually have an operational role of the root name server system as well, so it's in addition to that and L-root's an example of that.

Leon Sanchez: Okay.

Becky Burr: Okay so I think we just need to circle back to RSAC.

Leon Sanchez: Exactly. So I would suggest that as with the previous item that the Board would kindly reach out to RSAC and then come back with a better proposal.

Bruce Tonkin: Okay.

Leon Sanchez: Okay thank you Bruce. And back to Becky for next issue on mission as to the update of where are we standing with the discussion of other items so Becky?

Becky Burr: Okay thank you. So I think everybody's aware we have had a very, very robust discussion on the list about the language regarding consumer trust. I think that, you know, although the conversation has been heated I think that there are two quite strongly held positions.

I think everybody agrees that the Affirmation of Commitment creates an - obligations related to consumer trust specifically in the context of new gTLD expansion, and that that provision is being carried over into the Review section of the bylaws.

For a significant portion of the community that faithfully transposes the bylaw - the AoC obligations with respect to consumer trust, there are others who feel strongly that the Affirmation of Commitment contains a commitment by ICANN with respect to a general role in promoting consumer trust in the DNS marketplace.

And that portion of the community is advocating for a reference to consumer trust in the Commitments and Core Values portion of Article 1 of the bylaws. For those who believe that the AoC obligation is limited to gTLD expansion, the alternate view creates significant concerns about expansion of the scope of ICANN's role, raises question for example about, you know, what the DNS marketplace is.

Surely it includes ccTLDs. Probably it could be led to include a lot of other things. I think frankly that we have a real impasse on this and I think that it is an impasse that goes to sort of very, you know, fundamental aspects.

I frankly don't see a way forward at this point and I'm conscious of the fact that, you know, we have not had substantive discussions other than in the, you know, in the past week or two on this point.

My proposal would be that we agree to proceed with the language regarding the reviews that everybody agrees is in scope, and that we put the more general consumer trust issue into Workstream 2 for further discussion. And I will - I'm sure that there are people who disagree with that approach.

Leon Sanchez: Thank you very much Becky. So I would like to now open the floor for comments and I see Avri Doria's hand is up. Avri?

Avri Doria: Hi. Thank you. This is Avri speaking. Yes I'm one that does not agree with the proposal to push that off to Workstream 2. I think part of getting the AoC into the - into Workstream 1 includes dealing with that issue.

One way forward that I'm suggesting the impasse is to go back to the people both within ICANN and from within NTIA who actually produced this agreement and find out what the intention was.

We are disagreeing on an interpretation based on our view of the intention of those that wrote it. Some of us read the intention that all the words there are applicable and that the words in 3 are not just devoid of content and a (shepo).

Others read it as a (shepo). That is something that at least in terms of moving forward with this dialog it might be helpful to go back to the original source and see whether they can give us any assistance in coming to closure on it. So that's one thing I would suggest. Thanks.

Leon Sanchez: Thank you very much Avri. Next on the queue I have Alan Greenberg.

Alan Greenberg: Thank you very much. Some of us who a very long time ago said we should not try to tackle the AoC in this process that it doesn't - it didn't really need to be done.

But we decided to go ahead and we decided that we would incorporate the AoC into the bylaws without particularly saying which section is which. We have a problem here in that much of what was in the AoC is already in the bylaws and so that's - that wasn't a challenge.

Here we have something that was not and I think it's really important to look at the AoC paragraph because this - the group as a whole has not really looked at it.

And I've just posted into the chat. The contention is that the item on consumer trust and it is 3c of the AoC is a (shepo) leading into the reviews - the consumer trust review.

But if you look at Section Number 3 there's an a, b, c and d. A is talking about -- it's going to be hard to read because it's moving at this point -- the technical coordination of the DNS and public interest, accountability and transparency.

That's certainly not talking just about the new gTLDs. Preserve the security, stability and resiliency of the DNS. That's not talking about new gTLDs. Promote competition, consumer trust and consumer choice in the marketplace is - claim to be just the new gTLDs.

And then facilitate international participation in the DNS technical communication is certainly not new gTLDs. So the claim that's been made is that this section is just referring to the new gTLDs where this - the vast majority of it clearly has a general applicability.

And the ALAC feels strongly that this is something that is generally applicable not just to the new gTLDs. The term consumer trust along with stability, security of the DNS is within the mission of contractual compliance.

If we're claiming the consumer trust is not really part of what ICANN should be doing and one of our commitments, then one could in theory file an IRP saying, "Compliance shouldn't be looking at consumer trust."

And yet that's a large reason of why they're there to make sure that people have confidence in the DNS. So it seems obvious to us at least that this is a general statement and if we are making the decision, which we have made to move the AoC into the bylaws, then we have to do it.

You can't walk away from the AoC with a significant item in the middle of the AoC just sitting out in no man's land and never never land. Thank you.

Leon Sanchez: Thank you very much for that Alan. Next on the queue I have Thomas Rickert.

Thomas Rickert: Thanks very much (Leon). The point that I'm going to make is this. The - we have considerable discussions on what and what not to include. We have considerable discussion on what is meant by consumer trust, defining it.

We have considerable discussions about what the DNS marketplace is. We have concerns by the ccTLDs in particular, but also there are concerns to what extent these tasks if you wish or these provisions in the AoC only relate to new gTLDs versus legacy TLDs.

And all this leads to the conclusion at least for me that we're trying to discuss a much broader issue than what was originally in the AoC. And I think there are two component parts to this, one of which is the AoC, the, excuse me, the Review section.

We have that in our report and therefore nothing is swept under the carpet. But with respect to what exactly is meant by DNS marketplace, consumer trust, et cetera I think that's a discussion that could go beyond their further time, a translation of the AoC into the bylaws and therefore deserves further discussion in Workstream 2.

So I would really urge that we make this demarcation between the reviews and what should potentially go into the bylaws at a later stage, and that is something we should be looking into in Workstream Number 2.

Leon Sanchez: Thank you very much Thomas. Next on the queue I have - well I have Andrew Sullivan but suddenly he disappeared. Andrew did your hand go accidentally down or did you put it down?

Andrew Sullivan: No. No I agreed with all that went before so I decided to shut...

Leon Sanchez: Okay thank you very much Andrew. And next on the queue is Becky Burr.

Becky Burr: So I'm very confused. No one has ever said that Section 3 of the Affirmation of Commitment applies exclusively to new gTLDs. What I have consistently said and what I frankly think is the only sensible application of factual reading rules is that like Paragraph 1 and Paragraph 2, Paragraph 3 is an introductory text.

The provisions of Paragraph 3a, b, c and d directly trace to - directly link to specific commitments that ICANN has taken on in 7, 8 and 9. And Paragraph 3c maps directly to 9c I believe or on - which talks about expansion of the new gTLD space, and the move to consider consumer trust issues in the context of expansion of the TLD space - new gTLD space and calls for very specific reviews with respect to that.

So I just - Alan's read that says - I tried - to say that 3c is only about - that 3 altogether is only about new gTLDs is not correct. What I have said is it is (shepo) introductory text.

It talks about affirming commitments of the Commerce Department and ICANN, and then the text structurally goes on to specifically call out what those commitments are with respect to the DOC on the one hand and the - and ICANN on the other.

I think that we have transposed the commitment that is referenced in 3c and that is a peer that is articulated in 9. We have transposed that into the bylaws and to do anything else either creates a bizarre situation where we're talking

about, you know, very specific functions in the Commitments and Core Values that are limited, or that we stretch the concept of consumer trust in the Affirmation of Commitments in a way that will personally be unacceptable to a significant part of this community.

Leon Sanchez: Thank you very much Becky. Next on the queue I have Malcolm Huty.

Malcolm Huty: Thank you. I went in the queue before Thomas Rickert spoke. I'd - he basically said everything that I wanted to say so I just wanted to voice agreement and support for what he said and that's all.

Leon Sanchez: Thank you very much Malcolm. Next is Alan Greenberg.

Alan Greenberg: Thank you. First I apologize for misquoting Becky. The point I was trying to make is there are items in Section 3 which are not just related to reviews, and that is I believe an important aspect.

The commitment is to consumer trust in the DNS marketplace - I admit a bad phrase. Certainly I take that to mean in the gTLD or - space. There's no one who is going to claim that we're responsible for consumer trust issues in the ccTLD space, and I don't think anyone would claim that.

My concern -- I'll be very blunt -- is if we push this into Workstream 2 we are going to require a change to a fundamental bylaw. And I don't think there are enough people who do not want to see ICANN doing consumer trust issues at all, who do not agree with the current contractual compliance mission, that I believe that will virtually make sure that it will never happen.

And I really worry that someone will - can then claim that contractual compliance is in violation of the bylaws, and I think we have a real problem if we go that way. Thank you.

Leon Sanchez: Thank you very much Alan. Next on the queue I have Steve DelBianco.

Steve DelBianco: Thanks (Leon). I've always been a big proponent of having ICANN compliance step up to the plate and enforce ICANN's commitments and contracts.

And I'm a huge supporter of the work we're doing in the Affirmation of Commitments review of consumer trust, consumer choice and competition and in expansion.

So having said that now that you have the Affirmation in front of you, you could all see Paragraph 3 on the screen. And the point we were making and I made on the list earlier today is that I do believe this is as the attorneys call it a (shepo) to the reviews themselves.

And the reason for that is simple. If you read Paragraph 3a that maps exactly to the review down below on 9.1, the ATRT or accountability and transparency review.

Three b maps exactly to the second review, the review of security, stability and resiliency and 3c maps exactly to the review of the gTLD expansion in 9.3.

So, I mean, we can confirm by asking the ICANN folks who helped to draft the Affirmation. We can talk to the NTIA folks who drafted it but it seems

fairly obvious that 3a, b and c are a (shepo) for the reviews 91 dot - 9.2 and 9.3 which appear a page below in the same document itself.

So I don't think it's appropriate to read 3c as something brand new that applies to all TLDs, both legacy and ccs, although I wish it were so but I don't think it does.

And that is why there's an attempt here to put it into Workstream 2 I guess to do further clarity, and that's really a courtesy to those who want a more expansive read of this than it is a reflection of a likelihood that something would change in Workstream 2.

And I think a comparison of Paragraph 3 on the screen in front of you with 91 dot - 9.2 and 9.3 I think makes this a pretty close case. Thank you.

Leon Sanchez: Thank you very much Steve. And next on the queue I have Thomas Rickert.

Thomas Rickert: Thanks very much (Leon). And I think that a lot of good points have been made and I also understand the - why concerns are being raised by some of you.

But let me try to take this back to a merely procedural aspect and how we approach things. Let's try to remember the Workstream 1 versus Workstream 2 definitions.

And we have spent a lot of time. We've undergone various public comment periods to specify what needs to be done in Workstream 1 versus Workstream 2.

We have a - we have the AoC issues, the AoC points on our list for Workstream 1 and that's going into the Review section of our report primarily when it comes to the discussion here.

What we're trying to do here is actually go beyond what has - what is explicitly in the AoC and we see a lot of uncertainty with definitions, with applicability, with the applicability for ccns, for legacy gTLDs and new gTLDs and all that.

And that is going beyond what we had agreed to be (unintelligible) in Workstream 1 with the community's support, and therefore I think it would be a - an entire game change if we wanted to add components to Workstream 1.

Remember that we agreed we wanted to be conservative with Workstream 1 tasks, because Workstream 1 only asks us to do those things that need to be in place or committed to prior to the transition.

This needs more work. The work should be done. This topic should not be suppressed but I urge all of us to accept that we have done what we are tasked to do, what we've committed to with respect to the AoC based on what we have in Workstream 1 now, and we should just add these additional components to consumer trust and the DNS marketplace to Workstream Number 2.

Leon Sanchez: Thank you very much Thomas. So if I'm hearing well the proposed way forward would be to actually incorporate this - well, I mean, the AoC into the bylaws as they stand today, but to undertake a deeper look at the consumer trust issue in Workstream 1 as to whether their review needs to expand its scope to other gTLDs other than new gTLDs, or whether it should remain as it

stands in the current AoCs. I see Andrew Sullivan's hand is up. Andrew could you please take the floor?

Andrew Sullivan: Thank you. So maybe I can ask those who think that this is not an expansion of scope or who want to clarify with the people who wrote this what they will do if the answer comes back either, "Oh yes, we thought that what this meant was that ICANN has responsibility (sic) for all of the names in the entire DNS," or if it came back and said, "Well we didn't mean it that way.

We just meant this to apply to gTLDs or all TLDs or whatever," because both of those outcomes mean in any case that the - this language can't possibly be in use because in the first case what will happen is there'll be a revolt and the DNS will become, you know, unusable essentially overnight and in the second case the language has to be rewritten.

So I guess I don't understand - even if the expansive interpretation is the right one or is the one that people intended or something, I don't understand how we can proceed with that.

It doesn't seem to me to ramify it and so I'd like to understand how people would proceed under those cases if we actually went and did the clarification, which I have to say I don't really support since of course we'd just be asking people to clarify what they meant some years ago, and it's not what was - clear that people know what they meant some years ago. But supposing we came up with that I'd like to know what people would do.

Leon Sanchez: Thank you very much Andrew. Anyone willing to follow up on Andrew's request? Okay so I see Alan and Avri, so Alan is first in the queue.

Alan Greenberg: Thank you. I'm not going to answer Andrew's question because I didn't propose that we ask those people. I believe the words stand for themselves right now.

The original text in Proposal 1 did not use the term DNS marketplace I believe. It just used the reference that we have a responsibility to think about consumer trust, and that was all that was ever - that was - I had ever advocated (sic).

I agree completely with Andrew that that term is a loaded term that we would not want to go anywhere near but the concept that ICANN has a responsibility, not the sole responsibility we believe is an important one.
Thank you.

Leon Sanchez: Thank you very much Alan. Next I have Avri.

Avri Doria: Hi. This is Avri speaking. I'm fine with the question. I'm the one that, you know, proposed it as a way beyond the impasse. I too think the wording is completely clear.

I just disagree with Andrew and others about what it clearly says. I think that if the answer were to come back that, "No we had been thinking that it is either pertaining to, you know, all that ICANN does or pertains to all gTLDs or didn't," then we would include consumer trust in 1 as has been argued now.

I don't think of it as a loaded term. As I've argued on the list I think if you really want to get into analyzing all the terms here, we will have problems agreeing with promote competition and such.

All those terms are loaded to some sense and would book great argument. If on a hand they come back and say, “No, no, no, no, no. It was just a (shepo) and we never meant for it to refer to anything more than new gTLDs,” my proposal would be that we do not therefore include any change in 1 and we stick with the AoC as currently included.

At the moment I think that’s partial inclusion and I would like to see a complete inclusion. But if the answer comes back that, “No we own...” - is feeding it.

And those who say it is clearly only about new gTLDs, not existing gTLDs, not the general scope of ICANN’s mission with regard to the DNS marketplace then, you know, it becomes easier to settle as opposed to being in a situation where one side or the other has to agree that, “No I will surrender. I will accept your interpretation.”

And I personally think that it is obvious that it does go beyond the new gTLDs, but I’m willing to go back to first references and use that as a determinant. Thanks.

Leon Sanchez: Thank you very much Avri. And I would say that - okay actually I see Thomas hand is up. Thomas could you please take the floor?

Thomas Rickert: Thanks very much (Leon). I think that Avri has offered an excellent opportunity for us to take this discussion further. Let’s try to get an answer from NTIA with respect to whether it was meant to be (shepo) language or not, and maybe that resolves the issue for us.

And I would suggest that we pause our conversation of this during this call until we get confirmation or a response from NTIA on that aspect. Certainly we can continue the discussion on the list.

As said previously regardless of the outcome the discussion is not going to disappear so we can gladly have it in Workstream 2, but I think that is going to greatly help with this if we get feedback from NTIA.

So I suggest that we take stock in that way and that we will - what - if we're going to reach out to NTIA and report feedback to the whole group.

Leon Sanchez: Thank you very much for this Thomas and I have not been - drive to this conclusion. I would just like to correct the notes since we have a conclusion there that it's just - think of waiting - the bylaws as it stands today and then take deeper look in Workstream 2.

And since we are holding this issue pending NTIA response I would then correct the conclusions for this part of our call. And I see Malcolm Huty's hand is up. Malcolm?

Malcolm Huty: Sorry, just a quick check on the - where the action's being recorded. Are we looking to get an answer from the NTIA on whether it was meant to be a (shepo) or just a view, as in are we delegating to the NTIA the task of deciding this for us or are we merely asking for their input?

Leon Sanchez: We would be asking for their input Malcolm and see what they come up...

Malcolm Huty: In that case can we please have the action clarified so that that make - that's clear in the action item as it's called?

Leon Sanchez: Yes we will ask (Pat) to clarify. Thank you. Okay so are there any other comments at this point on this issue? Becky would you like to add something?
Okay so...

Becky Burr: No I think that's fine. I - I'm - I think we're fine.

Leon Sanchez: Excellent. Thank you very much Becky. So this concludes this part of our call and I'd like to turn back to my Co-Chair Thomas for any other business.
Thomas?

Thomas Rickert: We would like to hear whether there's any other business that we need to deal with today. There don't seem to be any hands up so with that we can conclude and end this call early.

Thanks everyone. This has been an extremely fruitful discussion. We will send high-level summaries to the list for further discussion soon, and we're going to continue our conversation on the list and during the next call. Thanks everyone and bye for now.

Alan Greenberg: Thank you. Bye-bye.

Leon Sanchez: Thanks Alan. Bye-bye.

Avri Doria: Bye everyone.

END