

ICANN

**Moderator: Brenda Brewer
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Holly Gregory: So could I just take a few minutes at the outset to talk about why we requested this call? Will that be okay?

Male: Sure.

Holly Gregory: Okay and I really want to thank you for responding to our request for this call on such very short notice at a time when I know how busy you all are. It is greatly appreciated. I thought it would be helpful if I took a couple of minutes to explain what motivated the call and what we are hoping that we might be able to accomplish.

So, the real primary driver for the call is that at this critical time in the project, we want to have a chance to talk with you about whether there are ways in which we could be more helpful and I'd like to return to that in a minute or so. But, before I do, we have some questions and concerns that I just want to put out there on the table. To start with, I need, I would greatly appreciate a better understanding of sort of the behind the scenes in how the drafts are being edited, you know.

For example, I am still not really clear on who holds the pen, who reviews and assesses comments, and we sense from the comments that we are reading on the CCWG emails and in chats during the last several calls that there are some concerns about how those decisions are made and we'd just like to better understand this ourselves. So, I have to share that we have more specific concerns that we've commented on drafts several times prior to publication of the third draft and post publication of the third draft and our comments are not addressed in the revised materials we have seen.

And we want to understand who makes the decisions with respect to our comments, and why the comments aren't reflected, and I just also want to be very clear, this is not about pride in editing because our comments are only comments and we could be wrong, but it is more fundamentally that if we don't understand why our comments are not taken, we don't know whether we are misunderstanding something, that the group has reached consensus on, or whether we are just not communicating with you all effectively. And that is really difficult for us to assess when we have no idea, it's almost a black hole. We put the comments in and then we sort of have to discover at a later time whether something is happening.

By the way, I just got a note from Rosemary that she's having difficulty with the phone number. I'll try to reach out to her in a minute and see if we can log her in. So, I just wanted to put to you, so without that feedback, we are kind of in the dark about is it that somebody didn't read it? Is it somebody read it and decided not to do it? Who is making the decisions and why? And are we failing in our role in communicating with the team about why we think a comment is important? And are we misunderstanding something and that is why you are not taking the (unintelligible).

We also would really like greater clarity about what we should post to the broader list. On several occasions now, we have requested that our comments get posted but they haven't been and yet when we've gone directly to post something on the list, it has caused concerns and more chatter and we certainly don't want to do that. We don't want to do anything that puts more pressure in an already pressurized situation. At the same time, we view the group as a whole as our client and so we feel at times that it is important for them to understand how we are viewing a particular issue.

I want to also note that we have some concerns about the certification rule, which it seems that some think means that we shouldn't read drafts or comment on drafts unless we are asked. And that is not our understanding of what was intended nor would we ever agree to work in that way. And I want to explain that. We understand that the certification process was designed to prevent sort of the chaos of CCWG members and participants requesting that we weigh in on something where the group and the chairs hadn't yet really decided that that was right and needed our assessment.

And we are greatly in favor of the certification process for that purpose. But as you know, as lawyers and professionals, we have to be able to make judgements about when our client needs to hear from us and what to review and how to participate to be prepared to offer you informed advice in an effective manner. That is the heart and soul of what it means to be a professional and it is key to the attorney/client relationship and our duty as attorneys to the CCWG.

We also, I mean, there is more that we'd like to understand. We'd like to understand what you expect in the implementation phase and how that will work and what you will need from us so that we can...

Thomas Rickert: Hi, this is Thomas, sorry.

Holly Gregory: Hi Thomas, that is so we can prepare for our own, you know, internal processes. We have resources that we have to make sure are available for you if you need us but if you don't need us, we have other projects that we have those resources working on. So, we'd like some understanding about that. So, at the end of the day I keep trying to reiterate that our goal is to provide you with high quality legal advice in as efficient a manner as possible. We understand the challenge and the concerns around expenses.

There are challenges in advising in this bottoms up consensus based approach that you are all very well aware of, but I don't think that the solution is to side-line your legal advisors through a broad interpretation of the certification process, which as I've said, I don't think is consistent with our duties as council to CCWG nor would we agree to abide by. And finally, we would like guidance on Americash. We need to know in advance what you will need and we do not think participation by phone will be effective.

So those are sort of our issue list. You may have other issues and happy to talk about them, in the meantime I'm wondering if somebody could try to connect Rosemary in.

Rosemary Fei: I am on now.

Holly Gregory: Oh great, hi Rosemary.

Rosemary Fei: It took a while. I had the wrong number. I called three times and kept getting asked if I wanted a Bahama cruise. It was the weirdest thing. So, I must have copied it down wrong. But I got in about a few sentences in.

Holly Gregory: Okay, thank you. So, that is sort of what is driving us. We want to meet your expectations, at the same time we feel like we need more information about how this is working so that we understand, you know, how to best support you. And we certainly don't want to do anything that adds tension into the mix. That is not our role as lawyers but we did think that these were important issues that we needed to hash out with you.

Mathieu Weill: Okay, thank you. And I appreciate the direct feedback because I think that suits the necessary, with all this complex process to be able to put issues on the table when they are up there and not circle around, which is on the -- which we will keep paying anyway in the end. So, I'm going to try and take your questions one by one. And you asked how your comments were taken into account, because in the latest versions you probably have seen some aspects that you commented on the (trench) to the report. And some of this was not reflected there, that is correct, right?

Holly Gregory: Not some of it, most of it.

Mathieu Weill: Most of it, okay.

Holly Gregory: And I think really when it's not reflected we don't understand what we, whether we've misunderstood or you've misunderstood or we've miscommunicated what we were trying to do. It is hard for us to feel that we can give you good advice. When we make an edit that we think is a no-brainer, and it gets rejected. So, it is like well, why?

Mathieu Weill: The point here is as we discussed at that point with that, we were on such a stretch for finalizing the report that we tried to keep at bay as much as the (more edits) as possible and so there was no process to say this comment is

rejected. It was more we are trying to focus on anything that we get that is high level enough for us to approve and all the rest were delayed.

Holly Gregory: And we appreciate that and that is why we provided comments again after the draft so that they could make it into the next things, but then when we see the annexes circulate and they are still not in it, we understand you are still under pressure but there comes a point at which we don't know without the communication and the feedback whether you simply didn't get to it yet, which is I think what I am hearing, or you disagree with it, or someone else is making the decisions and frankly this just isn't you know, high up on the priority list.

So, having a better understanding of that will be very helpful. I would like to know the process and who goes through the comments? Are they discussed with the (unintelligible), is this staff driven, is it something that is done in a committee with discussions back and forth, let's take this, let's not take that, it's time to focus on this issue or not. How does that work right now?

Mathieu Weill: So, I mean, honestly, having followed closely enough on that and I did have the impression that -- I sort of had the expectation that your line edit would be in the proof-read version.

Holly Gregory: Nope.

Mathieu Weill: Obviously that's not the case. I have no idea why and I'm not -- I haven't been following that closely enough to provide you any answer on that.

Holly Gregory: So who is responsible for the proof-read edition? Who are the people who are participating in that?

Mathieu Weill: Well, it's been a staff effort and it's been a huge effort, so I'm very conscious of the burden it's been upon them (especially) around the end of your period and so that is the process. Has there been a decision to reject? Not in my opinion.

Thomas Rickert: This is Thomas, let me just briefly assess, we are running through different phases, so obviously when we try to get the report out, we did not want to fuse arguments made by some that the report is too bad to go out and if we confront the group with too any changes, maybe they be just cosmetic or sub-standard, we would get or we would run the risk of getting too much push-back with the publication. So this is why in the initial publication we did not really focus on including all the comments received but just the high level ones in order to be able to publish.

Now, I guess in order to look at this as an iterative approach, so we have the proofreaders working on the document, in parallel we have staff analyzing comment and now we are integrating the comments into the revised draft and we need, I guess all the staff is also available at the moment in order to ensure that we are getting sufficient support to make all the amendments and get the document in proper shape to reflect the changes that we are making in the three hour course that we are having twice a week.

So I would anticipate, just for your information, that we would incorporate substantive legal comments in the last version after -- we actually note where the community stands. We can't really afford to get people distracted from the substantive discussion at this point, you know, that's always the risk and at least in my view we really need to ensure that we get everyone on the same page for consensus on the major points and then we will update the report and at that run through we are going to honor the comments that you guys made. I mean, certainly, this is not satisfactory, but I think we have to

find the balance between the workload that staff can take and what can be digested by our group.

Holly Gregory: And Thomas I greatly appreciate that. I understand what it is like to run multiple comments through multiple drafts and it is quite challenging. There are a couple of points that you may want to consider where there is actually a wrong description of a legal concept in the document that you may want to take on earlier, but I leave that to you. You are the ones who must manage this process. We simply wanted to bring our concerns to your attention.

We do think that you should post the comments that we sent yesterday to the list so that the list knows that the lawyers have looked at it and have comments on it. And then, those who want to read through it can be informed by it and those who don't can ignore it. Some of the comments may inform the substantive kinds of decisions that need to be made but I'd need to go back through it to point out where those ones are.

So again, we defer to you. You're the ones who have to run this process but we also feel that we advise the group as a whole and that the group needs to, you know, know where our concerns are. I want to raise along those lines, often we are not asked to weigh in on an issue and then a draft comes out and there is something in it and we just had an occasion with this the other day where I am trying to remember who it was in an exchange on the email.

It said well, the lawyers read the draft, therefore they have opined on the risk. And that is not true. If, you know, you are not asking us to opine on a risk. In some circumstances or haven't even brought it to our attention that something is an issue. It may be in the draft and we need to make sure that the group doesn't think that, you know, every single word in that draft is something that we have opined on a risk. I'll leave that to you to decide how to address.

And we certainly have not responded in the email list to those kinds of comments because we don't want to cause further problems. We don't want to create more chatter. There's already too much chatter and too much negative chatter. But I just want you to be aware that that's another concern that there may be a misconception about the level of review that has been given to the third draft by lawyers and the level at which we have opined and weighed in on risk.

Thomas Rickert: That is understood. I'll let you go ahead.

Mathieu Weill: So, the third report out, we have started working on a proof-read version that obviously does not take into account your comments. I think we need to, I certainly take your point that we need to take your input more up front rather than push it to a point where we don't even have time to take them into account later on.

The balance that we have to find is how to do that in a manner that does not create an over-burden of re-do both of your side, reviewing and reviewing and review different versions of the document and on the side on our side and especially on staff, integrating very detailed inputs several times in several review cycles when they are already quite over-burdened.

So, I don't know how we could do that. I am wondering whether, since we are doing recommendation by recommendation now, we could probably basically as well publish something after first reading, ask for your review at this point and your comments and integrate them as part of the comments that we receive before second reading. Maybe that would enable for a broader view and also for something that would be not a huge document with many, many

edits at the same point that would be difficult to manage for everyone. I don't know, I am just putting that here for comments.

Holly Gregory: I think that's a great proposal and I think that the last set of comments that we sent from Annex 1 to some, for a 12 was at that point and was designed to do that. So, I am comfortable with that. I do, again, I absolutely understand how burdened the staff is, but I do caution that the answer to a burdened staff can't be, will not deal with the comments from the lawyers.

Mathieu Weill: Thomas would you think about this approach?

Thomas Rickert: I am perfectly okay with that and Holly I agree with you that we shouldn't run the risk of ignoring your comments and that was certainly never the plan. But, we have to do one thing at a time and I guess that the comments that you made will make its way in through the final version of the report and I guess that the iterative way that Matthew suggested is a good way to make sure that we get that done.

Holly Gregory: I would appreciate some kind of understanding that if we have for example suggested that the word called designator be replaced with (the empowered community) substitute, if we decide to use that term for the unincorporated association that is being created and that edit doesn't get made, I would love to have a way to understand what the thinking is so that my next round of edits can reflect a better understanding of what you are doing and how you are thinking about it.

So, is there some way -- I realize this is a burden, but, you know, you want our advice and yet if we don't understand what you are doing, you are not getting our best advice. And someone I think moved to tell us, we didn't do this because, it would be so helpful if we could secure from you why you

rejected an edit that we thought was actually substantive and maybe the answer is (unintelligible), we don't care if there is a (unintelligible) or empowered community.

But right now it actually has both all over it, and we have just this one little example that maybe you are seeing that as non-substantive and we should just shut up and let you call it whatever you want, whenever you want, but employers, we wanted that consistent use of terms to sustain that, convey to the reader there is the energy throughout as opposed to there being the same called the empowered community in some sectors and in other sectors a thing called designator. It's the kind of, if we don't get your feedback, you are going to keep getting the same stupid edit process you don't want because we don't understand.

Thomas Rickert: Yeah, so sorry, I guess that's what I understood. I suggest that we try to give you that feedback that you are seeking during this iterative approach so that we will...

Holly Gregory: I'm sorry, I may have missed that. I am sorry to interrupt. I have been getting cut out of this call every few seconds now, so I only heard about half of what you said. And I'm sorry you just said that, I heard that you just wanted to take our comments into this process and so we would hope, but I didn't hear about feedback.

Thomas Rickert: So obviously, the line is pretty bad. I'm not sure whether I heard exactly what you were saying, my suggestion was that now that we continue to publish the paper's recommendation by recommendation, we would make sure that not only we'll include the updated status of the discussion by the group but also include the comments that you've previously made.

So, that the documents, as they go out, will include the changes that you suggested so that you can exactly see what, how your suggestions have made their way into our document and I am virtually looking at my fellow co-chairs, now that I think we should also document which of the changes have not been accepted should there be a rationale for doing that so that you have clarity on what we did and what we didn't do and whether there was a reason for it or whether it was just an oversight.

Mathieu Weill: I agree with that, Thomas.

Holly Gregory: That sounds perfect.

Thomas Rickert: Okay anything else?

Mathieu Weill: So next was implementation which you were asking what our expectations would be during the implementation.

Holly Gregory: Yeah I have to tell you that, so we are on these calls and more or more has sort of shifted into implementation which I agree with. I mean, I think the detail, it is unrealistic to think that you can get community consensus around every little detail. And so, the more we can put into implementation, I am fine with. I am a little concerned that we will get into the implementation phase and the same active group who wants to get into great detail will want to have the same kind of process to talk about implementation. It makes no sense.

I respect your bottoms up consensus driven processes, but at some point you have to say we've identified the general direction, let somebody else figure out the detail. Otherwise, this is going to just spill on forever. And I'm sure that that's not how the chairs want it, you know, order their lives, you know, I don't think we can make progress in any kind of effective way and I'm also

very conscious about the cost to ICANN as a not for profit of the very expensive process from a legal perspective that that would entail. So I just wanted to -- I really am worried about implementation and whether we are going to have to do through this same kind of group drafting and it is just from my mind a huge mistake if that's where we are going to be.

Mathieu Weill: Holly, this is (Unintelligible), we've had the discussion, I think our last coordination call with you was about implementation and I think we laid out that there were groups to oversee your drafting in order to check it is consistent with the report, the conclusions and recommendations of the group.

Holly Gregory: Right.

Mathieu Weill: And do you have any impression that it is going to be different?

Holly Gregory: As the group gets larger, as the oversight group gets larger and brings in all the same, you know, many of the same people, I'm going to be frank. I am concerned about the ability of some people to lift their heads out of the weeds and provide the kind of guidance that's going to be needed in that process.

Mathieu Weill: Alright, I understand. I have the same concerns. I have the same concerns. However, I think there is a challenge in managing these groups and making sure they remain focused on consistency with requirements as well as with providing guidance, which is basically answering some questions; not from their personal perspective, but from the perspective of what the group was aiming at.

And that's got to be a difficult one with the IRP without a doubt, with the other certainly as well. But I'm afraid there's no way around this challenge. And the experience from many in the community -- from previous

implementation periods where the outcome was so different from what they were expecting.

You had an example during the call the other day with the Meeting Strategy Implementation. You would think it's not hard; it's not very technical, it's legal. And people felt like it was not what they had agreed on. So they really need to be on board on that.

Holly Gregory: I hear you.

Mathieu Weill: And I'm aware of the risk and the cost.

Holly Gregory: I understand. Mathieu, I understand absolutely and it is a challenge. And I think - I guess what I'm asking for is that there sort of be continual - I don't know - when there are opportunities to reinforce so that when we get to implementation, it's not going to be the same process of just managing their expectations. So it's not going to be the same process that it is now.

The lawyers will go off and draft. They will come back with questions. They will come back with a draft for you all to review. But, you know, that's how it's going to work. You know, it won't be...

Mathieu Weill: Is that working out well in the CWG?

Holly Gregory: In the CWG? They have our draft and they - we haven't been asked - they haven't commented on it yet. So hopefully it will, but I don't know.

Mathieu Weill: Because if there's a good question in the CWG, that's going to be an immensely useful leverage for us...

Holly Gregory: Okay, that's helpful.

Mathieu Weill: ...because there's a common root of people -- group of people. So I have seen this cross (sic) that it works out all right in the CWG.

Holly Gregory: I see. Okay, great. I mean that is helpful. My sense is that the CWG, as we've provided them with a draft, I don't know that anybody has really worked through it yet.

And unlike the kinds of issues that we're talking about now where people can have opinions and weigh in and stuff, once you get into that draft thing and it's the nitty-gritty, following along is much more difficult. So maybe we're getting some of that sense in the CWG. But we'll get there.

I just wanted to put it out there. I wanted to continue to make sure that we're on the same page. Sometimes when in our calls, people say, "Well let's throw that, we'll deal with it later in implementation," I'm not sure that they understand the implementation is really hopefully a different process.

Mathieu Weill: Well I certainly hope so.

Holly Gregory: (Unintelligible) CCWG states too.

Thomas Rickert: Can I suggest that we try to get this over the line? I don't even want to think about implementation now.

((Crosstalk))

Thomas Rickert: I think you're perfectly right. We need to make sure that we establish working methods for the implementation that keep the process (sic) well as community

and (unintelligible) to a minimum. And that can only be a way where the lawyers work on a version - on the basis of information they can find in the report, and then we need a review team.

It's basically to ensure that the implementation is done in the spirit of the CCWG deliberations. So they shouldn't renew the effort or engage in what's missing, but just make sure that they we have no disconnect between the groups (unintelligible) and the work flows.

Holly Gregory: (Unintelligible).

Thomas Rickert: But I understand we really need to streamline that because otherwise it's going to be taking (unintelligible) and it's going to cost a fortune.

Holly Gregory: Agreed. I mean I think the actual time for us to go and draft this stuff is not where the big money is going to be spent; it's going to be in the back-and-forth and with phone calls and things. And that's what I'm hoping we can avoid.

You lock us in a room and tell us to draft to these points, we can do that pretty efficiently.

Thomas Rickert: Yes, exactly. That should be the focus.

Holly Gregory: Yes. Okay, so then our last question had to do -- before we talk more broadly -- about is there anything we could be doing to be more helpful. The last question is about Marrakech.

I'm not dying to travel; neither is Rosemary. At the same time, we have real concerns about whether we can be effective by telephone. And so therefore, it

would be helpful to know what we expect to be on the table to talk about that face-to-face meeting.

And I have a sense that, in some ways, it's of yet undefined because it depends on where you are in this process. Hopefully, this process is over and we are talking about implementation. If we are talking about implementation, we probably need to be there.

But I need guidance from you so that we can decide whether we need to get plane tickets.

Mathieu Weill: Okay, so Marrakech. As you said, not everything is set in stone about where we will be at that point. But so far, the way we're looking at this meeting is focused on kicking off Work Stream 2, and that would be scoping discussions -- general discussions about the various items of Work Stream 2 -- so that we constitute the groups and announce them.

So with that as part of the work where the lawyers into it should not be necessary at least, that would be a very bad sign that if when we scope issues like diversity, we are already in need of lawyer input right away.

And then there's Work Stream 1 implementation. But looking at this, I think the only substantial work (unintelligible) kind of activity we can have would be on IRP because I am not expecting that we will be - you would be in a position by Marrakech -- I mean considering the time we need to finalize our report now plus six weeks to produce the community power bylaws -- that's not going to be ready in Marrakech. Right? That's seems unlikely.

Holly Gregory: A draft could be but it doesn't - I mean you tell us the timeframe. Again, I just want to be clear.

We're not advocating that you need to have us in Marrakech. But what we're saying is we think if it's likely that you're going to need lawyers, in person is better than on the phone for that kind of an event.

Mathieu Weill: Yes.

Holly Gregory: One thing that we could do at this stage, Mathieu -- just because of (unintelligible) -- is we could make refundable airline reservations. And when you get closer to the date, you could say, "No, we don't need you."

It may be that what you need if we're doing IRP is me and Ed, and not Rosemary. I don't know the answer to all of that.

But I just want to make sure that if you need us we're available and, you know, for whatever. But I don't think that if the answer is we'll have the lawyers on the phone, that that's going to be a good solution.

So I think what I'm hearing is that we don't have enough information. And so it's probably wise for us to make reservations with the notion that there's a good chance that we'll get to cancel them.

Mathieu Weill: Yes, and actually, that the number of on-the-ground lawyers would be smaller than it was previously. I would tend to think that the IRP (unintelligible) would have the highest probability of being really highly needed in the meeting.

Holly Gregory: Mm-hm.

Mathieu Weill: So I think that the approach you're suggesting is very reasonable -- doing this refundable reservations just in case at this point. And then reviewing in two weeks' time to see where we are.

Holly Gregory: Okay, good. I mean that's exactly the kind of guidance we just need. So okay.

Rosemary, does that answer your questions on that?

Rosemary Fei: Yes. It sounds like maybe you should book your tickets and I should hold off. The nonrefundable tickets are about twice the price and we could probably wait a little longer. And if it's going to be IRP, I don't know, Holly, if you would rather bring someone from your shop. And, you know, I'm happy to sit this one out.

Holly Gregory: If it's IRP, I can usually (unintelligible).

Rosemary Fei: I'm sorry, I couldn't hear that.

Holly Gregory: If it's the IRP, I think it would need to be me and Ed (unintelligible).

Rosemary Fei: Exactly; that's what I was thinking too. And so maybe - because that sounds like it's the most likely and the other isn't very likely, maybe I should just hold off because as I said, the nonrefundable tickets are twice as much and they're horrible flights. You would end up basically (unintelligible) to fly them. You would end up paying for 2-1/2 days of travel time; it's horrible.

Holly Gregory: Okay, that makes sense.

Rosemary Fei: I'm going to mute my line again (unintelligible).

Holly Gregory: Okay. So then the last issue that we had -- the bigger picture -- is what could we be doing differently to be more helpful to you? I mean I really sense that the burden on you folks and on the Staff is significant both in terms of the time and the effort and also the psychological, you know, challenges at times and dealing with the tensions in the group.

So I just want to put out there, if there's some ways that we could be acting differently, either in a positive way or refraining from doing something to be more helpful, please let us know.

Thomas Rickert: I guess, Holly, thanks for the offer. I guess we would need to think about that a little more. At least I would need to think about it a little more because there's a - you know, things are moving quite a bit. So I think it would be a waste of result if you tried to comment on every suggestion that circulated.

But I guess what would be greatly appreciated is a (unintelligible) check on the conclusions that we circulate on the list. So basically after every call - or I should start by saying that you know that we're two readings for each of the topics.

And after the first reading if there are interim findings on a way forward, we would publish that to the list for the further discussion. And maybe those summaries, you could take a glance at and then let us know whether the compromised solutions that we're working on are moving into a direction that is sustainable.

Holly Gregory: We really welcome that because that provides an opportunity to just, you know, if we do see a big risk, to let you know. Not that we have seen them, but one of my fears is that we've been really trying to kind of remain silent unless asked. And at time, you would be more comfortable with someone

saying, you know, yes, we do want to know if you think there's any significant -- significant, you know, I mean big, big legal issue -- that we should be cognoscente of as we go down this compromised path.

Rosemary Fei: Holly, I have to go off (unintelligible) and I end up missing conversation every time when I do that.

I would give one example which is the idea of a two-thirds vote to reject GAC Advice. I have real concerns that that's not legal under California Corporate Law, and I've been wondering when is the time to say that. Wait until we see if it even ends up in the document which is never clear to me?

It's being interpreted. Does it mean that the Board must follow the GAC Advice unless it has a two-thirds rejection? That's the scenario that would concern me.

That's an example of something where actually I just need to be clear. I do have a real concern.

Thomas Rickert: Okay, can you disclose what the issue with the two-thirds is?

Rosemary Fei: Yes. The Board under California Corporate Law has to be in charge or running the organizations of how it can exercise its fiduciary duties. And that's a basic requisite of corporate structure.

And if the way it works is that if the GAC is able to come up with consensus advice, that the Board can only reject with a two-thirds vote, that means that you could have more than half the Board believe that something is not a good idea and not good for the corporation and all of those things, and still have to do it.

I don't think - Holly, do you disagree? We haven't really had a chance to talk this through or flag the issue.

Holly Gregory: You know, I've always been uncomfortable with that. I am a little bit concerned. I need to go back to your current bylaws. I think there is some current understanding that, at a certain point, that they will work toward, you know, toward finding a common solution.

Rosemary Fei: Right because that's...

Holly Gregory: I don't recall whether that's two-thirds. But the two-thirds kind of..

Rosemary Fei: Is that new? I thought that was new?

Holly Gregory: I think it's new but I'm not 100% sure.

Rosemary Fei: So that's an example of something where, you know, we haven't quite been asked. But as we're listening, we're also not sure where you're going to land so maybe it's premature to weigh in. And, you know, we don't want to offend the GAC. There's all sort of policies going on in your group that we don't want to upset.

Mathieu Weill: Sorry for the burden (unintelligible).

I see that's an interesting discussion. It's certainly something that is not used in this GAC proposal. There are other senses in the bylaws where the Board's ability to reject something is conditioned upon a two-thirds threshold. And so...

Rosemary Fei: And do you know - so we haven't been asked whether we think all your bylaws are valid. And I will be frank with you.

Mathieu Weill: But that's not our mandate.

Rosemary Fei: We think - right; exactly. I guess that we should shut up.

Mathieu Weill: I think that it's still a - because that's already existing in some other places in the bylaws, I don't know how to address that. But I guess the question you would be raising is whether half of the key aspects about the process are already flowed in the current bylaws.

Holly Gregory: Well I have a suggestion about how we might deal with it. I mean we could very simply ask Jones Day what analysis they did around those provisions. And maybe they can come up with the analysis that says that the concern that Rosemary and I have is not a real one. I don't know the answer to that. I assume that they drafted the bylaws and looked at these kinds of issues.

So that's why we're hesitant. We're hesitant - this is the kind of issue that we're hesitant to raise, that we don't want to throw people under the bus; we don't want to cause a big blowup.

But as Rosemary says, we hear that and we look at one another and go, we're not real comfortable with that judgment call -- would like to know the genesis of it. And maybe we should just reach out to Jones Day and before we raise the issue publically and ask for their, you know, how they came to that comfort level.

Mathieu Weill: I think that's a sensible first step...

((Crosstalk))

Rosemary Fei: ...a judgment call, they may have decided that while it's not ideal, the risk of it is not so substantial that they're not comfortable with it. I mean not everything is black and white.

Holly Gregory: Right. Right, but that way, we can at least have the discussion and then get a read on it. If you agree, we'll give them a call.

Mathieu Weill: I think that would be (unintelligible).

Thomas Rickert: I suggest you do that.

Holly Gregory: Okay, we'll do.

Rosemary Fei: So I'm sorry to backtrack a little bit.

Thomas Rickert: Go ahead.

Rosemary Fei: I'm sorry. I want to make sure. So as we're going through this set of first and second readings, I'm not quite sure whether you want us to resubmit comments after each first reading if they're comments that we've already given, or whether someone is going to use what we've already given you as part of their input.

Holly Gregory: I think we need to resubmit because there will be other changes and we're going to have to read it. So just like we did with - I mean it was a very easy process.

But I want to tell you -- the co-chairs -- it was not an expensive process to have Rebecca go back through the comments and look at the new material. And so I think that that's the best way to do it because it's the best way to make sure, you know, we're focused on how things fit together.

Thomas Rickert: Let me briefly jump in.

We have this process of two readings. And I suggest that probably the most problematic (unintelligible) is that we get feedback from you after the first reading -- of the respective recommendations. So you just tell us whether what we're doing is completely stupid or not, you know, because these are very short high-level summaries.

If you see something in there which you think can't work from a legal point of view, please do give us a heads up, and (unintelligible) analysis including the insertion of the previous comments after we provide you with the group's agreement after the second reading.

Is that acceptable?

Holly Gregory: Absolutely.

Rosemary Fei: Holly, I'm losing a lot of this conversation, so I'm going to need to see your notes. I don't want to keep interrupting.

Holly Gregory: Yes, we'll figure it out Rosemary. It sounds good to me and I'm assuming that Staff is getting a good capture of what we're agreeing too so we'll have it in writing.

But that sounds all good to me folks.

Thomas Rickert: I have one last comment on the certification -- that is almost on its way to you -- on the legal risk in connection with the high-level human rights bylaw language. And Rosemary, I'm not sure whether you or Holly made reference to that -- that basically you did not fully check that for risk.

The reason why I think it makes sense to certify that question through you is that the Board said we're now exposing ICANN to huge risk if we put in this bylaw language.

And I think that at one point we had agreed that we would not - I think we got this information from you - that we would not create additional risk for the organization if we proceed including something on human rights in the bylaws.

And I guess we - and our response to the Board's comments, we would need to understand whether the suggested inclusion of new language in the bylaws actually establishes new risk or if there is a risk in there already by ICANN submitting to abiding by international laws in its Articles of Incorporation because the difference would be that, you know, if there's a risk already -- which we might not substantial increase -- then the Board's comments would have to be seen in a different light than if we actually did establish brand new and substantial risk for the organization.

Holly Gregory: Right. So and we're happy to address it formally when we receive the certification request.

My sense is there are two kinds of risk that we're talking about. One is the legal risk of would you be found liable if. And the other risk is the risk will - some idiot raises an issue and tries to bring a suit against you, and then you've

got to deal with the idiots of the world. And, you know, there's no way to control for the idiots of the world and they're always going to find something.

So I look at this question and to the extent that if the question is is it creating new liability risk. I think the answer is no. you're not contractually holding - if we've advised you, the law already requires that you abide by a host of human rights types of provision by saying that you're going to, you know, comply with a sort of human rights generally.

I don't think that you have taken on, you know, a contractual obligation to meet everybody's various viewpoint of what human rights are. But it is one reason why we have to have some, you know, some identification of what you mean by human rights. And maybe that's why we want to use the best efforts kind of line with something like that when we get to the drafting stage.

But you will - I mean any time - it seems like ICANN is a magnet for crazy people to make claims of all kinds. And so to that extent, any time you make a public statement about what you will or will not do, you run a risk that some lunatic is going to bring a lawsuit. Hopefully it's (unintelligible).

Thomas Rickert: But Holly, I guess that's exactly the type of information that we need. I just - (unintelligible) and jokeful beyond this, but I thought when I (unintelligible) comment that it's the comment to try to pull wool over our eyes because they don't like the suggestion we're making in the first phase.

If ICANN is just spelling out that we're honoring human rights -- which is must anyway -- then that can't under any circumstances create an additional legal risk. But actually, it might be a magnet for those who just want to find an opportunity to take an organization to court.

And if the risk of transparency is the greater risk of exposure, then I think that the risk that we have to accept if we want to take this organization to the next level.

Holly Gregory: Right. And we can certainly answer the questions in that kind of fashion once certified.

Thomas Rickert: Okay, great. Is there anything else we should be discussing today? I wasn't there for the first two minutes when you set the agenda for the call, so I may have missed something.

Holly Gregory: No, I think this has been very productive and helpful to us. I hope it's been a worthwhile use of time in the middle of a crazy period (unintelligible).

I'm hearing Disney; I'm hearing Disney.

Rosemary Fei: Yes, I'm very sorry about that. I cannot find a quiet place.

Holly Gregory: No worries. I think on that note, if the Chairs don't have anything more, we should sign off.

Mathieu Weill: Yes, thank you everyone. And let's have a CCWG (unintelligible) in Marrakech like they do in Disney.

Thomas Rickert: Okay. Take care everyone, have a great weekend. Have a good day.

Rosemary Fei: Thank you.

Thomas Rickert: Thanks everyone. Bye-bye.

END