

ICANN

**Moderator: Brenda Brewer
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9:30 am CT**

Coordinator: The recordings are started.

Thomas Rickert: Thank you so much for that. Good morning; good afternoon, good evening.
This is Thomas Rickert, the GNSO appointed Co-Chair to the CCWG. I would like to welcome all of you to this 78th call of the CCWG on the 19th of January, 2016.

And as usual we would like to take the list of participants from the remote participation room, ask those who are on the audio bridge only on the telephone line only to make themselves heard so that we can add them to the list.

Jeff Neuman: This is Jeff Neuman on the phone.

Thomas Rickert: Welcome Jeff.

Greg Shatan: This is Greg Shatan on the phone for the moment.

Thomas Rickert: Hi, Greg. Any more participants joining on the phone bridge only? That doesn't seem to be the case. Can I then ask you whether there are any updates (unintelligible) of interest? There don't seem to be any and that allows us to move to the next agenda item which is the second reading on the scope of the IRP. And Leon is going to take care of that.

Leon Sanchez Thank you very much. Thomas, this is Leon Sanchez and our next agenda item as Thomas just said is the scope of IRP. We had a very critical discussion on our last call, so I'd like to call on Becky Burr to help us with this item. And Becky, you have the floor.

And I think she's trying to get into the Adobe Connect Room so we will wait just for a minute on this. She was going to send the first stream of questions - conclusion document which I believe has been already situated to the list. And as soon as we have her on the call we will continue. So I suggest that we get...

Becky Burr: Leon, I'm on the phone now.

Leon Sanchez: Thank you Becky. And can I ask staff to please display the last version of the document on the screen. Okay, so while the upload continues, I'll turn now to Becky. Becky.

Becky Burr: Good morning everybody. I believe that we had strong agreement on most items when we spoke on I guess, last Tuesday. The conclusion was that we would specifically address the inclusion of PTI actions or inactions as a basis for an IRP.

The decision was to exclude the protocol parameter decisions per the IAP comment. We concluded that expert panel determinations would not be an automatic subject for the Independent Review Panel, rather policy

development processes using expert panels should in fact provide for means for resolving inconsistent decisions or ensuring the quality of the decisions.

But that the IRP would continue to be available for - to challenge an allegation and determination by the - by an expert panel that was inconsistent with the ICANN bylaws. That - and the same with the DIBP decision with that.

I'm sorry, I did think that we had a document that was the conclusions from the first round reading as opposed to this one that's up here. But - and then the - we did not really have much of a decision about the - how to transfer the various comments and suggestions as implemented in the details to the implementing oversight group except that they are listed and they will be transferred.

The other substantive discussions that we had with respect to the IRP related to Annex 4, also the community involvement in ICANN decision-making. And we decided to discuss - we decided to talk about a carve-out. And I did circulate that to the group. Could we bring the language of that carve-out up?

Leon Sanchez: I'm sorry Becky.

Becky Burr: I did circulate to the group a language, sort of a carve-out from the - for challenges - IRP challenges to a PDP. It was - this IRP document was emailed to the list (Chris), I think over a week ago. The one that's up on the screen.

Thomas Rickert: Becky this is Thomas. I've just pasted that into the Chat.

Becky Burr: Okay, thank you.

Leon Sanchez: Thank you Thomas.

Becky Burr: So the language there is - that's been proposed is that we add, in a couple of places - and actually it goes in Annex 4, most pressingly, is the language that says, notwithstanding the various things that (unintelligible) a community IRP, can be brought.

And also notwithstanding required thresholds for launching a community IRP, no community IRP that challenges the results of the supporting organization policy development process may be launched without the support of the supporting organizations that develop with such PDP. Or in the case of joint PDPs, would have the support of the supporting organization that developed such PDP.

So the notion is, just as we carved out the need - the ability of the community to override a bylaws change that was the result of a policy development process that, you know, fell within the proper jurisdiction of a particular supporting organization.

The notion here is that one supporting organization or for each supporting organization would not be able to challenge the outcome of a policy development process without the support of the supporting organization that has authority for the policy questions being without the support of the supporting organization that has jurisdiction over - authority over the policy questions at hand.

And (unintelligible) pointed out as I did in my email that the credit for this task really goes to (David McAuley). So I would like to thank him.

Do we have any discussion about - anybody have any discussions about this text? Any comments on it? I see Greg's hand.

Greg Shatan: Thanks Becky. Greg Shatan for the record. Just to be clear, this implies that an IRP can be used to challenge the actions of an SO or AC, rather than the actions of ICANN the corporation.

And I want to make absolutely sure that's what we're saying here. It refers to the - challenging the results of a PDP rather than challenging the ICANN's enactment of a policy recommendation.

And I want to be clear, you know, what the limits, if any, of challenges to an SO or AC's activities and whether that challenge also goes to stakeholder groups and constituencies and perhaps even to individual stakeholders. Or is this drafted - does there need to be a change to the drafting here so that we're not talking about challenges to SO and AC activities but rather the challenges to activities taken by the Board?

Becky Burr: I think that's a really good point. It probably should say, ICANN's adoption as the results of the supporting organization as policy development process.

Greg Shatan: Thank you.

Leon Sanchez: Thank you Becky. Thank you Greg. I see Cherine Chalaby's hand is up. Cherine, could you please take the floor?

Cherine Chalaby: Yes, thank you. Can you hear me?

Leon Sanchez: Yes, we do hear you.

Cherine Chalaby: Becky, thank you. I agree with Greg's comment. I just wanted to ask you a question and your thoughts about any recommendation made by the ALAC or the GAC.

And will this clause here apply to that as well, in terms of challenging the Board action on any ALAC or GAC recommendation? Thank you.

Becky Burr: Thank you. I think that's a good question, but obviously there are ways for the Board to, you know, once the policy development process is underway, the Board considers it. It gets input from all over.

The - you know, presumably the GAC and the ALAC would have been commenting on the policy development process, as well as part of this.

So this would be an after the fact decision, you know for example, to - it would be the ALAC or GAC put in - lead a charge to get community development to overturn the GAC - the Board's decision to adopt a policy development process. Unless for example, if it was example a GNSO policy development or a CSC CNSO policy development without the support of that organization.

So it does have the - it does impact the ability of a community challenge. So it doesn't impact the ability of the Board to respond.

Leon Sanchez: Thanks Becky. I hope that answers Cherine's question. And next in the queue I have Sebastien Bachollet. Sebastien.

Sebastien Bachollet: Thank you Leon. Can you hear me well?

Leon Sanchez: Yes, we can hear you.

Sebastien Bachollet: I still need some sort about this. I am not sure that I agree with this proposal. My impression is that it will jeopardize the (unintelligible) system. But I have not yet made my mind completely. Then I would like to ask if we can - another time of discussion on that when I will have time to discuss with other people.

I was not on the ALAC call last week for personal reasons, and I still need to have some sort. Thank you very much.

Becky Burr: If I could just respond on a multi-stakeholder point, keep in mind that we are talking about policy development that - policy development processes that fall within the responsible scope of SO or AC.

So for example you know, the GNSO has the role for policy development. Now the multi stakeholder input is obviously part of that process all the way along. And that does not - and this would not stop or inhibit that input or process at all.

Likewise the Board has obligations to review and decide whether to accept or not accept the policies. But this is simply, once the Board has accepted the outcome of a policy development process by the proper community with responsibility for that policy, the other members of the community could not delay it through IRP.

Leon Sanchez: Thank you Becky. So why you just - so if we could wait, let's say 48 hours for Sebastien to digest the information. And if he wants to hold the objection then it would be perfect if he could raise it through the list. Otherwise then we would be moving on, okay.

So next in the queue I have Thomas Rickert but I remember seeing Chris Disspain's hand up. I'm not sure if Chris, if you lowered your hand.

Chris Disspain: I lowered my hand Leon. Thank you very much.

Leon Sanchez: Okay, thanks. So next in the queue is Thomas.

Thomas Rickert: Yes, thanks very much Leon. I'd just like to make a quick point on the issues that obviously there was the effect of the multi-stakeholder approach.

And I know Sebastien that you want to think about it more, but the carve-out as seen on the screen with the amendment that's been suggested by Greg, in my view ensures that the multi-stakeholder approach is functioning in full, and let me say why.

We're talking about PDP's here. And PDP, at least the ones that I know, undergo public comment periods prior to their adoption. So we should anticipate that each and any PDP that is (unintelligible) has sort of has been verified by the multi-stakeholder community.

And this clause, in particular this carve-out should just ensure that ICANN's action does not contravene the wish or the spirit of the PDP, if and when it is enacted.

And so I think that this preserves the notion of the multi-stakeholder approach more than anything else. But also with respect to Avri's point, I think implementation details, let's say it's an implementation contravenes the spirit of the PDP, that would be a different thing. Because the way that I understood the suggestion to amend the language would be the adoption of the PDP.

So we're trying to ensure that the PDPs, as they have been developed by the community, are being adopted by the Board in the spirit of the original community work. Thanks.

Leon Sanchez: Thank you very much Thomas. And next in the queue I have - I also remember having Kavouss, but I also remember having Alan Greenberg's hand up before that. So I just want to double-check with Alan. Alan, did you lower your hand? Okay, so I cannot hear Alan so I'll turn to Kavouss at this point. Kavouss, you have the floor.

Kavouss Arasteh: Yes, I put my comment in the Chat. I think if you're not dealing with any advice of any PDP or anything from the Advisory Committee, we are talking of the supporting organization. What you are saying is that without the agreement of that supporting organization we could not challenge that PDP. That's all.

I don't think that we're saying anything more than that. It is already in the third draft. But slightly the center is modified to make it quite clear, connecting this to the previous paragraph saying that notwithstanding, so on and so forth.

So I don't understand the issue of the GAC; issue of the ALAC and all of these things. Thank you.

And I also have some difficulty when people saying that we come back to this later. Where is the later? We are at the end of the process. Thank you.

Leon Sanchez: Thank you very much Kavouss. And yes, from a high level I think that the carve-out would actually ensure the multi-stakeholder approach on this issue. So - and I see it has had some traction on the Chat box as well. And there is a

comment on - by Alan Greenberg who is not in the bridge but is in the Chat box.

It says, drafting note, the term PDP is not just for the (unintelligible) in the bylaws. So the full expression should be used in the bylaws. So I guess that would require some kind of clarification.

And I see another comment from Avri. She's saying that we're only at the end. If we can't come to agreement we can - the (unintelligible) goes on. Being late in the schedule is not an argument for accepting as a substantive position. So I guess that's kind of in answer to maybe Kavouss.

Okay, so I suggest we should just move forward. And as I suggested earlier, let's wait 48 hours to see if there is any concern on this issue. And secondly if the concern gets any traction then we will continue discussion. Otherwise I think that the carve-out as amended or as suggested by Greg, would actually cover all the issues that have been raised.

So I believe that Kavouss, is that a new hand or an old hand?

Kavouss Arasteh: No, it's a new hand.

Leon Sanchez: Okay.

Kavouss Arasteh: I am not very comfortable with the drafting notes proposed by Alan, talking about that - about yes, why we need that drafting note? Why we need to explicitly talk about any exceptions?

Do we discuss everything that is only ISO? There is anything else? Why we need this drafting note in the bylaws? I don't think that this drafting would

serve any purpose. Does it have the same status as the bylaw or just an ethical note? Thank you.

Leon Sanchez: Thank you very much Kavouss. And I see that Alan Greenberg's hand is up. And after that we will try to close this item and move to the next agenda item. So Alan.

Alan Greenberg: Thank you. I didn't think I was suggesting anything controversial. I was just saying we shouldn't use the abbreviation PDP if indeed we ever use it in the bylaws. I'm not sure if we do or not, because it isn't typically used with respect to the ASO. And the bylaws don't mention what - exactly what their policy development process is. That was the only reason. It certainly wasn't meant to be controversial.

Leon Sanchez: Thank you very much Alan. So it's rather a commendation of avoiding the use of the acronym rather than expanding it to the ASO.

So with this I think we can continue. And I suggest that Becky could of course, continue the work on this document and just as discussed, clarify the limits on the (unintelligible) the IRP as discussed on SO and (unintelligible).

And I think we would be, in order to actually check whether there are any objections to what has been discussed on the carve-out that had been (unintelligible) by Becky.

So if we have no objections on this then we could say that we could have - this could be the final version on the scope for IRP. So, are there any objections on this issue at this point?

I see (Brett Schaefer)'s hand is up. I don't know if that is an objection or is he just pointing...

Brett Schaefer: I would like to...

Leon Sanchez: Yes, Brett?

Brett Schaefer: ...just ask for a clarification.

Leon Sanchez: Yes?

Brett Schaefer: So the Board circulated a comment last night saying that they did not believe the DIDP appeal should be in the IRP process. I want to know where that issue was settled in the current draft. Is it continued to be included as an IRP appealable process as far as DIDP appeals are concerned?

Or are we going to have DIDP appeals handled in a separate process that is independent of the current process?

Or are we going to kick it to work stream two like the Board says? I'm unclear as to where everything stands at this point and I would appreciate some clarification. Thank you.

Leon Sanchez: You are right. And I will turn to Becky. Becky.

Becky Burr: The notion is that we need to have an escalation process so we don't go - you know, so that we don't lightly go into IRP.

And I took the Board's suggestion to say that review of the DIDP in work stream two should have an escalation process and a manner of resolving it.

But that ultimately there should be some final ability to appeal to an independent body to do that.

The Board suggestion was that it be a separate independent body. I think on the call last week the conclusion was it didn't make a lot of sense to have a wholly separate body. So that the notion would be that ultimately it could be - kinds of things could be appealed to the IRP but that they would first have an appropriate escalation process.

And also that the - so that was my understanding at the outcome of our discussions.

Brett Schaefer: And in terms of that, my understanding is that the IRP only focuses on issues that may be outside of ICANN's scope mission and in the Affirmation of Commitments.

And so DIDP appeals may be simply a question of whether the right interpretation was made in terms of privacy or in terms of other considerations, or in terms of not turning over or disclosing the documents that were requested.

Would that be within scope of the IRP as you laid out? Or would that not be within the scope of the IRP appeal?

And second, when you mentioned escalation process, are you saying that a DIDP appeal, as you - the process that you've laid out would be available to an individual? Or would it require the support of one SO, one AC or some combination of SOs and ACs? Thank you.

Becky Burr: Well I think we're using apples and oranges here because the DIDP is available to individuals right now. And that is separate from the various document review and other processes that are related to the community powers which indeed will be in the bylaws. And a violation of the bylaws with respect to that would be appealable to the IRP.

What we're talking about is in the individual case having appropriate escalation processes in place so that every dispute about whether I can access, you know, a particular document, would go to the IRP.

Leon Sanchez: Thank you very much Becky. I think that clearly answers Brett's concerns. And next in the queue I have Sebastien Bachollet.

Sebastien Bachollet: Thank you Leon. I just wanted to understand, do you have 48 hours or you want to have a decision now? Thank you.

Leon Sanchez: No, we would actually provide the 48 hours as agreed. But if there is no objection or no traction on the list to any objections raised within the 48 hours, seems we would not have any objections at this point. Then we could call this issue closed.

So what I mean is that we would be calling it closed unless of course, we get your objection within the next 48 hours and that objection has some traction or follow-up in the list. So that is what I am actually proposing.

And I see Greg Shatan's hand is up. Greg.

Greg Shatan: Thanks, Greg Shatan. This is a process point. It doesn't apply uniquely to our discussion of the independent review process. But more generally when we're

talking about calling matters closed, I know that just I think yesterday, the staff circulated the major trends in the public comments.

And I'm wondering where in this whole process we are going to give significant consideration to the public comments. Is there going to be a third reading against the public comments or is it implied somehow we've already considered the public comments? Because I think that implication is, it is incorrect.

So it will be very helpful to know where in this process the review and analysis and discussion of the public comments and possible changes in light of those public comments, is being considered. Thank you.

Leon Sanchez: Thank you very much Greg and I think that Mathieu Weill wants to ask a few questions. Mathieu.

Mathieu Weill: Thank you very much Leon and, thanks Greg for providing us the opportunity to clarify here on the process.

The approach that we've taken is, based on plenary sessions only, that was an agreement we had. And we have tried to identify it in the discussion points that are currently on the screen.

For instance on Recommendation 7, all the comments. And with specific attention to the chattering organizations, ICANN Board, stakeholder groups with the GNSO, even constituency feedbacks.

For example, the PTI, the question whether PTI is in the scope of the IRP? Was the CWG stewardship count?

There was also a question raised about the implementation details for the IRP which were related to comments from various constituencies including the BC and IC; also the IPC.

So it was our intent that we capture all the comments. And it's really open for everyone in this group to challenge this list of questions at any time. But certainly not - we are certainly not only focusing on the Board comment when we're going this review and are not planning for an extra cycle of reviews.

So if there is a comment that you think should be considered on this particular recommendation or another, please raise it during the like (Mike Shati) did on the Recommendation 11.

I think he pointed point through a comment that had been forgotten, and will be - we're doing the first ruling today and will certainly discuss this comment because it was a legitimate concern that I've been overseeing. Thank you very much Leon.

Greg Shatan: So just to clarify, we are not going to actually step through the comments or actually look at any sort of comment tool or the like? We're just counting on the leadership and membership participants to raise comments that were filed?

Mathieu Weill: Greg, there is a common tool. It has been circulated. It's a sort of a massive spreadsheet that I'm sure staff can find it out and re-paste the link in the Chat. But there is a common tool and it's the basis for our analysis actually. And it captures all the comments, a recommendation by recommendation, and provides a summary of the concerns received.

It has been circulated on January 7, and that's the basis upon which we - Co-Chairs and staff, actually identified the discussion points. So you can certainly double-check with that.

Greg Shatan: So the participants and members are not - we're not part of that? I just want to clarify that that's the way we're dealing with the comments. Okay, thank you.

Leon Sanchez: Thank you very much Greg. Thank you very much Mathieu for this clarification. And I see some comments on the Chat box. And as Mathieu just said, there is a comment tool. And the intent of the different discussion points and all the documents that have been circulated is to actually be based on those comments received in the public comment period.

So just to move forward on the agenda, on today's agenda I would reiterate that if we have no objections on the IRP issue then we could call it to be closed. And this is of course subject to the 48 hours given to Sebastien to raise any further objections on the issue that he raised in this call.

So, do we have any objections? Okay, so I see no objections.

So our next agenda item is Recommendation 6 on human rights. And we have had a very fruitful discussion on the list. And we circulated some amendments to the last version of the document. And in this version we've proposed different ways for where they were different.

We highlighted the different (unintelligible) that could be the paths to find common ground on the different positions. So I would like to focus on what we have on our screen, and this would be - I would be jumping into number two - proposal number two.

And of course of the three alternatives A, B, and C. And it has been discussed whether the group would be okay with going with Alternative A which is I believe, the current status in our third draft proposal.

Then considering the Board's comments would be in Option B. That would actually put on hold adding any human rights clause into the bylaws until the framework of interpretation is finalized in work stream two.

And the third option would be to consider our lawyer's input and to let's say, expressly limit the jurisdiction of any internal dispute resolution systems within ICANN such as the IRP to preclude claims of human rights violations that are not grounded in a specific violation of an applicable law.

So we have had very wide discussion in Working Party 4 on this issue. I think that the proposal - in our third draft proposal is a consensus position from the group. And this group of course included many participants, not only from the different internal organizations but also from the Board.

So what has been put in the third draft proposal would be thought of a consensus position. But then we have had this comment from the Board and I would like to point that there was no other objection from (unintelligible) organizations on the language proposed in our third draft proposal.

So of course addressing the different comments from commencing in this issue, we considered the Board's comment. And that is why we came with this three ways - this three alternatives that could help us move forward on human rights.

But before if course we choose any of these alternatives I would like to open the floor for comments on whether we consider that which of these alternatives could be the best way forward.

So I see that first on the queue is Tijani. But I remember that that Tatiana was first. So I'm not sure how this happened that Tatiana went to third place. So as a matter of courtesy, if you don't mind Tijani and Greg, I would go to Tatiana. So Tatiana, could you please take the floor?

Tatiana Tropina: Yes, thanks Leon. Tatiana Tropina speaking. I hope you can all hear me well.

First of all I would like to correct the document which is on the Adobe Connect Room screen because this Option C which is now is to see, is not actually Option C, reconsidered.

Option C reconsidered it the (unintelligible) of bylaw language which will not be operational before the framework implementation is developed and drafted. So can we do something with this and then I will happily speak after Tijani and Greg and everyone else. Thanks.

Leon Sanchez: Thank you for highlighting this Tatiana. Yes, we'll go to Tijani and of course then we'll come back to you. So Tijani could you please take the floor?

Tijani Ben Jemaa: Thank you very much Leon. Tijani speaking. And I - you said that the proposal that we had in Proposal 3, was the result of the discussion we had before in work group party 3 - work group party 4.

But in work party 4 we didn't say that we will put it in the bylaws. We said that we will have this high level mention of the human rights commitments in

work stream 1 report. And we will address all the issues - the whole issue in work stream 2, including the interpretation.

So this is - I think this is the problem. The problem is that the proposal wants to put the human rights commencements in the bylaws which is not I think, what we believe on before the proposal was written.

So I will have (unintelligible) but I will go through the options. And I think that Option 3, as it is read, is (unintelligible) bylaws but not the basic (unintelligible) bylaws. Why do we need it?

I think the best thing is to help to mention the commitments to human rights in work stream 1, and to have the details - everything in work stream 2. Implementation and everything. This is my point of view.

But at the end I may live with Option 3; I don't mind. But I find it useless.
Thank you.

Leon Sanchez: Thank you very much Tijani. So just to clarify, what we have on the screen has of course, Alternatives 2C and 3C. So 2C is the proposal by the lawyers; by our external lawyers. And 3C would be the option that contemplates the dormant bylaw.

And just to follow up on Tijani's intervention, if my memory doesn't fail, what was agreed on work party 4 was to include a commitment for ICANN to - with respect to human rights, as part of work stream 1, and also include a concessional bylaw that would allow that bylaw - the commitment for human rights to remain dormant and wait for the framework of interpretation to be developed as part of work stream 2.

And then when that framework of interpretation would have been developed then the dormant bylaw would actually be implemented. So I guess that's something that also needs to be clarified in our alternatives. But I think that this has been solved on Point 3C.

So I think that that was what was agreed by work part 4. Tijani I think that that is how we reflected it on our third draft proposal.

So next on the queue I have Greg Shatan. Greg.

Greg Shatan: Thanks, Greg Shatan for the record. I'm looking at 3C as it's stated. I think that there is significant confusion here. And first 3C as it's stated, while the parenthetical refers to making the bylaw effective after approval of the framework of interpretation, the actual language there that says it clarifies that the bylaws can only be enforced or used in an IRP, fall significantly short of that concept.

Let's focus for a second on what bylaws actually are. Bylaws are essentially a set of if you will, private laws that an organization must abide by and not violate.

The issue of enforcement is kind of a downstream issue. The issue is, what does an organization do every day? The fact that an enforcement action can't be brought is a mistake in focus.

If the intent is for the bylaw to not be effective, it can't nearly be unavailable for an IRP or for enforcement by the community. It has to be stated that it is simply not effective. That the - it is not a bylaw yet. Otherwise it is completely effective and perhaps an IRP might have to wait. But the actions of the organization will be affected immediately.

So whether you agree or disagree with this concept, I think it need to be accurately stated. So I object to the language of 3C here as it's stated.

Second, I think both A and C fail to take into account the effect of the transitional bylaw. And frankly I think that's because the effects of the transitional bylaw is also completely confusing at this point.

Is it intended that the bylaw is not in force as opposed to enforceable, but in force or open for business until the framework of interpretation is put in place.

If that's the case the A is a significant departure from the third draft. And C, or at least the parenthetical in C, is closer to what we've actually said. If the effect of the transitional bylaw is some other thing -- but frankly I can't think what that other thing is, then it needs to be clearly expressed.

But I think we have a big mess here right now in terms of our alternatives and as to what is going to be open for business when and with the relationship of the bylaws and the framework of interpretation and the actions of ICANN.

So I think we need to step back and decide what the heck it is we are trying to decide between before we make a decision between any set of options. Thank you.

Leon Sanchez: Thank you very much Greg. And I'm not sure if I got all the message that you wanted to convey, but if I understand all, you would like to go back to the drawer and really discuss the whole issue? Because I don't think that's - that that would be a viable option at this point.

And maybe in regard to clarifying (unintelligible) language, I would of course trust in our lawyers. Let's remember that anything that we propose to be included in the bylaws would ultimately need to be passed by our lawyers.

And of course with their expertise, I trust that any language that we put into the bylaws would be clearly - relatively clear. And there would be no confusion arising from the suggested language that our lawyers would be finally putting into the bylaws.

So I think that I see that others are also commenting on the Chat box as to whether you could kindly summarize why 3A deviates from the third proposal, as Niels turnover points. And I also see some confusion from Tatiana. And I have to convince that myself, I am also confused about the whole elaboration that you just kindly shared with us.

So could you in a nutshell, please explain to us what would be the point?

Greg Shatan: Sure. First the - in terms of A, it does not take into account the transitional bylaw. As I read the transitional bylaw, the intent of that bylaw is that the human rights bylaw will not be effective until the framework of interpretation is put in place.

If A is a complete statement of what Option A is, then it essentially deletes the transitional bylaw and makes the human rights bylaw immediately effective; immediately binding ICANN in terms of its actions and inactions. And that is different from the third draft proposal.

And the problem with C is that it only - the language that is in the text here on the screen talks about clarifying that the bylaws can only be enforced or used in an IRP.

But once the FOI is approved, that again leaves the bylaw effective and binding ICANN in its actions and inactions as of the day of the draft.

And again that contradicts what's in the parenthetical of C. So C is internally contradictory. Although if you look at the transitional bylaw, unless there are other interpretations of the transitional bylaw, in which case we'll need to discuss the right interpretation of the transitional bylaw, the spirit of C, which is that the bylaw is held in abeyance until the transition will - the cause of the transitional bylaw, until the framework or interpretation is enacted, to my mind that would be closest to what we have in the third draft proposal. So we need to sort these three out.

No, 3A does not imply the transitional bylaw. It does not state it. It only talks about putting it in this - putting in the bylaw language in work stream 1.

So the alternatives need to be well stated that that we understand the effects, including the effect of the transitional bylaw so that we have clear alternatives in front of us. The alternatives are not clear. Thank you.

Leon Sanchez: Thank you very much Greg. So I would like to of course continue the discussion with the other people that patiently have waited to get the floor. And of course we'll try to recap in a moment.

So next on the queue I have Niels. Niels, could you please take the floor?

Niels ten Oever: I see Tatiana would like to go ahead so I'm happy for her if she goes ahead of me.

Leon Sanchez: Good. So Tatiana, would you please take the floor.

Tatiana Tropina: Hi everyone, Tatiana Tropina. I'm sorry that I took Niels (unintelligible) because I really want to reply to Greg. And I'm just afraid that if I will reply after two people we all forget what we were talking about.

Well first of all I think there is a big confusion what we're actually talking about. Options that are written here in this document, they're not really - they're ready to go bylaw language.

I'm sorry, someone has not muted their microphone so I really hear background noise.

So back to the options, I don't think that we are actually talking about the bylaw language right now. We are talking about concepts. We are not talking about rated to trade bylaw language.

And in this sense I don't think that Option 3A is actually a big departure from the draft because Option 3A means that we are taking the language from the draft, including transitional bylaw. That was my understanding.

And I believe that we have to be clear here that what we're seeing on the screen is not actually the proposed language.

And if we are talking and thinking about the concepts we will see that A is the operational bylaw language with the transitional bylaw which we had in the third draft.

B is what Board is proposing and some other commenters to put everything to the work stream 2. And C is a dormant bylaw language which is not operational.

And again, I think that we shouldn't mix the concept itself with what we see written on the screen.

And in this sense, if we agreed that we are talking about concepts, (unintelligible) draft proposal language versus putting everything to the work stream 2 or dormant and not operational bylaw language, we can be much clearer on what we are talking about. And it would be much easier for us to find a compromise.

So this is just my suggestion. And I'm really sorry that I took the turn of Niels. I don't know if he has to go after Kavouss and my place. Because I really wanted to say a couple of things about the recent discussion about the Board proposals and comments. But I think it can wait before we will discuss the options. Thanks.

Leon Sanchez: Thank you very much Tatiana. And I will now turn to Niels and Kavouss. And after that I will try to recap and of course propose a way forward. So Niels you have the floor.

Niels ten Oever: Thank you very much Leon. And I'm very happy to hear from both Leon and also from Matthew Shears and others in the Chat that 3A is indeed the language as proposed in the third draft proposal.

And I'm not quite sure why there was a misunderstanding with Greg, but I hope we've taken it away from there now. So 3A is the bylaw as well as the transitional bylaw which would operationalize it.

But given as well the option to fine-tune it a bit more to come up with a framework of (unintelligible) in work stream 2. And we also need to think that human rights language is not necessarily a sub-law rather.

So I don't think there is a big risk within the IRPs. But the reason for 3B were the comments by the Board that I think quite rightfully so have been discussed and discarded by the - by our independent lawyers as can be seen under Point 2A.

So even though I'm very happy to discuss and continue to discuss with the Board, I think they would need to provide a bit more argument then, if we would like to consider that option further. Option 3C, okay -- the dormant bylaw upon the completion of the framework of invitation in Work stream 2. There we would not have a guarantee would actually get into action until we have the agreement of the framework of the invitation.

And I really hope we can continue with a constructive discussion because we have reached agreement on this in Working Party 4 as well and Greg was also part of that consensus, so I'm a bit confused of that position right now. One more short reaction to a (unintelligible) is that every proposal it has been the aim to have a high-level commitment in the bylaws as exactly what we're proposing now so I really hope that we can ensure on this call that we agree on (unintelligible).

I think that we have an opportunity to do so. Also, if we look at the public comments in which there is significant support or adding the Human Rights commitment in the bylaw with the proposed language and I think on the list we've also addressed some of the issues that we're brought up about legal ways - about the timeline, but I'm happy to go through them also once again and once more. Thank you.

Leon Sanchez: Thank you very much Niels, and I think that Jorge seems to be next on the queue, but I remember that Kavouss was online before that so I just want to double-check whether Kavouss did you lower your hand or was it some kind of a bug in the system?

Kavouss Arasteh: Yes, I can lower my hand with the provision that you come up for some immediate solution if you want to put it again for this (unintelligible). I have followed all these discussions. There are many, many options come up. Perhaps we should take something as more general, and more safe. Can you try that please? Thank you.

Leon Sanchez: Thank you very much Kavouss, and yes, I will try to propose a way forwardness as we recap and after we listen to the rest of the participants in the queue, so thank you for agreeing to give your place to next participant in the queue. So, Jorge, you are next on the queue. Jorge, might you be on mute? We can't hear you.

Jorge Cancio: Hello? Do you hear me now?

Leon Sanchez: Yes, we hear you now.

Jorge Cancio: Okay, thank you very much and good afternoon to all. Perfect answers. Jorge Cancio speaking for the record. I just wanted to make more a general comment and this is something that I said on the chat and basically it's to remind ourselves that in the public comment we read we have had very strong record of support for this recommendation, so I was rather be a bit surprised if we were to stray away from the recommendation and substantial terms.

If the numbers are correct in the slides which were circulated yesterday where 44 expressions of support, 14 in neutral for against in 28 which was silent so I think that as we were being all this time that should give us the general direction of our work. And lastly but not least, I would also share with you that after proposing this in the draft of the CCWG and after very intense work in the Working Party 4 to move every, single substantially to Work Stream 2 at this moment of time after the public comment.

The public comments we have received we would be sending a very weird signal to the community at large on such an important issue as Human Rights. Thank you.

Leon Sanchez: Thank you very much, Jorge, and yes, you are right. The proposal or the - this - the proposed texting or the proposal of support in the public comments, -- so, yes, we cannot, of course, refrain for - from listening to the community and the comments on this issue. So next in the queue I have Greg Shatan. Greg?

Greg Shatan: Thanks, this is Greg Shatan again. I've heard what others have said. If 3A includes both the Human Rights bylaw and the transitional bylaw, then I think there's significant confusion or problems in interpretation of the bylaw -- the interim bylaw -- language or concept as its stated in the third draft because to my mind 3C is actually closer to what is stated because the interim bylaw says that the bylaw XX -- which will be the Human Rights bylaw -- will be implemented in accordance with the framework of interpretation.

It'd be the relative to Work Stream 2. So it seems to me that any implementation needs to come after the framework of interpretation. The way people are talking about alternative A, it seems that they think that the bylaw would be immediately effective and bind ICANN and be available for all purposes including an IRP immediately even before the framework of

interpretation is in place, so it seems that the that in essence reads out or deletes or the effect of the transitional bylaws because that implies or really states that the Human Rights bylaw will be implemented immediately.

Of course, the word “implemented” is, perhaps a “squishy word”, but I don’t think so. Either something has been implemented or it hasn’t. So, the question is whether ICANN will be immediately bound by us Human Rights policy which it will have to follow and which all parts of the organization will have to interpret and implement as best it can and then sometime later the work of Work Stream 2 will come in and say, “No, you guys are all wrong,” or, “Some of you are right, and some of you are wrong.”

This is the way it’s supposed to be interpreted. But until that time it’s essentially going to be a free-for-all in terms of implementing, interpreting and acting under the Human Rights bylaw. I don’t think that’s what was intended by the transitional bylaw. The idea was for implementation to wait. So, either we have a problem with the interpretation of the bylaw and - or we have a problem with understanding the difference between 3A and 3C and I don’t think this is anything that we have discussed or clarified so I for one think we have a problem. Thank you.

Leon Sanchez: Thanks Greg. So I think that it seems to me that essentially we are all on the same page, but just we are translating this into a different ways of actually expressing the idea. So what I’m seeing under discussion is that having the third draft proposal language as our baseline would be the most coherent way forward, but we would also be in, let’s say, a “safe harbor” if we clarified a little bit on the transitional bylaw and by this I mean that we would be in fact proposing or this, of course, I am thinking out loud here and maybe the ability - the way for work would to be actually keep the language that we have in the third proposal.

But in the transitional bylaw, we would be satisfying, of course, that the implementation of the Human Rights bylaw would be subject to the framework of interpretation. That would be the (unintelligible) worse from one. And in the meantime, the bylaw itself would remain dormant until the framework of interpretation is developed, and I think that that would be a way that would clearly address concerns on the many sites that we have after discussion.

I believe that would be in line with what has been discussed and agreed on Working Party 4 and I believe that that could also provide a way forward to trying to address the board's concern as the bylaw itself wouldn't be enforceable in between the time it is included in the bylaws and the time that the framework of interpretation is actually developed, but we also need to or remember that we have not received GAC feedback on this point and I know that a couple of GAC participants in the room have pointed to this issue.

So what I would suggest is that we, of course, keep in mind this suggested clarification for the language in our third proposal while we also wait for GAC input on this issue and when we get GAC input we would come back and check whether the proposed clarification to the language in our third proposal would be viable and if need be then we could also be polling the members on whether we support one or other option as our final way forward.

So next in the queue I have Tatiana again. Then we have (Allan Martos) and Marília and I would like to close the queue with Marília so we can have - and I see Kavouss just raised his hand, so I will close the queue with Kavouss and after that we will be moving forward. So Tatiana, you have the floor.

Tatiana Tropina: Thanks Leon. Tatiana Tropina is speaking for the record. I'm a little bit lost after your proposed way forward because, again, when they're talking about Action 3, D, or C or A wherever I'm not sure, but we're talking about the same options. For what I would like to propose as a way forward -- and maybe actually it supports your idea -- is that we will have the bylaw issue -- it will not be operational -- before the framework of implementation is adopted and I think that's we are talking about over our which is going in circles and being confused is an option.

And I think that this option or for dormant bylaw issue or not operational until the framework is implemented if going to address pretty well or move forward the comments and especially board concern. There is a (unintelligible) bylaw it will not be operational, it will not open any door for invitational (unintelligible) floor or IOP practices and whatever and I really think that this is the only way we can take to go - if they are going to move everything to the Work Stream 2 they're going to basically to just regard over other discussions because I believe the communities have already discussed that we need this bylaw and there is no need to move everything to the square one and again decide whether we need the bylaw or that we have to have framework of implementation and interpretation first -- so I do think that we can come with these high-level same bylaw, make it non-operational, and then just interpret everything in the work stream through.

And if this is the option suggested for the compromise be it A, B, or C because I'm seriously lost in this option so I will fully support because I think it would be the step for us to compromise and look forward and other commenters feel - agree with this, it would be a good move for compromise for them as well, thanks.

Leon Sanchez: Thanks Tatiana. And what I was proposing was exactly what you said. And let's just forget for a moment about A, B, or C. Let's just take that out of the game at this point. The suggested way forward would be to stick to our other draft proposal language, but with the clarification in the transition of bylaw that the that the Human Rights bylaw would remain dormant until the framework of interpretation is developed on (unintelligible). That is the - that is a way that I would be proposing forward at this point. So next on the queue I have Alan Greenburg. Alan?

Alan Greenburg: Thank you very much. Tatiana said a lot of what I was going to say and your clarification supports it. But to be clear, I really think we need text in front of us, not A, B, and C referring to things because other than without that, we are still going to have people presuming different things. And, you know, for instance, Greg is, I believe, is correct in that C has - cannot be viewed as an option because it has two different things in it -- one thing in the sentence, one thing in the parenthetical.

So, if you're going to ask us, "Are we agreeing on this way forward?", I think we need to see the text that we're talking about, and not a reference to something else or, you know, a summary that we only have verbally. Thank you

Leon Sanchez: Thanks Alan. Next on the queue I have Markus Kummer. Markus? Hello? Can you hear me?

Markus Kummer: Yes, hello, can you hear me?

Leon Sanchez: Yes, we can hear you now, thank you.

Markus Kummer: Oh, just a few points like (unintelligible) having a bit confused. The last call, I think, (unintelligible) had made some (unintelligible) noises as about what is option C and we have a very forward discussion on the board and for the conclusion that Option B that is deferred to work through (unintelligible) solution. Greg raised many (unintelligible) points that were also made. But to avoid all the misunderstanding the board is totally permitted to having a Human Rights as (unintelligible), but we - the general theory is that (unintelligible) before the host to do that before we have a framework of invitation and the whole considering whether or not there should be a language in the finals and obligation in the bylaws that should be framework of implementation is later.

That is the board's position as it (unintelligible) with the (unintelligible) outside of the position and there is concerns just also in more detail as (unintelligible) proposed language (unintelligible) detail all in writing. And as to your way forward like others we would need to see language before configuring it as it would have go back to the board, but this (unintelligible) more in more detail. But once again, the board really expect (unintelligible) to Human Rights. That's all for now, thanks.

Leon Sanchez: Thank you very much Marcos. So, yes, of course, many have suggested to see the actual language before the signing abuse and I would suggest that we, of course, circulate this proposed language in the next review or the next amendment -- amended version -- of this document so that everyone can, of course, receive the actual language of how as we would be proposing it. And in the meantime we will be, of course, also while we're waiting for GAC input and I think that could help us move forward on this issue. Next on the queue I have Marília Ferreira Maciel.

Marília Ferreira Maciel: Thank you very much, Leon. This is Marília speaking, for the record. I'll be very brief. I'd like to support what has been said by others -- Markus and Alan -- about the need to have the language in front of us and one that is confused with the A, B, C too. I'd just would like to remind us that we are here together to establish a language in the bylaws. That's why we created Work Party 4 in the first place and we were very successful in having an outcome that was largely (unintelligible) the public comments here.

But I think if you're not here to go back to (unintelligible) and renegotiate (unintelligible) specific to the bylaw and not we would actually find the best way forward to do it, and I think what you have proposed and that has been supported by others is actually a very good and elegant solution. I know that we had been using actually California law and international law as a backstage of what we are discussing, but it's very common and natural in other legal systems as well as you've been hearing that Latin America that we have a non-specific called, "(unintelligible)" of secrecy in place which are general norms that (unintelligible), for instance, is a very good example way given to markets which is the main watch regulating internet in Brazil as a general principle and it'd probably discrimination between that the packages with the exception of management that is indispensable for the work of the internet that we are each this essential traffic management case.

This is something that is not that in the (unintelligible) of your law. This is something that is going to be and defined by further regulations that is more technical that goes into details, but that preclude the fact that we have a principle in place that that internet transition should be respected in Brazil. Of course, after the principal was approved, that did not create changes in the market from (unintelligible) because we are all awaiting regulation and to be approved any place, so that's what we call the "norms of contain to secrecy".

I think that we're trying to do here is a familiar solution and I think that you have a proposed a good way forward. I think it's just for us look at the language and my feeling is that these are all converged or system of points of agreement after we see the language that we had being discussed here - discussing here and that you have a (unintelligible) proposed (unintelligible). Thanks.

Leon Sanchez: Thank you very much Marília. Last on the queue, I have Kavouss. Kavouss, could you please take the floor?

Kavouss Arasteh: Yes, thank you. I think your proposal was your suggestion perhaps was that we agreed for the time being we do not (unintelligible). We agree on the text of the third proposal quoting the facts by adding that, the implementation of this would be deferred until the framework of invitation of that is approved. That is the text that we are offer you.

I think it is better that you put it with the judgment of the people now and do not wait of outside because we don't want the term to ask. So if you still sticking to your proposal, please put it in the clean and correct language that the situation as I have explained. Did I understand your position clearly, Leon? Thank you.

Leon Sanchez: Thank you very much Kavouss. And, yes, you deep understand clearly. The proposed way forward, again, is to stick to our language in the third proposal and to add a clarification in the transition of bylaw that the bylaw would remain dormant until the framework of interpretation is developed; therefore, not being enforceable for any issues until the framework of interpretation would be developed. That would be the proposed way forward, and I would suggest that we, of course, circulate this language in our review to the recommendation 6 document and that we also ask our lawyers to provide us

with a proposed text that correctly reflects what we are trying to say here and that, I think, would address everyone's concerns because it would, of course, honor the work that has been undertaken by Working Party 4 and that it has been widely supported by the comments in the comment - the (unintelligible) previous and would also, I think, address those concerns raised not only by the point, but by others as to how the bylaw would actually be in operation and when -- so that would be the proposed way forward.

And with this, I would like to close this item for the day and as I said we will be circulating the proposed language for everyone to have a look at it. We will touch base with our lawyers to check on whether these proposed language would actually be reflecting to discussion and we would also be waiting for GAC input on this issue and hopefully we will be coming back to the discussion to approve the final version of text.

So, I would now like to move forward in the agenda and for that I would like to turn to my co-chair Thomas for the next agenda item. Thomas?

Thomas Rickert: Thanks very much Leon. We're now going to give you a very quick update on where we stand with language or the proposal on the individual board member removal process. And to be specific you will remember we discussed that it is required for us to come up with language that eloquently protects as all AC leaders or community members raising concerns about an individual board member to shield them from being sued or having other disadvantages in case the (unintelligible) being attacked, so to speak, by the director in question.

Also, there was the discussion on to what extent I can should identify both individuals. There on the other hand we discussed what was required for the director in question to be able to defend him or herself against the defamatory claims that - or acquisitions that I raised and we had concluded on an interim

basis or discussions by asking our lawyers to get in touch with (John Stage) who tried to find mutually acceptable language that enshrines the objective that we want to have in our report and we've heard from our legal team that they have to reached out to (John Stage), but that it had yet to been possible to have that convolution. So, that's a quick update.

We promise to get back to the topic during this call which is why we're going to - or that why we are updating you in this session, so actually there's no incentives or substantial news to report, but we do hope that in the next couple of days this conversation will take place and then we will hear back from our external counsel.

Already allows us to move to the next agenda item which is on the AOC reviews or Recommendation 9, our first meeting, and (unintelligible) second of discussion. On that and before I hand over to (Steve), I would like to point out that on these recommendations - on this recommendation we clearly see that we have very well incorporated and analyzed other comments beyond the board comments -- so I think that there's evidence that's clearly that the allegations that (unintelligible) is on his comment is far from the truth.

Well, with that I'd like to hand over to Steve to present us with an all view of the main question to be discussed and options on how we might wish to proceed.

Steve DelBianco: Hey Thomas, it's Steve DelBianco. Glad to do that. Annex 9 refers to Recommendation 9. This is incorporating the commitments and reviews from the affirmation of commitments into ICANN's bylaws. These recommendations arose from Stress Test 14 and that regarded ICANN's ability or the NTI's ability to cancel the AOC at any time with just a few months' notice.

It was brought to port in all three drafts for bringing the commitments and reviews into the bylaws the board submitted - the board supported as well, and staff summary of the third draft public comment round showed 45 in support of the Recommendation 9 and only 9 against and so what we're going to do here is cover some of the comments. There are seven of them. First one is that many folks notice that our recommendation and Annex 9 several times mentioned that there are four AOC reviews including the Consumer Trust competition and Consumer Choice Review of the new gTLD program, we neglected to include the text of that review in Annex 9 so it was error admission.

Some of the early drafts had it and then it fell out when we published. And, of course, I'm referring to Paragraph 2, Paragraph 6, Paragraph 35. There are many places in there where it was referenced. So it's not so much as a change as just restoring to the draft -- the detail that's necessary. And that's sort of ironic because we've spent quite a bit of time in the last several days discussing one aspect of that review which is the inclusion of consumer trust and how that commitment to review consumer trust is present in the new gTLD rounds.

All right, so let's go to - that's the first comment. I think we've got that one covered. The second comment is to confirm or discuss the notion of incorporating all the reviews and it's not just the four OAC reviews, but also the (unintelligible) functions review into the bylaws. We had three comments that were against the very idea of bringing the AOC into the bylaws. (Robin) and (I.P. Justice), (Nelson Muller), and Richard Tindal suggested not to bring it in there at all and we had that and we had two comments from the NCE, UC, and the NCSG suggesting only that the accountability and transparency

review what we call the “ATRT” should be brought in, but not the other reviews.

So, I examined the rationale for that and we can have a discussion here, Thomas, about the merits of bringing all the reviews in and none of the reviews in, but the vast majority of comments supported, as I said, 45 in support of having all the reviews brought over to the bylaws. So, Thomas, how would you like to proceed on that one?

Thomas Rickert: Thanks Steve. I suggest that we open it up for comments from the group on this aspect and send some individuals have like the apps for a break for them to have a break after we discuss this very question. Are there any comments on this - on the extent of what the number of reviews that should be incorporated?

So we were - if you remember that our user practice works as we take a look at the comments and in the (unintelligible) correction for a change of our report we would then stick to what we had in our report. But I think then (unintelligible) plans on this issue that we continue on the basis of what's in the report. Steve, would you be comfortable with breaking now for ten minutes and then we convene and discuss the remaining questions?

Steve DelBianco Of course.

Thomas Rickert: So, thank you very much for that. And so I suggest that we reconvene at 30 or 40 to and so we have a ten-minute break as of now. We can (unintelligible) the recording stop in the meantime. Thank you.

Thomas Rickert: Hi everyone, this is Thomas again speaking. Can we get the recording restarted please?

Coordinator: The recordings are started.

Thomas Rickert: Thank you so much, sir. And with that, we can continue our conversation on the general Item Number 5 on Recommendation 9 and we have covered the first two questions before we broke, and now I'd like to hand it back over to Steve to introduce the third question.

Steve DelBianco: Thank you Thomas. The third question is based on public comments discussing that the ATRT -- that's the Accountability and Transparency Review of the AOC -- that could it include a midterm review of the independent review process or IRP? This is discussed in more detail on Page 12 of the documents that you have in Adobe which Paragraph 89.

And what I would give it sort of a backdrop on this is that while it could if the community wanted to and then whatever we do in ATR key is we in the community that can examine any of the accountability and transparency mechanisms that ICANN is using and, of course, the IRP has been a frequent topic of previous ATR key's and there a number of you on the call that have been a part of that.

So the community could, of course, examine the IRP at any point that we did an ATR key. Now under the proposal in here, the ATR key reviews would occur no less frequently than every five years -- so at a minimum every five years -- so the community could convene an ATR key much sooner and possibly in time to do a midterm review of the IRP.

I do think that as a practical matter that the ATR key is a big undertaking and with so much on our plate it's not - it may not be reasonable to simply expect that we've addressed this comment by saying that the ATR key could convene

sooner, so I feel like that's a possibility and probably not a satisfactory way to address this comment.

Also on Pages 9 and 10, I wanted you to know that in the document and screen for Annex 9 that we have required ICANN to do an annual report on the status of its implementation of review recommendations and that is a new requirement being added to the bylaws and it was in fact derived from previous ATR recommendations. I wanted to note that we could add on Pages 9 and 10 that that report done annually by ICANN would include the status of transition recommendations such as the recommendations we're developing here in CCWG and CWG and include any of those implementation updates as part of that annual report and that report would be helpful but wouldn't, of course, do a midterm review.

So where that leaves us is that we are probably likely to defer this for consideration by our IRP Implementation Group. Now Becky's still on the call with us as well. "And to what extent would the IRP Implementation Group just currently working be able to address this midterm review concept of the IRP?" Becky, would you like to respond to that possibly?"

Becky Burr: Sure, and I think that we have discussed in several concepts that in several times the notion that there has to be continuous review and continuous improvement as the IRP process so - but I would expect that, in fact, ongoing review mechanisms would be built into the procedures. It's quite typical anyway in these sort of systems to have those reviews -- so I do not see that as a stretch at all. It seems to me it we should expect that there will be reviews associated with it.

Leon Sanchez: Thanks very much Becky, and thanks Steve. Can I ask you whether there are more contributions or comments from the group? So the suggestion is to put

into our report that the recommendation is to be put in front of the IRP Implementation Group, but is there are any objection to this way forward? Kavouss?

Kavouss Arasteh: Just could you repeat the last proposal - the last six conclusions please? Thank you.

Thomas Rickert: Thanks so very much Kavouss. So basically there was the discretion on whether interim or midterm reviews of the IRP should be held. And the suggestion they advised Steve and supported by Becky is that this question would be dealt with by the IRP Implementation Group and since there are a lot of implementation related aspects that aren't on the table for that group, I would personally support this suggestion because improving the IRP on a continuous basis is something that we need to do anyway and leaving the decision to that group during the implementation only looks like it's straightforward.

So Kavouss has agreed with that. In the chat, I don't see any further hands up or objections and so I would like to invite you, Steve, to introduce the next question which is Question 4.

Steve DelBianco: Thanks Thomas. Before I jump to that, I did want to point out to folks that I think this is first reading that on Page 12 of this document Paragraph 89 was assessing and improving the independent review process so we have added that to the specification of the ATR key as, you know, sort of a marker that it's something that should be taken care of in the ATR key review.

That doesn't make that a midterm review, right, but it just makes it explicit. And I wanted to be sure that this came from center and we want to be sure that

was acknowledged in the first reading -- that's Paragraph 89 on Page 12.

Thomas, and if you're okay with that, then I'll move onto the next one.

Thomas Rickert: Please do.

Steve DelBianco: Great, all right. So the fourth -- and there's only seven of these that we have to cover -- so the fourth comment here on Annex 9 regards a suggestion that GNSO itself needs a larger presence in some of the affirmation reviews that deal exclusively with the gTLD space -- so those are the two reviews the first on expansions of the new gTLD space -- the fourth review -- and the third review and the fourth review which is a review of who is or its successor so that only applies only to the gTLD space.

So there were three commenters within the GNSO Commercial Stakeholders Group -- the Business Constituency, the IPC, and the U.S. Conference in International business, right? I think the concern is well argued that there are seven constituencies in the GNSO that have well, quite frankly, very divergent interest and under the proposal we have we have a team composition -- it's on Page 9 of your document -- and it suggests that each AC and SO -- and that includes the GNSO -- could suggest seven prospective members and so more than likely the GNSO would be offering up one from each of its constituencies.

By then we suggest that the AC and SO chairs would select 21 total review members from all of the candidates that were submitted -- and, of course, if we had all of the AC's and SO's submitting seven, we'd have nearly 50 candidates -- and then the chairs of the AC SO's would select at least three from each AC SO for a total of 21 review team members.

And on previous conversations it was the discussion that 21 might be too large, and yet we needed it to be inclusive enough to cover potentially three from each of the AC's and SO's. Now in Dublin we agreed to add the notion that if any AC and SO had suggested fewer than three, well, then those extra seats would be available to the GNSO or to other AC's and SO's that had many more members who wanted to participate -- so that is only partially satisfactory to the SCG concern since there's no guarantee at all that we would have more than three from the GNSO in case all the other AC's and SO's filled up their slots.

So Thomas, this is a compelling argument, but it is only from a minority of us in the SCG and I would turn it back over to you for how to proceed.

Thomas Rickert: Thanks very much Steve, and thanks for introducing this sort of view of the comments received. Before we move to the queue, let me just say that the comments that we received were from the GNSO so I'm - when you comment on this let's just bear in mind that changing the numbers involved might lead to a discussion on the overall number of seats in the - on the review teams and as Steve rightfully pointed out, there already have been discussions and concerns about the size of the review team -- so I'm not sure whether it's - it really serves the purpose of the review teams to be further augmented. Alan, and then Kavouss.

Alan Greenburg: Thank you very much. The AO did not comment on this. I know I have personally expressed some strong concerns for what was being proposed, but we chose to use an expression letter, "Sleeping Dog Lie". If this changes, then the (unintelligible) will be vocal. What we're proposing right now I believe, will result in a bloated structure as it is right now.

The current CCT review is an example -- has 13 members. The political pressure on each of the AC and SO chairs to name people from their group is going to be such that it's going to be really hard for the GNSO chair not to select seven people in any case if the numbers allow according to the rules.

Greg in the chat said the GNSO is a container. Well, so is the AOC. We have five different regions represented and sometimes these regions have very different perspectives and we would have literally no choice but to make sure they are all represented as well. The political pressure on the chairs is going to be such that it's going to be really difficult to have a lean and mean group. We've already said the group can be large and then we're adding an unlimited number of participants to quote the proposal.

We're going from review teams which have perhaps 15 people including experts to groups that are going to be very large and it's going to be very different beasts and I think they're going to be extremely hard to manage and get good results out of them -- so adding more at this point reopens the whole thing and we really don't want to do that. Thank you.

Thomas Rickert: Thanks very much. Kavouss?

Kavouss Arasteh: Yes, this situation is the first of a concern about the size of the group from the viewpoint of manageability or we are concerned about the balance within various group. Since the section of some of these SO or AC's are quite different from the others, I see no problem to the extent that the final number will be manageable and the balance would not be drastically changed why not to satisfy this diversion of things.

I don't think that having five region really necessitate that we have increased the numbers because there are many others that have five region. You're not

talk of the region of the solution, we are talking of the subject and contend this resolution in GNSO is a very, very vast group so not to (unintelligible), of course.

I do not want to get into a problem with Alan, but I think that we should look at that marker size to be manageable and balance should be maintained to the extent possible. Thank you.

Thomas Rickert: Thanks very much Kavouss. So it's a tough call now, but the way that I suggest the discussion continuing is that we do seem to have traction for amassing the group size primarily from the GNSO that has placed this request. The - I see a lot of concerns where it's about the size - the concerns about their groups being able to deliver and to be able to deliver on time.

So I think that, you know, since this is about such reading on this topic the preliminary conclusion that I would draw from this is that the request of the group does not reach a sufficient traction from other parts of the community but let's see how the community is - further continuing this discussion but in the absence of more traction for lamenting from other parts of the community, I think, implying work method and looking at how much the support request for changes we get just to predict that we prescribes that we stick to what we have in our report at the moment.

So with that Steve, I'd like to ask you to move to the next question which is going to be Question 5.

Steve DelBianco: Great, just three more to go, folks. Number 5 is a discussion of the board's proposed change to the way we describe the charter of the new review team that we look at "Who Is" and their change is in Paragraph 113. It's on Page 14 of the documents that you have in front of you. You'll see it's a relatively

small change that clarifies broader terminology so that the word “Who Is” doesn’t in anyway sort of lock in our concept of what we’re reviewing here.

It says, “Reviewing the effectiveness of ‘Who Is/Future Registration Directory Services Policy”, so we had had “Who Is/Directory Services Policy”, but the board has added the word “Future Registration Directory Services”. As repertoire for this section I see that as a helpful clarification giving us broader terminology and in no way frustrating what the working group had done earlier.

So Thomas I see no concern with that and if you don’t either, I guess, we can move on. Go ahead?

Thomas Rickert: I suggest we do move on and should there be any concerns be others do raise them in the chat window, but I think this should be uncontroversial -- so please move on.

Steve DelBianco: Great, just two more to go. Number 6 -- and we - this is on Page 1 on Annex 9 -- refers to the question on whether to bring an affirmation of commitment Item 8B as an ICANN fundamental bylaw or not. Now, the discussion we’ve had on this in previous drafts is this idea that affirmation of commitments 8B suggest that, “ICANN deferrals commitments remain on not-for-profit corporation headquartered in the USA with offices around the world to meet the needs of a global community,” so the affirmation of commitment includes that, well, that affirmation.

What CTWG had noted in our third draft is that there are two ways in which that is reflected in the articles of incorporation and bylaws. The first is that ICANN’s current articles of incorporation state that ICANN’s a nonprofit,

public benefit corporation organized under California law -- it's Article 3 of the articles of corporation -- and that is (unintelligible) in the article.

Any change to the articles would require a 2/3rd's approval of both the board and members. Now, all of us know ICANN's not going to get a membership structure out of our recommendations. Instead, it's a designated structure so that under the proposal for the community mechanism as the sole designator, we would need to approve any change to ICANN's present status as a California nonprofit, public benefit of corporation and therefore we have an affirmative approval by 2/3rd's as well as we change the articles from reference in member to referencing designator and I'd like to the co-chairs now to address that.

“Do we have elsewhere in our third draft proposal, have we captured and do we have consensus that we are going to change the articles of incorporation from ‘member’ -- this is Article 9 -- from ‘member’ to ‘designator’?”

Thomas?

Thomas Rickert: I think we do and Kavouss is ready to pass and the (unintelligible) problem to Kavouss which is also concern in the chat. Kavouss?

Steve DelBianco: I do have another - I do have a second element of that point before we go to question-and-answer. Thomas, if you - and Kavouss would you yield for just one moment longer?

Kavouss Arasteh: (Unintelligible), Steve. The (unintelligible) Kavouss.

Steve DelBianco: Kavouss, thank you very much. So I said there were two ways in which we have addressed 8B from the affirmation. The first way would be the articles of incorporation and (Natu) has just confirmed that Recommendation 3 is to

change our articles incorporation from member to designator. That indicates that we, the sole designator, have to affirmatively approve any change.

So the second way is that the headquarters commitment of 8B is already in ICANN's regular bylaws. It's in Article 18 Section 1 where it says that the principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California and ICANN may also have additional offices outside the United States as it may time to time establish.

That is the bylaw that gave rise to the affirmation of that in 8B. So the board could propose to change that bylaws provision and it's a regular bylaw, the community mechanism as sole designator we have the opportunity to block that change. So CCWG, repertoires, and teams had earlier concluded that we have both the ability to approve and to block a change according to affirmation of 8B.

It was under that - it was under those conditions that we felt that it was adequate already and it wasn't a need to move Article 18 to a fundamental bylaw designation whether it's we think we have this one covered. So - sorry, Kavouss, over to you.

Kavouss Arasteh: Yes, see I think the members that you're referred to have different (unintelligible) as the sole members that you're talking. You are talking this - two different things, so I don't think that we should complicate the issue and I don't think that we need to open a new extensive exchange of message and so on and so forth.

Your question is quite simple. Whether it should be the standard bylaw or the fundamental bylaw and the answer is a standard bylaw because it is very, very sensitive question and there are a lot of comments on the early first proposal

from the CCWG -- so I don't think that we should put in discussion, should open a new chapter, and we should just, if possible, could confirm that remain a standard bylaw and that mix of the number that you referred to is a small end in the (unintelligible) article with the number of sole member. Thank you.

Thomas Rickert: Thanks so much...

Steve DelBianco: (Unintelligible) may I reply to Kavouss very briefly?

Thomas Rickert: Yes, please do. Please do.

Steve DelBianco: Thank you Kavouss. The reason I bring up the articles item is that this ECWG is anxious to change the articles so that not just for this purposes, but for anything in the articles of incorporation. The right that would've been given to us as a member would be associated with the rights of us as a designator and as a sole designator 2/3rd's of a sole designator means that the community would have to reach its directional and decision to affirmatively approve any change to the articles.

And the reason we bring that up is relevant to this is that because the ability of the community to have approval rights over changes to the articles makes it less necessary or unnecessary to move Article 18 into the fundamental section -- so I do that as informing our opinion on whether to make it a fundamental bylaw. Thanks Kavouss.

Thomas Rickert: Thanks Steve, and thanks Kavouss for your comment. Alan, turn it up. Alan, please.

Alan Greenburg: Just for clarity, it is not Article 18 of the AOC as it says in the red text. It's of the bylaws. Thank you.

Thomas Rickert: Thanks for that correction. We will make sure that we will take note of that to have it corrected in the document. Now as for the previous points, let's try our usual work method and see whether we get sufficient traction for a suggested change and if there's no sufficient correction we will leave what we have suggested in our report.

Please do also remember that the fine list of items that should be fundamental bylaws have underground three public common period by now, so the other implication of changing this would be interfere with this previous broad community support that our report enjoyed on the finalized list of fundamental bylaws.

And, so in fact, I do not see any further wishes to contribute on this. Rather, suggesting to keep things as they are and not confuse different elements. So with that, I think we can conclude in our first reading that our report will stay as it is. So that's good news.

Steve six down...

Steve DelBianco: One more?

Thomas Rickert: ...one to go. So...

Steve DelBianco: Yes.

Thomas Rickert: ...one more question right?

Steve DelBianco: Yes thank you Thomas. This is Number 7. This is on Page 1 of Annex 9. This was a suggestion regarding the affirmation commitment review operational

standards that were promised to be developed as part of implementation. And this is under Paragraph 8 on Page 3.

Our third draft included a promise from ICANN -- and this was discussed several weeks ago -- where ICANN staff promised to published operational standards for the reviews.

And the board has subsequently added an explanatory paragraph to that promise. And that appears on Page 3 of the document in front of you if you want to scroll to that.

I - on the understanding that this paragraph, this promise is about specific recommendation that we already have in Annex 9 and that those would be respected and that this was an opportunity to address the implementation details of those recommendations.

I certainly would have no objection to the board's text. I did want to note though that since the CCWG is making specific recommendations about for instance the composition of the team, the review teams that we welcome the board to present implementation details of that. But we do expect that the board will respect any guidelines or numbers, any specifics that we have in the recommendation itself.

But on that assumption I see no objection to this. Thomas?

Thomas Rickert: Thanks very much Steve. While you were presenting this Kavouss had already stated support for the inclusion of the suggestion as you explained it.

Let's just see whether there are any objections to including this suggestion to make it part of the implementation operation standards that is.

So I don't hear nor do I see any objections to this. So as the outcome of the first reading let's please then take note of the support for the inclusion of this recommendation in Number 7.

So that's good news. Thanks to Keith Drazek also to confirm that he does not object to this. I'd say Steve sterling job. You've as always presented things in a great way. So this was a good discussion with all of you.

And let's see whether there are further comments from the whole group on the list when we publish the summary of this discussion. And let's seek confirmation of our (unintelligible) feedback on those seven points in a week's time.

And with that we can conclude this agenda item and move on to the mission statement discussion Recommendation 5. And that's going to be chaired by Mathieu.

Mathieu Weill: Thank you very much Thomas and hello everyone.

This Recommendation 5 is about the mission statement. And it's not our first reading. It's not even our second reading. It's the third time we are discussing this on our calls.

And it's been certainly providing for healthy and sustained traffic on the mailing list as well.

We are suggesting that we break the discussion into sub parts. And we are not planning to do a full discussion on all the sub parts right now.

We would like to take stock of the recent developments on some of these items and also highlight what we see are the challenges moving forward.

The first - and obviously I will turn to (Betty) in a minute to address the various issues.

First a reminder of where we were last week, we had agreed that the root server wording in the mission statement would need some fine-tuning with the board and the root server community as well.

That's has - we haven't had any written feedback at this point. But that's certainly - that's certainly not yet for approval on our level.

We've had a discussion on a numbers type of mission statement. And we've received a few hours ago a comment from our lawyers who advised to avoid as much as possible the reference in the mission statement to a mission that would be defined in an external document such as the ASO MOU.

And (Azumi) was - has been providing an (unintelligible) suggestion also a couple of hours ago to try and avoid this issue.

I don't know if this - I'm not sure we can actually move that much further at this point because it's very recent language that has been circulated. And we also need to circle this back to the lawyers.

But I think we are at the stage where we are sort of wordsmithing and certainly not in any kind of disagreement on substance on this.

So I think we should keep these action items alive to finalize these wordings. But that's I think all we can do in terms of taking stock on these two issues right now.

Then there was the consumer trust discussion. And our conclusion last week was that we would turn to NTIA for clarification about the intentions of the drafters of the AOC.

And we have received this clarification from (Fiona) and (Alexander). And I think since then it appears to have clarified that we might stick to the current proposal. And I'd like to check that everyone is comfortable with that so that we can take stock of this interesting development.

Before turning to the queue Becky is there anything you want to add on the consumer trust?

Becky Burr: Now I just for those who may not have reviewed it the NTIA responded to my written inquiry saying that the scope the reference to consumer trust in the affirmation of commitments was limited to expansion of new gTLDs and that was the intent.

That was the community could certainly discuss ICANN's role with consumer - with respect to consumer trust. It was not to be in a general sense. No general commitment was to be derived from the affirmation of commitments itself.

Mathieu Weill: Thank you Becky for the clarification and I'm turning to Kavouss.

Kavouss Arasteh: Since clarification of NTIA I fully agree with that clarification that they expect the consumer interest or thoughts or whatever you call them.

But just (take) through the second distinguished colleagues. Mathieu for years and years I have been dealing with this issue. Memorandum of Understanding is a pre-stage of something, a gentleman agreement bilaterally engage the people to some sort of understanding. And the meaning of that is quite clear. We call them Memorandum of Understanding.

And that memoir in French that we understand each other. Understanding means that we may not truthfully agree later one. So it is very difficult from legal point of view to give the same status MOU as the legal provision and put them together in Article 1 which is the basic a fundamental part is not legally appropriate.

I raised this point six weeks ago. But unfortunately I would say as usual I was not heard by some people.

I'm happy that (Holly) raised that issue again and in the third - 3- o'clock in the morning I came to the computer and I tried to contact the people and tried to explain the matter.

So I am not comfortable to make any reference to the Memorandum of Understanding because you try to subordinate something which is more stable to something which may change with the time and so on and so forth.

While I fully agree with the content and purpose of the Memorandum of Understanding but they are not the same level so we should avoid to put them in the article as well. Thank you.

Mathieu Weill: Thank you Kavouss. Next in the line is Alan who had - and (Alec) had been one of the key commenters on the consumer trust issue. Alan?

Alan Greenberg: Thank you very much. This has not been discussed by the ALAC so I'm not speaking on behalf of the ALAC. But we did discuss it in the advisory group.

And our position is like we'll - the position the advisory group has taken is that since this was not an effort to change the mission and change the overall conditions that we accept what the intent was of the AOC.

That's clearly not how we read the AOC and the words perhaps should stand on their own. But at this point given the statement from the NTIA we're likely to withdraw that particular issue. Again that's not a decision yet of the ALAC.

I do have a question now. Are we - I don't believe we've seen a revised version of this section. We've - Becky has done a few slide decks on particular issues but it's not clear that we've seen something that says what it is we're approving.

The ALAC for instance had one other issue that I don't think has been discussed yet in the CCWG on this new proposal. So I'd like some clarity as to where we stand on this. Thank you.

Mathieu Weill: Thank you Alan for the encouraging words regarding the ALAC view. And in terms of you well in your right we are trying to get agreement in general principles first and then move to new wording, new language. So that's going to be their - our next steps.

And...

Alan Greenberg: Okay. But I do note there are - this - there are substantive issues that have not been discussed at all yet. Thank you.

Mathieu Weill: Could you elaborate on exactly what...

Alan Greenberg: Yes, we had...

((Crosstalk))

Alan Greenberg: Yes we had a particularly recommendation and it was a strong one on whether the market mechanism should resign or whether the - where feasible and appropriate clause should remain in the bylaws.

Mathieu Weill: Thank you. That's well noted and we'll add it to the discussion...

((Crosstalk))

Alan Greenberg: Thank you very much.

Mathieu Weill: That's correct. Next is Steve.

Steve DelBianco: Thanks much. You are willing to address Alan's point about tech. We just finished the discussion of Annex 9. That was bringing the affirmation reviews into ICANN's bylaws.

And by including the text of the review on the new gTLD expansion we have picked up in the bylaws text that specifically phrases the consumer trust angle.

I'll put it into the chat right now. This is on Paragraph 35, 36 of the document we just finished. What that had in it was a reference to the AOCs 3C which was the topic of consumer trust that raised the idea that it might go general.

And you'll see that the language we brought in verbatim from the bylaws - sorry, from the affirmation of commitments includes the phrase that ICANN will ensure that as it expands the TLD space it will adequately address issues of competition, consumer protection, security, stability, resiliency, malicious rights and (unintelligible) to use sovereignty concerns and rights protection.

So Alan that would be the text that we are proposing to bring into the bylaws again in the review section of the bylaws, not in the core values, not in the mission statement and that those commitments are necessary to do the review of any expansion of the new gTLD space.

So that addresses I think the text that is in the affirmation today bringing it into the bylaws but not in the core values. Thanks.

Mathieu Weill: Thank you Steve. So in summary what I'm seeing on the consumer trust issues that we although it's not in the core value section as such because it's not over-arching. There was an intent that it was at least focused on the expansion of the gTLD space it's not discarding consumer trust from ICANN in any way.

There is a - the CCT review is part of the bylaws in our positions as well. So I think that's the kind of balance that we have currently in the text.

And I'd like to check if this which is currently the - which was the - so a draft proposal is raising any objection in the group at this point or we're looking sort of in general or in principle agree on that on that approach?

I think (Marilyn) I think we've had substantive discussions several times on this. So we'll - our next step is providing language obviously that's not to say that it's - that comments cannot be received at the language stage obviously.

But I think we'll take that as directions for drafting in the next steps. Malcolm your hand is raised.

Malcolm Hutty: Sorry Mathieu can you clarify what you're proposing please? Are you saying that what we have at the moment is sufficient or are you saying that you want to add additional language on consumer trust?

Mathieu Weill: I'm saying that the general direction is that we're keeping what was in the third draft which...

Malcolm Hutty: Okay, thank you.

((Crosstalk))

Mathieu Weill: ...and is that there is the CCT review incorporated in the bylaws. And the consumer trust does not appear as a core value itself in the initial articles of the mission statement.

Malcolm Hutty: Thank you.

Mathieu Weill: So the next items I think are more of a summary of the discussion we've had. And we - we'll have the discussion on ALAC's point on market mechanisms.

But I think the core of discussion on mission statement remains the discussion about the ICANN's enforcement powers and whether the scope of ICANN's ability to enforce contracts should be limited and how and to what level.

And there have been some - I think some very clear expressions in the list about views from the group. And those views are not necessarily compatible with each other. There's been a lot of debate on that.

And what we received a few hours ago was also a high level comment from our lawyers which was highlighting that there might be a need to stick to general principles at the bylaw level and especially in the mission statement and except that the IRP panel might have to interpret these general statements because they did not really see a in management way forward.

And I think I'll turn to Becky for a summary on that. I'm not planning to get closure on that discussion right now because I think it's certainly too ambitious.

But I think we all need to recognize that probably we're - we might not be taking the right approach if we're trying to nail down all the details in that discussions in the bylaws. And that's certainly calling for some sorts about how to move forward.

Becky you - your hand is raised and I'm sure you'll provide a more accurate summary.

Becky Burr: Thanks. I first want to go back to Alan's comments about other comments on the mission commitments and core values.

When I circulated the deck for I guess several meetings ago I also stress circulated two side by side documents. One of them was a comparison, an annotative comparison of the current bylaws and the third draft proposal with notes about comments on the third draft.

ALAC had in addition to the consumer trust comments a comment regarding preservation and enhancement of the neutral and judgment free operation of the DNS which was not a properly transposed from the NTIA requirements.

And so on the list we discussed changing that to preserve enhance the neutral and judgment free administration of the technical DNS and operational stability.

In addition to the consumer trust ALAC in what is now core value Number 4 objective to the deletion of where feasible and appropriate regarding dependence on market mechanisms.

And Alan is correct, we have not had a detailed discussion on that. We did discuss it after the second draft proposal. And we will again discuss it.

But unless anybody think everything's being swept under the carpet as seems to be the concern it was clearly marked down as a specific comment to be addressed with respect to the core values.

Now doing to the other mission statement issues, the general issues remaining I think that there are two large discussions. One is the subject of a great deal of debate on the list.

And I would encourage people to read and think about and weigh in on these. And that is whether there should be and if so to what extent any limitation on the scope of ICANN's agreements with contracted parties.

And this goes to the heart of, you know, whether people in applying for new gTLDs for example can include commitments designed to secure the support of a particularly community for their application. And if so to what extent can ICANN enforce those commitments?

I think that that - the discussion on the list is still extremely divergent. There's quite a degree of divergence on the list about it. And that goes to, you know, how do you know when something is truly voluntary?

Others would say, you know, if people put things in their applications in order to gain an advantage in the selection process how can it be right that we not hold them to those commitments after the fact? There are a number of other views on that.

In addition there are, you know, sort of very fundamental freedom of contract provisions and questions about the stability and security of the agreement between ICANN and a registry operator or a registrar and the extent to which both parties to those kinds of commercial agreements can rely on the terms and conditions that they agree to versus equally serious concerns about using subtle or not so subtle pressure to impose conditions to their contracts that ICANN could not get through a policy development process in the sense that they would be outside of its mission.

I think that's a - it's still, you know, it's still pretty polarized. And anybody who has suggestions for middle grounds I think we would love to hear them.

The other and somewhat more straightforward conversation is the grandfathering provision that we have, you know, provided some or clarification with respect to what the grandfathering means.

But there is a specific request for confirmation that the provisions of the agreement including PICs can be renewed as they are without being subject to question as exceeding the scope of the - of ICANN's mission.

Again I think that there's a - you know, there are fairly simple answers with respect to the standard PICs. The issue is more complicated by the fact that many operators propose individual PICs and it's very difficult to go through those and understand to what extent they are, you know, within ICANN's mission or not.

So again - again this does come - does involve some freedom of contract provisions. It's a close call on the kind of voluntary cut.

We have - while we have some time I think it would be just very useful to have some general conversation. And I would really like to expand the conversation to include people who are not participating at this point to see if we can try to identify some areas of agreement and consensus.

Because as I said I feel like we are quite polarized on the list at this point.

Mathieu Weill: Thank you Becky. And I think it's indeed high time that we probably reinitiate the way that we're looking at this from the lens of what we agree on because that's the kind of thing we can take forward in our recommendations.

I see that Alan's hand is up and then Andrew. Alan?

Alan Greenberg: Thank you very much. I put my hand up originally when Becky made the statement or somebody made the statement of sweeping issues under the carpet.

I raised the issue of the market issues not because I believed it was hooked under the carpet. I just wanted to clarify that it's still - was still to be discussed.

And we keep on using the term mission as synonymous with Article 1 of the bylaws which include things other than the mission. So it was a little bit confusing whether we had intended to be talking about it yet or not so I just wanted clarity.

In terms of the question that Becky just asked I don't see how we could even be talking about a concept where ICANN could have contracts that it could not enforce.

And in any of the TLDs which are community TLDs there may well be content issues. And I - how we could think of having such a TLD and say what you've committed to is something that we - you know, we don't care. You can go do anything you want after submitting an application. I don't understand how we could have a contract that we could not enforce. So I need to be enlightened on this. Thank you.

Mathieu Weill: Thank you Alan. And bear in mind I think we should not replay this discussion right now in the call rather while we try and identify how we can move forward on this.

Turning to Andrew now. Andrew?

Andrew Sullivan: Hi. Thanks. Yes I don't of course want to replay the discussion. I've sort of been trying to think about how to walk between the two quite reasonable observes first of all that, you know, ICANN needs to be able to follow its contracts and enforce them in some way which particularly if they're voluntary how you decide that they got there on the one hand.

And on the other hand the sort of narrow and limited goal that we have because I think some of the arguments there have been reasonable.

But it strikes me that there are two things that we have going for us. First of all there is this narrow fact that we keep sort of dancing over but I don't think we're always being clear about it that what ICANN is really doing is enforcing the terms under which it agreed to a delegation from the root zone. And so that's what ICANN is really agreeing to.

And so it seems to me that under those circumstances, you know, we have to be able to permit - we have to be able to permit that kind of enforcement. I don't think that - that seems only reasonable.

Now the question is whether the terms that are in those agreements are reasonable.

And it - I'm sorry I haven't sent this to the list but it really only occurred to me sort of last night.

It seems to me that we have a different mechanism that we could use to avoid ICANN imposing pieces in such agreements that we don't like.

And that is we've got all of this other mechanism that we're building to try to prevent ICANN from stepping outside of its remit.

And so we could use that mechanism instead to avoid ICANN stepping past it, you know, past its remit.

And that gets us out of the possibility of ICANN imposing, you know, conditions that go down the tree whatever at - while at the same time permitting ICANN to enforce terms that it has agreed to a delegation under. So that's a suggestion that I have.

I'll try to write this down maybe a little more coherently. But I just wanted to get people may be thinking about that to try to see if there's a middle ground there. Thanks.

Mathieu Weill: Thanks Alan. I'm sure we'll need your support in finding a way forward here.

Malcolm, Greg and then we'll close this discussion.

Malcolm Hutton: Thank you. Firstly I'd quickly like to help Alan here as to how people could be proposing that ICANN has contracts he doesn't enforce. The answer is nobody's proposing that.

What we're proposing is that ICANN shouldn't enter into those contractual commitments in the first place.

But in terms of getting out of this I come back to what you - where you said when you opened this Mathieu when would be advice from the lawyers.

It may be that the question or the difficulty of describing how every last PIC should be approached in this way in the way that we're trying isn't going to really solve this problem for us. We're never going to be able to do this that we should actually accept the advice from our lawyers.

But we need to establish a principle that we support and then leave it to those that are charged with it to apply that principle in using the structures that create. Namely the board will decide what is the right way to interpret the mission.

And in the event that there is a substantial disagreement over it and somebody wishes to challenge it ultimately the IRP will review that decision.

If we try to put ourselves now in the place of having this discussion I - down to the nth degree I'm not sure we're ever going to come out of it.

Mathieu Weill: Thank you Malcolm. That's a very useful suggestion. Thank you very much. And I think that's probably what we need to investigate now how we can achieve that. Greg?

Greg Shatan: Thanks, Greg Shatan for the record. And I apologize to Becky that although she invited those who had not participated in this discussion much so far she seems to have ended up with some of the usual suspects including myself.

But in any case and I do support what Alan just outlined. But - and I think that raises a larger issue of to what extent are the applications part of the agreement.

Definitely though I think with - before we even get to that I think the issue - when you look at clearly what's in the four corners of the agreement, you know, ICANN has the, you know, clear authority to enforce compliance with every obligation of a counterparty. That's really just the essence of contracts, contracts 101.

So, you know, to my mind that seems utterly non-controversial. At the same time, you know, ICANN has, you know, can exercise, you know, business judgment as to how it might enforce its agreements.

But if it completely, you know, goes to sleep on certain provisions I think that raises a, you know, significant concerns. You're not looking for a draconian or, you know, overdone enforcement of agreements.

But it's really of the essence that - of an agreement that it's an obligation to the other party and the other party can ensure that the party with the obligation complies. Thanks.

Mathieu Weill: Thank you very much Greg. So in terms of taking stock of this discussion and moving to the next agenda item I think on this aspect of ICANN's enforcement and the scope they went into - we have lawyer advice that unless it's significantly challenge and I would be surprised we would have to accept.

And we have a clear call for trying and find - trying to find the middle group the areas where we agree on so that we could put them into the mission or Article 1 as Alan rightfully said.

And I think that should be our target on the list in the next few days so that we can start moving to a more constructive productive way to conclude the discussion taking stock of the various questions and aspects that were raised and also bearing in mind that we need to find consensus so that we require at some point that not everyone's expectations can be 100% fulfilled.

So I think with that I will - maybe that on the mission statement we've at least clarified the consumer trust approach for now. And we'll try to reconvene on this discussion with a - also a more language next time and hopefully based on the fruitful outcome of our mailing list discussions.

And the next agenda item is going to be Recommendation 11.
Recommendation 11 you will remember was previously known by the name

of Stress Test 18. It's about the obligations of the board to with regards to GAC advice.

And before going into the key discussion items that were in the document I will actually turn to Steve for a couple of items that were unfortunately not get into the document but need to be discussed because they were part of the comments we received and probably can be captured in a satisfactory way as far as the discussion on the mailing list is relevant.

And so Steve can you enlightened us about these additional items?

Steve DelBianco: Thank you Mathieu. The first is regarding the question of whether rationale should be required when formal advice comes from an advisory committee. And the other is the notion of whether the board could act on GAC advice in a way that was inconsistent with ICANN's bylaws.

And these are comments that were part of registry constituency and others. And there have been significant discussion on list with respect to whether our third draft proposal adequately explain that.

So before we turn to what you have on the screen there I wanted to suggest two things we could add to Annex 11 to address the two issues.

The first this notion of rationale. You'll recall that in our report we had suggested a mention that advisory committees would make their best efforts to provide clear explanation for their advice including a rationale.

That has met with I think nearly uniform dissatisfaction since it's not a requirement but merely a best efforts.

So the solution I would propose to that - I'll just put it into the chat is that we add a clarification to Recommendation 11 and we go in Article 11 Section 1 which regards all advisory committees, not just the GAC that was the subject of Stress Test 18.

And it would say that all formal advice of advisory committees must be accompanied by a rationale for such advice.

It seems like a rather obvious and straightforward requirement. And it is much better than suggestion we would have a mention of a best effort.

So Mathieu I put that here for a first reading as...

Mathieu Weill: Yes.

Greg Shatan: ...the suggestion to solve a discussion that's been going on on list. How did you want to react to that?

Mathieu Weill: Well taking into account that there was a lot of support expressed on the list I would just like to check whether there's any objection to that clarification that providing a rationale is a requirement and not a best effort and it's all - it applies to all AC advice.

I assume that Malcolm and Greg's hands are like old hands here, yes? And so I'm turning to Kavouss on that point. Kavouss?

Kavouss Arasteh: And obvious nothing could be mentioned without any reasons whether you call them reason rationale or anything else.

And I don't think that we have any problem about this. And I think this one and the second proposal (obviously) is normal and (unintelligible) think and I personally fully agree with that. Thank you.

Mathieu Weill: Thank you very much Kavouss. Next is Chris Disspain. Chris?

Chris Disspain: Hi Mathieu, thanks. I'm fine with having rationales. I just want to ask you a question which is there (unintelligible) some sort of process for dealing with the possibility that how others don't think it is a rationale? I'm not saying it should be. I'm just asking.

May - if I called it a rationale then just say because I say so. How does that make sure that the rationale provides is actually understandable and indeed rational?

Mathieu Weill: And what's your suggestion Chris? I would be tempted to...

((Crosstalk))

Chris Disspain: So I - I'm not - I don't have one other than to say if we're fine with just making the statement that a rationale should be provided I'm fine with that.

But I just think we need to be aware that there's no - there's not necessarily any follow-through from that.

The intention that something's supposed to happen with it then we wouldn't declare to follow through. I'm not advocating that. I'm just raising it as a point.

Mathieu Weill: Thank you. Okay, not sure how to proceed with that. But I'm turning to Malcolm and...

Malcolm Hutty: I think I can...

((Crosstalk))

Malcolm Hutty: ...answer that actually. I think it's for the board to decide whether they believe that they have received a rationale from the GAC in accordance with the requirement so as to apply the special rules.

And if they decide that it is then they need to apply the special rule accordingly. And if they decide it's not then the GAC has not delivered the advice in the form that the bylaws require in order to provide the special advice.

And then therefore it's free for them open to the board not to apply that provision. And in the event that the GAC or any other materially affected party believes that the board has erred in the way that it supplied that it is always open to it as it is open on any other matter to seek review by any IRP.

So I think it's straightforward how this is applied.

Mathieu Weill: Thank you Malcolm. Next is Steve.

Steve DelBianco: Malcolm I would agree with your response to Chris Disspain on the way in which to address it with one qualification.

This proposal would not address just the GAC. It would be all advisory committee advice would require a rationale and that would go in that section of the bylaws, not in the GAC section.

So we're not singling out the GAC. We're suggesting that any advisory committee advice would require rationale.

But I think you're quite correct that lacking a rationale in a case where the board believed rationale were needed would naturally give rise to the board asking that advisory committee to please flush out with some rationale.

And like you said if the community or any aggrieved party felt that the rationale did not justify a board action that then violated ICANN's bylaws then IRP is an inappropriate mechanism. Thank you.

Mathieu Weill: Thank you Steve. Alan and then we'll take stock and move to the next items. Alan?

Alan Greenberg: Thank you very much. The whole concept we have here is that this is a device. It's not something the board is required to accept.

So if the board does not feel the rationale has a sufficient basis for following the advice then that's how they make their decision.

I mean I on occasional have looked at board rationales and thought it was a politely phrased version of because we think so or because we decided that instead of really the background rationale.

But it - rationales are subjective and you may not agree with them. And I don't think we can try to define and have a litmus test for is the rationale sufficiently good or not?

It would be nice perhaps in some ideal world but I don't think it's practical. And I think we have to you know, we have a board that - to make judgment calls. And with the - these new powers the community makes judgment calls and rationales. And whether they're sufficient I think is one of those calls. Thank you.

Mathieu Weill: All right thank you Alan. I think we can move on to taking this into account. I think if we - if there's any follow-up this only first reading in the - on the list on ideas how to - that would be acceptable to all. Obviously we could take that on.

But at least I think your requirement in principle for rationale is agreed on.

Steve what was your next point?

Steve DelBianco: Thanks Mathieu. The next point is another item that was suggested in several public comments regarding whether in Recommendation 11 are we somehow obligating ICANN's board to follow advice that could be in conflict with its bylaws and whether this notion of GAC or any AC advice might inherently be a violation of a bylaw where the substance of the advice would be a violation of ICANN's bylaws or inconsistent I should say with ICANN's bylaws.

So I would propose for first reading that we add a - two sentences to Recommendation 11 and Annex 11 to clarify that we cannot restrict the GAC or anyone else about the advice they can offer to ICANN's board. You can't muzzle any AC. They can offer advice on anything.

But it is clear that ICANN's board may not take action that is inconsistent with its bylaws whether that's pursuant to advice or not.

And the empowered community we're designing here would have standing to bring an IRP to challenge any board action or inaction that was inconsistent with its bylaws even if the board were acting on advice of an AC like the GAC.

And moreover we have recommended that ICANN itself would be responsible for the legal fees of a community IRP to make that challenge.

So we have both standing and the means to bring that challenge quickly.

So I will paste into the chat a proposed text for that paragraph. This would add to our supplemental draft in Recommendation 11 in Annex 11.

So while the GAC is not restricted as to the advice it can offer to ICANN it is clear that ICANN may not take action that is inconsistent with its bylaws.

The empowered community will have standing to bring an IRP to challenge any board action or inaction that is inconsistent with its bylaws even if the board acted on GAC advice.

So I believe this would put the emphasis where it belongs not on restricting what advice is but on restricting what the board does in reaction to the advice.

And I certainly hope this on first reading and second reading we could stimulate some discussions to determine whether this address a concern that

was most recently brought up in GNSO council as they debated their concern about Recommendation 11. Thanks Mathieu.

Mathieu Weill: Thank you (Steven). I'm seeing Kavouss saying that it's more than obviously. So I would hope that would be uncontroversial. Kavouss is that a new hand?

Kavouss Arasteh: Yes. I said that for me it's quite clear in a situation how board could accept any advice or anything from anybody in the constituency which is inconsistent of the bylaw. That is quite clear.

More than that, any decision will be made by the ICANN also should be consistent with the bylaw. So that's quite clear.

It was discussed about ten to 11 weeks ago in Becky's group. Everything should be consistent with the bylaws. That is off this article of the first article that actions of the board should be consistent with the bylaw.

If you receive something which is not consistent simply reject that indicating that it is not consistent with the bylaw or this isn't. So these are quite clear.

If you want to add something I have no problem. Thank you.

Mathieu Weill: Thank you Kavouss. And I think that's the point of replying for the comment sometimes to restate the obvious. But it's better when it's written and everyone understands it.

Chris, any concern on this?

Chris Disspain: Hi. No, I don't have a concern Mathieu at all. I think as able and (unintelligible) obvious.

But at the risk of just of being pedantic I - because we're now coming to the time when we're going to be drafting this stuff I think it's important that we say it properly it's not - the second sentence in what Steve (unintelligible) it says the empowered community will have standing to bring an IRP chat to challenge any board action or inaction that is inconsistent with its bylaws. And that's not actually correct.

What the entire community has the right to do is to challenge whether a board's decision is consistent with its bylaws.

In other words the IRP is to bring a finding as to whether the (stand) he is consistent or not consistent. And once that finding has happened then a series of consequences flow.

And I stress that as I said, that may sound very pedantic but from a legal point of view it's an important thing to keep in mind. Thank you.

Mathieu Weill: Thank you Chris and I think we agree with that and I'm seeing Steve agreeing as well. So that's well taken and we'll probably adjust the notes so that it's taken on board.

So that's the second point that we have clarified Steve. And we're getting to Item Number 1. I'm not sure we're going to get to all the items on this discussion on Annex 11 but, at least the more we can clarify the better because we have only five minutes left. But at least Item 1 we should try. Steve Item 1?

Steve DelBianco: Thank you. So Item 1, 2, 3 and 4 are related and all arise - this is on Page 1 of Annex 11. And they all arise from some carefully argued concerned by the

Intellectual Property Constituency as to whether we have inadvertently changed the way the board is obliged to consider GAC advice, whether we have changed inadvertently implications for whether advice that is not voted on by the board would be binding on ICANN.

And as one of the authors of the answer to Stress Test 18 which is Rec 11 we added only one phrase to the bylaws. And that was that any governmental advisory committee advice approved by full GAC consensus understood to mean the practice of adopting decisions by general agreement in the absence of a formal objection may only be rejected by a vote of 2/3 of the board.

So we added only that phrase to the general requirement. And we certainly didn't meant to stir up an implication that voting would be required where it isn't now required.

And Steve Crocker offered some insights about history here where he recounted only two occasions where the board decided not to act consistently with GAC advice. And in both cases they did in fact vote. So that is something that the board does when it's about to reject GAC advice.

But nonetheless with only 4 minutes left what I would propose is another clarification paragraph for Recommendation 11 and ask the Intellectual Property Constituency and others who shared their concern whether we think that this clarification paragraph will be sufficient to help our lawyers to draft Recommendation 11 correctly.

So I'll just go ahead and paste that in the chat. And what I'm trying to get to there is that this recommendation is intended to limit the conditions under which the board must enter its obligation to try and find a mutually acceptable solution. It's about limiting the board's obligation to do so.

And the recommendation doesn't create any new obligations for ICANN's board to consider and/or vote on GAC advice relative to the obligations that are already in ICANN's bylaws.

And this recommendation doesn't create any new assumption that ICANN is bound to implement any advice that is not rejected to the board but also to the bylaws that effect today.

And these sentences were crafted with full attention to what I knew the intent was over the compromise we came up with on Rec 11 but more importantly trying to address the argued concerns of the IPC.

So Mathieu I would hope that we could put that in for purposes of second reading on Thursday and hopefully then have some discussion on list.

And I truly invite the IPC and those who argued their point to give a summary action. Back to you.

Mathieu Weill: Thank you Steve. That's probably also going to be useful to get some lawyer input on this so that we have agreement that it's consistent also because I'm seeing some comments in the chat regarding the level of layer-ish mess of the proposal and that's certainly agreed.

Kavouss, Greg and then we'll wrap-up because it's been a long call already.
Kavouss?

Kavouss Arasteh: Could you kindly say what is the question to the lawyers, to redraft Recommendation 11 totally or draft the last proposal and last (talk up) on (Jay) talking about treatment of the GAC advice by the board?

What did the lawyers are expected to do? And what do we expect from them to be discussed on Thursday within two days they prefer something and open up again this very, very sensitive issue for which there is no consensus in GAC. Maybe we have something we call them all the non-consensus. Again thank you.

Mathieu Weill: Thank you Kavouss. Just quickly I think the question is does the clarification help for clarity in the drafting in the next stages? That's the question, not change anything in Recommendation 11. That's not the question right now.

And finally Greg?

Greg Shatan: Greg Shatan for the record. And I'll try to speak for the Intellectual Property Constituency in this regard though clearly nobody in the IPC other than those on this call has reviewed the language that Steve pasted into the chat which I as a lawyer do not find lawyer-ish.

But in any case I would support this addition to the recommendation at the guidance to our lawyers. I think it's in line with the IPC's comments. And, you know, the point is that there is, you know, no new obligation or change in the way the board deals with GAC advice in this recommendation other than perhaps -- and we haven't gotten to this discussion yet -- at the 2/3 majority. Thank you.

Mathieu Weill: Thank you Greg. That's a good way to close this discussion.

At this point we're aware that we haven't really touched yet on the most substantial areas of this agreement regarding a recommendation 11 that will

provide some additional time also for the GAC and GNSO to provide their formal inputs on this.

But at least we've made progress in clarifying what the recommendation is about. And I think that's also important to remove any misunderstanding.

And with that I'm not turning to Leon for any other business. It's going to be very short I guess Leon?

Leon Sanchez: Thank you very much Mathieu. This is Leon. And yes it's going to be very short just to point out that we will be holding that discussion and on our timeline on our next call. So for those who have been wondering what is going to happen with the timelines but we'll be discussing the issue in our next call.

So at this point are there any other business that anyone wants to raise? We have - we are over time. So I don't see anyone raising any other business.

So I would like to call this call adjourned.

END