

ICANN

**Moderator: Brenda Brewer
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6:00 am CT**

Coordinator: The recordings are started.

Mathieu Weill: Thank you very much. So I am Mathieu Weill. I'm the ccNSO-appointed co-chair and I would like to welcome you for this CCWG Accountability meeting Number 79. We are - have quite a busy agenda today. And a very high level number of items, but you have noticed that a number of them should be, according to expectations, but obviously we'll be flexible if our expectations are not met on this, but a number of these items are about confirmation of previous discussions. Sort of the consent items, if I may use the analogy. So hopefully we can still manage this ambitious timeline.

And to start this call I'd like to do the usual roll call. I noticed that Holly was on the phone line only. Is there anyone else who is on the phone bridge only and who should be added to the roll call? No other mention so far. Maybe is there any update to statements of interest to mention? None either so I think we can dive right into our agenda.

Agenda item Number 2 is designed to ensure we are all in line with the update from the chartering organizations. You'll remember that we have received

feedback on our draft report from our chartering organizations except for GNSO and GAC at this point. While of course we had initial input from the GAC but it was also mentioning that we would receive a more formal one slightly later on in January.

And the point here is to ensure we're all clear about these expected delivery dates because some of the items that we have on our agenda today actually would certainly benefit from clear chartering organization feedback on this topic.

And as far as the GNSO is concerned I understand there is a Council call later today where the Accountability group proposals are on the agenda so I'm hopeful that we will receive some feedback soon. And as far as the GAC is concerned I understand there is a call also planned for tomorrow. And I would like to hear if any members or participants have any further clarity about expected dates so that we can share this information among the whole group.

And I'm seeing Kavouss hand is up so, Kavouss, you're first in line and you have the floor.

Kavouss Arasteh: ...time to any one of you so all of you - first I have two points to raise and I put in the chat and I discussed with you to kindly take that one. Second, I think Jorge Cancio from the GAC is on the line and perhaps in one or two minutes he could brief us because he is the leading person for the little group established in the GAC we try to finish everything yesterday at least to have something. Unfortunately we didn't have any consensus yet. We're working very hard to have something, I don't know what that something would be.

But if you have something to add. I expected to receive some draft today but, unfortunately, nothing has been sent. So if you have something to add I will

request in (unintelligible) possible to brief us because we are working very hard on that but unfortunately, you know, in GAC everything is difficult to achieve. Thank you.

Mathieu Weill: Thank you, Kavouss. And I wouldn't say the GAC is the only place where things are difficult to achieve, certainly not. So - but thank you for the kind update and I think it's indeed shows that since important that this input get clarified so that we can move forward on some of the difficult issues we still have ahead of us. So that's going to -- I noticed that Keith Drazek posted a comment in the chat mentioning that the GNSO expected input would be a summary of the stakeholder group and constituency inputs which have indeed been used in our analysis so far, so that's useful.

And to answer Brett Schaefer's question about Agenda Items Number 10 and 11, indeed, while there is some progress and understanding of comments that we can do on these items, certainly it would be unwise and difficult for us to conclude on the way forward until we've seen the GNSO and GAC inputs on these topics about GAC advice and the GAC as decisional participant.

So we are - these two inputs are becoming more and more importance to receive shortly if we want to be able to make all the decisions on the way forward after the third report.

And Jorge is correcting something that I said which was incorrect. There was a GAC call yesterday and there is the finalization of the updated input which is on the way. And Brett's hand is up so Brett, please. Brett, if you meeting we cannot hear you.

Brett Schaefer: Sorry about that. Yes, just a clarification on Point 10 and 11. You said it would be difficult to move forward without the formal GAC advice. Does that

mean that they're going to be deferred until next Tuesday's call or are we going to still discuss them today later on to the extent that we can? Just wanted to know what is on the agenda.

Mathieu Weill: We'll continue the discussion that we started on Tuesday and move it as far as we can in terms of clarification for instance, which have been proposed and circulated. Certainly I'm not expecting that we can fully come to a conclusion on the way forward but if there is progress we can achieve while we wait for the GAC advice.

Kavouss, your second intervention on this topic.

Kavouss Arasteh: Would try and just try to see whether we could have some progress. However, we should wait until, hopefully, just hopefully, I don't know, whether we receive something from GAC or not. It seems to be very unlikely but let us be optimistic. We have to postpone the main discussion on the GAC until we receive whatever they sent to us. Maybe send to us something that there is no consensus here; there is no consensus there; there is no consensus there that I meant in yesterday, that doesn't help CCWG. To the extent possible people they should try to join the consensus emerging in CCWG. However, we cannot put more (unintelligible).

Having said that, I suggest that the main discussion on the GAC to be postponed to a subsequent meeting but not this meeting. But I have no problem, you go ahead. While having the microphone, I am very, very concerned about this push of all these agenda items today and so on so forth. Still we are doing (unintelligible). I'm very sorry. Please provide more time. There is no deadline, there is objective date. Let us discuss it smoothly and not unnecessarily unremitted but let us discuss it deeply and as smoothly. Thank you.

Mathieu Weill: Thank you, Kavouss. And you're providing me with a very adequate transition, I should say, into Agenda Item Number 3, which is the timeline and the next steps. We circulated a short presentation which will be shared in the AC room in a second, to take stock of where we are and discuss how we can finalize the areas where we have found some stable ground to proceed.

So if you look at what we've been doing over this very very heavy agenda over January, we have analyzed the comments. On January 7 we shared the full spreadsheet which is the first document we referred to here. We've now put all recommendation under review. We've had first readings, the number of second readings as well. We tried to provide - actually I think it was following a suggestion by Kavouss, among others, a type of score card to see where we are.

We have five recommendations that are -- we agreed how to proceed basically, nine are basically in second reading or third reading and four of them we can still say that there are some gaps to bridge because there are some disagreements that were expressed in the comments and we haven't resolved and yet.

And an important point is that so far the changes we have been agreeing on are mostly clarifications trade and I think that's an important point. We have clarified a number of things, provided directions for implementation but not reviewed any of the substantial groundwork that we have been doing from the start of our group.

So if you go to the next slide on the next steps, obviously we need to get the GNSO and GAC feedback to make sure we don't speculate about their views. But assuming that there is no surprise and that our ongoing discussions do not

lead to any big new idea that would be a material and substantial change, it's most probable at this point in our view that the appropriate way forward is going to be a supplemental draft report. So we need to start thinking about how we would put this together and what the steps for putting it together would be like.

So on the next slide, we are trying to provide you with some suggestions and proposals for process for building this keeping in mind that we need to ensure that this is consistent with the conclusions of our calls, that we would keep the structure of the report intact so that people are not lost when they review it and can see where the changes are. We would need to also highlight very clearly the changes from the third report.

And in the finalization we've really taken into account the feedback we've received recently about the ability for everyone, our lawyers obviously but everyone, to provide input and review the documents themselves and the transparency about which comments are taken into account or not and why. So that's the requirements we've tried to factor in. And I should have mentioned our external advisors as well in these requirements.

On the step-by-step process I think once we have concluded on second reading our proposal is that staff co-chairs and rapporteurs clean up the document and publish this on the list and have review from counsel first. Then - but in full transparency on the list. And then another period of review that enables also participants and members to provide any edits that they feel are necessary. And that is the process that we are currently testing for Recommendation 12 in - and you've been seeing the emails on the list.

And our intent, as well, is to provide through a spreadsheet a tracking system for any comments and why they have been taken into account or not. That's

the kind of process we are contemplating right now. And we are obviously open to comments on this process so that we can adjust to your expectations because it's our common work product and certainly we need to listen to you on this.

And I'm seeing Kavouss and at first so Kavouss, you have the floor.

Kavouss Arasteh: Yes, Mathieu, I would like to repeat what I said before. I don't think that the CCWG could suffer all burdens from the situations. Burdens should be distributed. So I think that we should reduce other timelines for others than CCWG between now and the transition of the IANA function and try to reduce their time in order to add some time to ours. This is something that I insist; it does not - it is not fair that we put under the (unintelligible) we can't work more than this that we are working. So we can't do it with (unintelligible) quickly done, badly done. This is first one.

Second, Mathieu, I'm sorry, I cannot agree with your proposal, for the first time, please forgive me. But we have a supplement. Then you make changes and changes are substantial. It is no longer supplement; it is a revision. It is a modification. It is an amendment. So your proposal is to have supplement. I have some difficulties with that regard.

I am much in favor of having a revised recommendation or revised CCWG proposal. It's not to have a third proposal. And the second question is that because of the nature of the change you have to at least discuss with the CCWG whether all agree that this changes does not require to go to another public comment. I am not in favor - I don't want to propose public comment, but I don't want that we decide without discussing. So please can we don't forget this, it is (unintelligible) now, do it at the next meeting. Thank you.

Mathieu Weill: Thank you, Kavouss, for raising this question. Indeed, you're right. That's an underlying question. So on the term "supplemental" I think to my understanding is not that is going to be an extra document but the term used in our charter where we take into account the feedback we've received on the draft report and produce what the charter calls a supplemental draft report. But it's actually a revised version as you are rightly saying, highlighting the differences with the previous one.

And I think the discussion regarding the public comments should be about whether we are actually introducing substantial enough changes that they would need to be reviewed and tested with the overall community. And our assessment so far is that the changes we provided, as I said, are mostly clarifications and guidelines for implementation. And as such we are not seeing, just like you are saying, a need for an extra public comment period.

Alan, you're next.

Alan Greenberg: Thank you very much. The times you show towards the end of the process between various traditions and the time that we have -- we will have to comment on them is just not going to be sufficient if you don't want unexpected final comments from the chartering organizations.

The ALAC, for instance, is putting about - the ALAC advisory group is putting about four hours per week additional meetings over and above the CCWG meetings to try to keep people up-to-date and make sure that what we are talking - when the representatives are on this meeting we are speaking not only on our personal behalf but on behalf of the group.

But nevertheless, we are going to have to actually go back and make sure that the bodies that are voting on this are going to be satisfied. So having changes

come out whether you or the authors or the proposers think they're smaller not, and giving one-day turnarounds is just not going to be sufficient. So there's got to be some place really near the end where there's a little bit more of a gap before final publication or you are going to get surprises that you're not expecting when the final document is signed, sealed and delivered. Thank you.

Mathieu Weill: Thank you, Alan. I think that that's -- there are two comments on this. First, that's just the deadlines for the wording added at the end and that should be consistent with the discussions that we are having now that should, at the end, clarify what the clear outcome is. So you're right, it wouldn't be realistic to expect people to speak up in the name of a community on substantial decisions with a one day or two day turnaround.

And I take your point regarding the need at the end of the process when we reconcile everything for a longer turnaround time on probably the high level summary so that we ensure we have consistency. I think it's a very good point. Thank you.

Athina. Athina, if you're speaking we cannot hear you.

Athina Fragkouli: Can you hear me now?

Mathieu Weill: Yes.

Athina Fragkouli: Okay, I had some trouble with my device. Thank you. Actually, I, you know, the plan you show seems very consistent with the plan we discussed early. And this additional draft and report is also like a very clear element of our discussions in Dublin on the way forward. And this would be - as I understand

this, this will be, say, the draft that explains the changes and how this changes make the final report a bit different from the previous one.

What I'm missing is the concrete date from this plan. Could you elaborate a little bit when you see the submission - the final submission to take place?

Mathieu Weill: Thank you, Athina. And I notice that Mark Carvel also raised this point in the chat earlier. I wish I could. Right now I would say that first of all some discussion we will have a hard time concluding before we get this GNSO GAC input. I'm understanding they're on their way. And as I said, there were still a number of gaps to bridge on a few items. I would hope that we could close them during next week's call but if not definitely - that's still challenging.

So it's a bit difficult for me to provide actual dates and not create the feeling that we are rushing things. So I think we need to take the time needed to conclude and also make sure we have clear expectations from the SO and ACs about when they want things and for ASO it's very clear. But it may not be as clear for others.

To me, and that's just a personal view not a CCWG timeline, but to me if we could - we might be in a position to issue a supplemental draft, something clean for chartering org's consideration during the month of February but it still a challenging time. And I'm open to...

((Crosstalk))

Athina Fragkouli: Can I ask - I have a follow up actually, if I may?

Mathieu Weill: Yeah.

Athina Fragkouli: Okay. When you will look into specific dates and timelines, are you going to do this in coordination with the NTIA?

Mathieu Weill: What do you mean in coordination with NTIA?

Athina Fragkouli: Yes. So because of course, you know, the submission of the report is very much connected with ICG submission to the NTIA. And NTIA has given their timeframe - the time they need to, you know, to process the report and so on. So would it make sense to talk with the NTIA and ask what is their ultimate, let's say, date that they see they can indeed get the report and have enough time to work on it until April 2016 when the transition is supposed to take place.

Mathieu Weill: Thank you, Athina. We were very aware of the delays that have been announced by NTIA. Clearly, it's - Larry Strickling has been on the record saying that every day, extra day hurts the chances of success of the transition by September 13. It was - well it was said several times. And at the same time, there was the clear also some clear statements that consensus and quality of agreement were of the highest importance for this success.

So I think - as you know and many of you pointed that out earlier, staff is doing - is working around the clock to make sure we get these documents that we circulate every day so that we make progress. But, there's a need for everyone to strive to compromise if we want to proceed in acceptable timeframe. And it's difficult for us now to predict that especially before we get all the input from the chartering organization.

Kavouss, you're next, your second intervention.

Kavouss Arasteh: Yeah, my point is in the chat. I don't take the floor anymore. Please read the chat. Thank you.

Mathieu Weill: Thank you, Kavouss. And indeed the NTIA may have the opportunity to ask for clarifications. Thomas, you're next and then we move to the next item.

Thomas Rickert: Yes. Thanks very much, Mathieu. Just a quick point to add to what you've said. I think it would be unwise and disrespectful to the chartering organizations to lose feedback we're waiting to anticipate that we could deal with the feedback in a certain period of time without knowing what their response is going to be. So I think the approach outlined by Mathieu is the best we can do preserving the integrity of the process, i.e. we will come up with projections as to how much time we will need and discuss these and agree these with you once we know about the complete picture.

And another quick point on the question of whether a supplemental draft is needed or not, we have tried to work on a couple of scenarios with and without a supplemental draft. As you know, the charter says that it's in our discretion as a group to issue a supplemental draft and in fact we would not gain any time if we did not issue the supplemental draft because the chartering organizations will need a certain time to review the final report anyway.

So it is our suggestion that we go with the supplemental draft. Personally I think it's a hard way arguing anyway that there's no supplemental draft needed. But rest assured that even if we did exercise our discretion, say that there's no supplemental draft needed we would hardly gain any time with it. Thank you.

Mathieu Weill: Thank you, Thomas. So I think we'll leave it here for this meeting and go for - certainly a second reading or confirmation at our next meeting on the next

step and discussions can take place on the list as well. But we thought it was important to introduce this visibility about what's next and the discussion has been very helpful in highlighting all of the aspects of this discussion.

And I think I will - we will conclude this agenda item at this point. And I move to Thomas for the next agenda item now.

Thomas Rickert: Thanks very much, Mathieu. The next agenda item is actually the third reading on the escalation timeline. You have received a link to the document in its current state with the invitation to - and the agenda to this meeting. So this is primarily to double check with the group whether there's any further need to discuss the conclusions that we've drawn previously.

And that to those in particular to try to make the process of decision making inside the community quicker and more efficient by removing the mandatory community call and make it mandatory instead for the petitioning party to socialize their request and pertinent information to the fellow (component) part of the ICANN community before the community forum is held.

By doing so we would gain some time that would otherwise be Thomas mandatorily spent during the escalation process. And we would then proceed in a fashion that the community conference call or Webinar would still be possible for an organization to request. So the call can be held but it's not Thomas mandatory to do so.

And I'm just spotting that in Subsection D agrees this point remains to be finalized. According to my memory we've actually discussed the process as we have just outlined.

Then we've discussed the thresholds and this is not to be confused with the decision of participant discussion that's going to be held at another opportunity. But we have settled on a lower threshold requirement for fundamental bylaw changes only.

And the last point we've discussed is the question whether percentages should be spelled out for the community to come to decisions and we would clarify the report that every new arrival or the deletion of a component part of the ICANN community would require a bylaw change anywhere - anyway and that therefore a threshold adjustment would be needed in that context.

So let's open it up for questions or comments you might have. And in the absence of further need for discussion we would take this reading as concluding on this topic and actually going to drafting the final language for this recommendation. Not sure whether it's my Adobe - Alan has his hand raised.

Alan Greenberg: Thank you. Just a clarification. I think the text that follows confirms what I'm about to say but to be honest, I'm not quite keeping up with all of my reading.

The change to lower the threshold fundamental bylaws, I see when this deletes all of the discussion of what if some groups do not participate or abstain. This is simply reducing the four to a three in the general case and there is no more special case. Is that correct?

Thomas Rickert: That is my understanding. Correct.

Alan Greenberg: Thank you.

Thomas Rickert: Thanks Alan. I don't see any further hands raised nor do I see any requests for further discussion in the chat. So that was good. We can conclude this agenda item. And I'd like to hand over to Leon for chairing the next agenda item.

Leon Sanchez: Thank you very much Thomas. This is Leon Sanchez. And our next agenda item is in regard to fundamental bylaws. And we had further discussion over the last (couple weeks) talk about this issue.

And we are now going to go through the second read for the conclusions that we have in the first reading. And the two conclusions that were reached in the first reading was that we should clarify that the IFR provision should apply only to the IANA domain name maximum function since it's a part of the CWG. So it's a requirement that this has a dependency that we need to actually fulfill in order to cover the CWG dependencies.

And the second one is that we will be clarifying the process for changing the Articles of Incorporation although it says Articles of Association in our document. I will (type) the correct term - Articles of Incorporation, which would be similar to changing fundamental bylaws.

And for this we have made some clarification in Paragraphs 19 through 21 on Page 5. And there was a memo by our lawyer in which they raised the concern or they want (unintelligible) why changing the Articles of Incorporation would be recommended to follow a process like that of changing fundamental bylaws.

So what we would be adding to our next report would be to add a specific recommendation that the Articles of Incorporation will be or should be modified to remove the notion (member) and (object) the need of an

affirmative vote of at least 3/4 of the Board of Directors without (replication) from the (empowered community).

So it would be the conclusion from the first reading. And as this is a second reading, I would like to call for any objections on whether this is the right path which should be - which should be taken for our next report. So are there any objections to going ahead with this clarification? Okay. So I see no objection in this case. So I guess we could continue with our next agenda item...

((Crosstalk))

Leon Sanchez: So I'll turn to Mathieu.

Mathieu Weill: Thank you very much Leon. And indeed that we were saying some of these agenda items are confirmation. But the one in front of us now, Item Number 6 on Recommendation 7, which is the recommendation about the IRP, is put on the agenda because actually Avri raised a concern after we had closed the discussion on this point on Tuesday that we might not have been meeting all the CWG dependency on the IRP scope.

You will remember we said that the PTI decisions or actions or inactions would be part of the IRP scope. We agreed on that. But Avri's point is that the CWG requirement is that we enable affected parties from the PTI decision or absence of decision to challenge this decision through an appeal process.

And Avri was raising the fact that it - the standard for such challenge may not be limited to ICANN bylaw compliance only. So two alternative approaches were discussed on the mailing list.

One is to provide direct access to IRP for PTI action or inaction through sort of a standard review. And the other would be to indicate that ICANN has to ensure that PTI actions are compliant with basically the recommendation of the CWG. And in case there would be a failure by PTI to do so, then the IRP could be triggered to force the Board to act and correct it.

And we do have to ensure we have compliance with the CWG requirements that's obviously a very high priority for us. And so number one question should - would be do we have agreement that PTI action - the standard of review for PTI actions or inaction is different than the other types of standard of reviews that we use for the IRP.

And do we - is there a preference that being (extract) for either of the approach that has been described and were in the document circulated lately on Recommendation 7, which we could certainly have on the screen. It would certainly help the discussion somewhat.

And I don't know. Maybe if there are any CWG participants - Avri, you were actually making a lot of liaison with CWG in our group. So do you think that one of the approach would be better suited to address the CWG requirement?

Or maybe we should just reach out to CWG and ask what they prefer. We'd like to have some views on these options including the ICANN Board as Kavouss is rightly pointing out. Avri. Avri, if you're speaking, we cannot hear you. And I saw your hand disappear suddenly.

Okay. I'm noting some traction in the chat for actually raising the point to the CWG and following their input on this. And we might have lost Avri I'm afraid.

Seun Ojedeji: Hello. This is Seun (unintelligible).

Mathieu Weill: Yes. (Unintelligible).

Seun Ojedeji: Yes. Thank you. Yes, this is Seun. I'd like to (submit that) the question be put at least to the CCWG co-Chair (unintelligible). Thank you.

Mathieu Weill: Thank you Seun. Sorry for misquoting your name. And I think that's a reasonable way forward to formally ask the CWG on this. And if there's no objection on that, then we'll proceed this way and remind - and we need to also remember that we have joint legal advisors who could also certainly help us with this.

So let's put an action item that we'll share this item to the CWG leaders very shortly so that this can be discussed in the meeting that they have in a few hours' time. And we also note that we'll have to come back to this during one of our meetings next week.

And I think with that that was the only outstanding item for Recommendation 7. And so I would move to the next agenda item, which is going to be chaired by Thomas.

Thomas Rickert: Sorry Mathieu. I had to get off mute. Actually in fact I wasn't aware I was chairing this - I'm so sorry. I got - I've managed to confuse myself, which happens at times.

So we're now going to discuss the scope of the community IRP and (separations) (power) as a second reading. And you will have seen the summary document as well as - remember the carve out language that we have discussed.

You saw the documentation and there is one additional point that is as far as I can see not included in the language of the document yet of which we have agreed on. And that is when it comes to the carve out language that we would specify that not all communities inside the ICANN community are using the term PDP.

That was a suggestion made by Alan Greenberg. So that will be added. And let's now here whether there is any further need to discussion these points that we have previously agreed on.

And we pause for a second to see whether there's any additional requirement to discuss. But I think we've had a very good participant discussion on this a week ago. And that does seem to be the case. So with that, we can then move to the next agenda item...

((Crosstalk))

Thomas Rickert: I'm sorry. Just spotting it. Sebastian.

Sebastian Bachollet: Yes sorry. And it will be very short. Sebastian Bachollet. Just to say that I know I have - I had to write something. I didn't write anything. I am physically in some trouble and it's why - about - and but I still have trouble with the carve out.

And I really think that the idea of not allowing the rest of the community to disagree with something done by one part of the community jeopardizing the community stakeholder.

I know Thomas that you already answer this. But it's not - it isn't coming to me yet. And then I wanted to say that I am still in trouble with this proposal. Thank you.

Thomas Rickert: Thanks very much Sebastian. And for everyone's benefit, particularly those who have not been on the last discussion or the last call where we discussed this, Sebastian has raised concerns that he wanted to specify in writing in a matter of 48 hours. So we did not conclude on this matter before we let this time expire.

Sebastian, I would suggest the following. I understand that you haven't had the time to further digest this and write something. If you continue to have your concerns, please do send them to the list and according to our usual working methods we would see whether your concerns get traction. And if they get sufficient traction, we can then further discuss the topic.

But for the time being and just to ensure that we properly deal with this matter, we would proceed in the conclusion that this is adopted as an agreed way forward with this group.

So Sebastian, I hope that you understand this. I think we will need to try to take stock of where we are, which we have done here with...

((Crosstalk))

Thomas Rickert: ...so Sebastian agreeing with that approach - is that Roelof in the background.

Roelof Meijer: Yes. Roelof. Oh. Very good. Can you put me in the queue please? I'm on the bridge.

Thomas Rickert: It's your turn Roelof. Fire away.

Roelof Meijer: Okay. (Unintelligible) and I already (had it) in the last call. I have some (unintelligible) for this position. And maybe you can just clarify this because I think in the last call your response was it seems there is a PDP there already has been a public comment period. Now I think the process will be - for instance, let's say that one of the supporting organizations comes up with a crazy idea.

I'm just (encouraging) one second round new gTLD. It goes through a PDP and there can be a public comment period. But even if the whole public is against it, I think that the SO in question could still persevere in its idea and develop this policy. Now what would the possibility for the community then be to stop this policy from being implemented?

Thomas Rickert: Thanks Roelof. That's a good point. Let me try to respond. I'm certainly most familiar with GNSO and the ICANN community. But adopting recommendations that come out of the chartering - or out of supporting organization in this case if it were the GNSO is not an (auto mechanism).

So we have various stages. There is an issue report that's put out for public comment. There is a first report and then a final report that's going out for public comment.

And then the GNSO Council meets to adopt the PDP with a certain threshold in both of its houses. And only if that is achieved, then the PDP will be passed onto the Board. And the Board will do additional checks. And the Board does not have to do rubberstamp the PDP. But they can refuse to rubberstamp it if there are substantial concerns with the PDP.

So I think my response to you Roelof would be that there are various steps in an iterative process where there's double-checking with the community. There is double-checking with the Board to see whether any of the recommendations that are being made to the PDP are contributing the global public interest.

And then therefore, what we're trying to do with this (paragraph) is just to ensure that let's say the ccNSO was coming up with something that's of vital interest for the CC community that we don't end up in a place where the rest of the community - so let's just assume for a second that doesn't like ccTLDs just makes this whole exercise of the ccNSO producing policy mute because they just go up against the Board to try to make it impossible.

That's certainly a lengthy answer. I hope that at least was helpful for you to understand better what my understanding of the process is. But if you would like to take the floor and respond to this, please do.

Roelof Meijer: Yes. It's not a crucial point for me. So I'm so happy either way. But I would like to submit if we are trying to enhance the accountability, why can't we also have the feedback that we should make sure that we - you can give more power to the community and the supporting organizations if we have to enhance the accountability of those supporting organizations and the community.

Would you - I think what you're doing with this is comparing the worst-case scenario that the community can now stop a viable PDP process or at least prevent the outcome of the process from being implement. Are you comparing a worst-case scenario with the (heavy part) with the (heavy part) being the process that you just - you explained in how the GNSO should work.

Maybe this comparison is not fair comparison. And I think by now you know I'm an optimist so I don't really believe in worst-case scenarios. But the reason why we don't want the possibility for the community to stop the implementation of a PDP is based on the worst - on the worst-case scenario.

And I think you should also take into account that there can be another worst-case scenario and it is that you have a very terrible policy being developed and something the SO in question is not giving any of this - or notion to the objection from the community and of course it has to be combined with the Board, it doesn't (do so either). That's why this is also a worst-case scenario.

Like I said, I am happy either way but I just wanted to point out that - well I have some understanding for this position and I would prefer a situation in which as the ultimate measure of accountability we would in fact enable the community to stop the implementation of a bylaw change even if it's the result of a PDP executed by any of the SOs.

Thomas Rickert: Thanks very much Roelof. And I appreciate...

Roelof Meijer: No, go ahead. I'll shut up.

Thomas Rickert: That's very harshly put. Thanks Roelof for your intervention. I would like to conclude by saying that, you know, this is not a matter of personal preference but my response to you would be the same as to Sebastian even at the risk of not being able to make you entirely happy.

But it looks like the - like you and Sebastian are the two individuals that do have an issue with a suggestion that is otherwise (enjoying brought to court). So let's see whether there's more traction for the concerns that you have and

Sebastian might raise and then that we visit the point if there is more traction for that.

With that, I'd like to conclude this agenda item and for the time being we do seem to have consensus on that point. And I'd like to hand over to Leon.
Thank you.

Leon Sanchez: Thank you very much Thomas. And our next agenda item is an update on Board removal and a liability implication. And for that we have concluded in the second reading that we would be adding some language to compensate (pre-service letters). And of course (unintelligible) (pre-service letters).

But the main would be to mitigate the risk of litigation in case Board (unintelligible), (pre-service letter) for members could be required. So we put a safeguard for avoiding any kind of risk for community members.

So our lawyers have provided language to provide adequate direction for implementation. And we can have a look at an amended process on Step 1 I think, which is on Page 11.

And we would be adding two clarifications to this process. One is that - it says any (legal can begin) petition. This must be supported by a (unintelligible) stating the reasons on why (unintelligible). And also we would be adding that prior to completion of (petition) there would be time (unintelligible) with the incumbent Board member.

But I remember that we had tasked our lawyers to have a call with ICANN legal and Jones Day if I'm not mistaken. So I would like to listen from them and update on how this call went. And for this I would like to turn to (Holly). If you are on the line, could you please provide us with an update on this?

(Holly), are you available or might you be on mute? Or maybe (Rosemary). I think that you are also on the call.

Rosemary Fei: Yes I am. We...

Leon Sanchez: (All right).

Rosemary Fei: ...spoke with Jones Day and ICANN legal yesterday. And we are - we shared some language with them later today - late last night on waiver. And we are also working on indemnification. So we are actively in discussions. And I think they will be productive.

Leon Sanchez: Thank you very much Rosemary. So we will be waiting to hear from you on the conclusions that you reach in these chats you have with Jones Day and ICANN legal. So when could we be expecting for this to get back on?

Rosemary Fei: I would - I don't know when we'll hear back from Jones Day or ICANN legal on the proposed waiver language. We're waiting to hear from them - further thoughts on the indemnification issue. I would think it's going to take a few days.

Leon Sanchez: Okay. Perfect. So we'll follow up and we'll try to remind those who are pending sending us the language to try to provide it as soon as possible. So that will be the update on the status of Board removal. I see Alan Greenberg's hand is up. So I would like to hand the floor to Alan. Alan.

Alan Greenberg: Thank you very much. One these issues as has been noted, the Board originally said under no conditions would they consider a waiver. Can we assume that if there are discussions with ICANN legal and some agreement is

reached that is -- I don't know who I'm asking -- that we can expect some change from the Board? That's Question Number 1.

Rosemary Fei: I don't think - I don't think any commitment has been made but the fact is that we are discussing what sort of waiver if any would be acceptable.

Man: Okay thank you and...

Woman: We are discussing what sort of indemnification if any would be acceptable.

Man: Thank you and the clarification on the indemnification, indemnification of whom because we've had various different discussions of how wide that indemnification might be.

Woman: Yes...

((Crosstalk))

Man: Is it just the chairs or is it wider or what?

Woman: The breadth is being discussed as well as the depth.

Man: Thank you, thank you.

Leon Sanchez: So I suggest - I suggest that we do not go into this and we wait for the conclusions that we get from the lawyers and I believe that with this we would leave of course this - come to the conclusions that we will be waiting for the lawyers but the main conclusion is that we said earlier would be to have the (unintelligible) and of course so a requirement for dialogue with the affected director and the (unintelligible) rationale for the removal.

And I think that with this we have covered these (certain) items and I would like to turn now or actually we have a break. We have a break scheduled for 10 minutes.

So we can have a break at this point.

((Crosstalk))

Mathieu Weill: Why don't we just continue I think we're doing well on time.

Leon Sanchez: Okay, so then let's keep moving and with that I will turn to (Matthew).

Mathieu Weill: Thank you very much (Leon) and yes and that's instead of the break but it's certainly as relaxing as a break is our next agenda item about recommendation 11.

And we started a very neutral discussion on Tuesday to provide some clarification that have been incorporated in the document that was circulated. And we would like first because some of the items will be difficult to discuss until we get some formal GAC and GNSO feedback.

We'd like first to make sure that the clarification provided are agreeable for everyone and to remind us of these clarifications I'd like to - and I turn to Steve DelBianco for a reminder of the additional clarifications that were discussed on Tuesday and then we'll try and see if everyone is comfortable with them. Steve.

Steve DelBianco: Thank you (Matthew). Annex 11 or Rec 11 is on the screen now and I'd like you to go to page 1 and 1 we're going to discuss real quickly the additions that

were made 2 days ago for clarification that we propose to put into Rec 11 and Annex 11.

And these clarifications are meant to declare our intent with respect to any change we're proposing to the bylaws governing board treatment of GAC advice.

And at the same time we've said throughout this document that when we put clarifications and explanations in our CCWG proposal those are supposed to be taken onboard by our attorney's and Jones Day as they come up with the actual bylaws language.

So it's not just legislative history that these clarifications attempt to apply. They are also there to instruct our lawyers and ICANN's lawyers that as they craft the bylaws language that they follow the clarifications and explanations we've included.

And I realize that for stress test 18 or Rec 11 we did add one phrase to the bylaws that we believe covers it but it may or may not be unambiguously clear and that is what the intellectual property constituency or IPC have been so concerned about.

Brenda is refreshing the document right now, thank you Brenda. So (Matthew) you told me to quickly summarize the three items we added on Tuesday, the clarifications.

The first one everyone is right there on item 1 on page 1 it's in the blue text where we are trying to address this notion that did we represent an unintended change to the current practice as used by the board when it regards GAC advice?

Those of us who worked on this and discussed the compromise in November had no intention of changing the way the board handles GAC advice only the rule by which the board would decide to reject the GAC advice.

And the rule of voting that the board uses today is I guess the board canvases the board members. If no one objects they consider it unanimous and they take a decision.

If it isn't unanimous the board votes and Steve Crocker informed us that in two instances in the past the board had voted to reject GAC advice. So we know that they are capable of doing that and we don't intend to change the way that works only the threshold of voting.

So underneath item 1 you can see that we added the clarification text that this recommendation is intended to limit the conditions under which ICANN board and GAC must try to find a mutually acceptable solution.

And this recommendation does not create any obligation for the ICANN board to consider and/or vote on GAC advice relative to the bylaws that are in effect now prior to the IANA transition.

And we went on to say that this recommendation does not create any new assumptions that ICANN is bound to implement any advice that is not rejected by the board relative to the bylaws in effect prior.

Some of this language will strike many readers as a bit strange but it's a direct attempt to address concerns that were raised by the IPC in their comments on the third draft.

IPC has made it very clear its lawyers on its team and as lawyers I think they read into the small phrase we added in Rec 11 and somehow thought that that

would create new obligations. So we want to be sure and address that directly. That's this attempt here.

As you read now (Matthew) under 5 and 6 we have new text there as well. Number 5 is to add a requirement, not just say suggestion but a requirement that a rationale must be provided for formal advice provided by an advisory committee to the ICANN board.

And that the board will determine whether the rationale is adequate. And this is turning it from a mere mention that the advisory committee's would make an effort to provide clear advice with the rationale.

And that was what he had in the third draft. Here we want to make it a requirement about all advisory committee's not just the GAC of course.

And then finally (Matthew) number 6 on here is another clarification we want to add because some had been concerned that ICANN board could act on GAC advice where that action would be inconsistent with the bylaws.

It isn't necessary to add this to this part of the bylaws because we have spent a great deal of time indicating elsewhere in the bylaws that an IRP is the mechanism by which any aggrieved party or the community at large can challenge the board on actions or inactions that are inconsistent with the bylaws.

So whether it was the board listening to GAC advice or SSAC advice or following through on any other action the board cannot act inconsistent with the bylaws without the community having the right to standing to challenge this action on an IRP.

So we added for abundance of clarity that 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 this bylaw.

The empowered community will have standing to bring an IRP to challenge whether - we added whether I believe, someone on Tuesday's call pointed that out to indicate whether any board action or inaction is inconsistent with the bylaws even if the board acted on GAC advice.

Those are the clarifications (Matthew) and I just ask as we discuss those we can turn to the more threshold questions of whether the 2/3 threshold is appropriate for locking in the consensus requirement for the GAC. Up to you.

Mathieu Weill: Thank you very much Steve and indeed let's focus on the clarifications first and I see (Kavouss') hand is up in the queue, Kavouss.

Kavouss Arasteh: Yes, I have note - because - but Steve gave a lot of information and a lot of changes. On the addition of the following up on the one I have no problem with the (unintelligible) but I have a problem with the wording.

The second part of the addition is that this recommendation does not create. Who said that? CCWG claims that this does not create. How you could do that.

The only thing missing here is the recommendation shall not create but not create. This is a source of the condition but not the statement. The recommendation - the text (mentioned) in the (unintelligible) that we CCWG confirmed that this does not - how we can do that?

We should change those not - saying they shall not create any. And the third sentence is the same thing, this recommendation does not create we shouldn't - we shall not create any.

So with the change does not sound like this is a discussion of all that I had with Steve and we had all that had been signed to take GAC into account. We will see I hope that this will not be any different than before (him).

But after that please go down direction see the others because the things have changed so quickly so I have not seen the other things yet, thank you.

Mathieu Weill: Thank you Kavouss. You should have full control and I take your points and to quickly answer the intent for this sentence is to provide direction for recommend - for implementation where we will draft the actual text.

So it's indeed the intention of the CCWG that is being described. Not being a (unintelligible) speaker I would not try and get into the actual wording but I think your point is well made and taken.

Rosemary you're next.

Rosemary Fei: Yes thank you. We had been asked whether we thought the proposed additional language was helpful to us in contemplating drafting the actual language in terms of directions to us.

And we're having some trouble along the lines that Greg and others raised in parsing this language and having all these different pieces be consistent. We are uncertain how it is possible to act inconsistently with GAC advice and not have that be considered a rejection for example.

So I don't - I think we're planning to frame a high level concern about this and maybe rather than me rambling on it makes more sense but I wanted to just let everyone know that we were going to be doing that.

Mathieu Weill: Thank you Rosemary and I think what would be extremely helpful also in this exercise is if you could highlight how this issue would be related to the new wording or whether it was already existing in the way the bylaws were drafted now.

Rosemary Fei: Okay.

Mathieu Weill: Steve you wanted to say a word on this?

Steve DelBianco: Thank you Mathieu. With respect to the actual bylaws language you can all see it everyone if you simply scroll on the document. You'll see that on page 2 in the center is the existing bylaws.

So much of the language that we're discussing here is existing bylaws. If you scroll to page 2 at the bottom, at the bottom of page 2 you'll see in bold and italics and underlined you'll see the phrase that Recommendation 11 adds.

And that phrase that is added it's only there to clarify that the GAC advice needs to be a consensus which is understood as the practice of adopting decisions in the absence of any formal objections but it raises and locks into the bylaws the way the GAC makes decisions today.

And when that GAC advice has max level of consensus that the board would go to a 2/3 vote as opposed the implied majority vote that it uses today. And then that rejection by 2/3 vote would trigger the obligation for ICANN's board to try and find a mutually acceptable solution with the GAC.

And that is an existing obligation for all GAC advice. We are saying that it should only be an obligation when the GAC advice has full consensus in the absence of a formal objection.

So I do try to call your attention to the actual change we had proposed and for many of us we don't understand how that affects the board's treatment of GAC advice other than the vote threshold since we didn't change any of the other language. Thank you (Matthew).

Mathieu Weill: Thank you for providing that Steve. Next question is Malcolm.

Malcolm Hutty: Thank you. I'd like to thank Steve for this work. It's just I think it's great and he's explained it with is customary eloquence and clarity. If it doesn't quite work for Rosemary yes I think we may still have a little bit more work to do but I do think that this is moving in the right direction.

I would have - would though ask for one small clarification and that's the last point that Steve made in his presentation. The clarification that ICANN continues to need to remain active in accordance with its bylaws and if it fails to do so then the empowered community is able to bring a community IRP against that whether or not that's through a consequence of GAC advice or for any other reason.

That shouldn't just refer to the empowered community that has the right to bring that challenge it's any material affected party individually or the empowered community collectively that has that right.

And so that clarification ought to be made so we're not making a suggestion that we're limiting such complaints to the empowered community in the case of GAC advice.

Mathieu Weill: Excellent point Malcolm. I see Steve agreeing on that, we'll annotate that. Greg, Kavouss and then we'll try to wrap up. Greg.

Greg Shatan: Thanks, Greg Shatan for the record. Two things, first I think, you know, while this is a valiant attempt it's kind of admmissive of the point. Particularly I think that we should be attacking or revising perhaps is a better word the actual draft bylaws language as opposed to trying to sure it up with so called clarifications.

I think it's inevitable that both the readers of our document and the drafters, our outside council will look to the draft bylaw as kind of the primary resource for drafting the actual bylaws.

And I think the problems arise from the language in the draft bylaw itself and not - and leaving those problems there and then trying to solve them by extra explanation is kind of like taking a wall that needs to be repaired and just (shoring) it up with some two by fours and the like without actually repairing the wall itself.

So I would think that changing the new sentence is really what we need to do rather than trying to explain it. In particular I agree with Rosemary introducing the concept of rejection into a bylaw that does not have that word in it, you know, as unnecessary ambiguity and tension between the language of the existing bylaws and the in person.

So I'll put in the text a possible change or substances for that sentence without any endorsement of the 2/3 vote threshold change or that leads as a way to remove that ambiguity.

Second and I'll stop talking after this. I think these clarifications need to be much more clearly stated. But they are in themselves somewhat (lawyer) sounding and we need (unintelligible) explanation as being offered to us.

So I would urge us to be more plain in stating things as well. I think we need to say that there is no requirements that the only thing that is being changed is the threshold for a vote when that vote is taken.

And that no other change to the GAC - to the board's process is being made by these changes. Of course if we don't have the 2/3 vote then we have to look at other phrasings as well.

So since the point of this from the point of view of the rest of us is to ensure that the board only needs to give due deference to - and engage in a mutually acceptable solution process when the GAC advice is supported by whole GAC consensus. Thank you.

Mathieu Weill: Thank you Greg. I think we'll - you just put input as well for Rosemary's point about trying to find a way with our lawyers to work around it. Next is Kavouss.

Kavouss Arasteh: Yes the issue I would like to ensure by you and by Steve and by others that I understand that the main purpose of this recommendation is that the board's obligation to get into a discussion or a negotiation is GAC.

You know that you find a satisfactory solution is limited to those of us which have even by consensus without any formal objection. Having agreed to that at least as (unintelligible) is against any of the advice of the GAC after all of these things it is subject to IRP mechanism or not?

Does any party could initiative IRP which affected the GAC advice even if everything settled within GAC and board? Thank you.

Mathieu Weill: Thank you Kavouss. I think an IRP is against the board action or inaction not against the GAC advice and that's been a consistent aspect that we've been trying to clarify.

I'd like to turn to Steve as well on this and on the question that was raised on the chat regarding the rationale requirement where the words - there is a sentence that stated the board should determine whether the rationale is adequate.

And could you expand a little bit Steve please on this adequate which was being questioned in the chat?

Steve DelBianco: Thank you Mathieu. So working backwards I think that the word reject is what got Greg Shatan animated to propose a new formulation of text. It avoided saying the word rejecting GAC advice.

And Greg that seems to accomplish the right purpose. I'd be interested to hear what others think. It seems to have achieved the right purpose and avoid the use of the word reject.

And before we go too far down that road it would be great if you checked your colleagues in the IPC to see if that addresses all of the concern they had

about mandatory voting or this notion of (inside) obligation that would be great.

I think Malcolm is right to point out the need for any agreed party in clarification number 6. And with respect to (Kavouss') explanation I think Kavouss you got it exactly right.

This is only supposed to restrict the board's obligation to try and find a mutually acceptable solution. And then turning to your question on adequacy of rationale.

This was discussed briefly on Tuesday I believe Chris Disspain had asked what is the rationale that is adequate. The recipient of the advice coming from an advisory committee whether it's SSAC, GAC, ALAC or anyone, the recipient of that advice is ICANN's board.

And it is ICANN's board's responsibility to assess the rationale and clarity of the advice it received. And as the board has done before it can ask that advisory committee, could you please provide a rationale, a further rationale for this recommendation?

Could you please clarify whether this recommendation would apply here or there? And the board has that dialogue. It can communicate with the advisory committee and ask for the appropriate rationale and clarity because the board realizes that when it takes action on advisory committee advice it is subjecting itself to a challenge by any aggrieved party or the community that that action is inconsistent with ICANN's bylaws.

And the adequacy then of the rationale I believe is well placed in the hands of the board who is ultimately accountable for the action based on that advice. I hope that's helpful.

Mathieu Weill: Thank you very much Steve that's helpful. And to confirm to Kavouss we'll include what we said earlier in somewhere in the Recommendation 11 to (unintelligible).

Brett one last comment before we try and move on, Brett.

Brett Schaefer: Sure, I will keep the brief. First, as to point 6 I agree with the notion that we need to clarify that the ICANN board cannot take advice nor implement advice that is inconsistent with the bylaws.

But I think we do need to insert a provision in there that clarifies that point. We can't just leave that as an instruction it needs to be expressed. And I have offered text on that line in the chat to just sort of implement that or to realize that.

Second, I also mentioned in the chat that I have some serious concerns that the 2/3 threshold, raising the threshold of rejecting GAC consensus advice to 2/3 would be unwelcome by Congress considering comments and testimony provided by Fadi on behalf of ICANN to the Senate last year where he said that that option was off the table.

Considering that Congress and NTIA in conjunction with Congress have to consider this proposal at the end I have some concerns as to whether that would be negatively received after those assurances were made. Thank you very much.

Mathieu Weill: Thank you Brett. I think your point was made and it's been made before even - I mean it's been made a few times already since this statement was made and certainly as part of the previous deliberations.

So I think we - if this is - this is difficult I believe for us right now to move to the direction of handling the discussions under Items 2, 3, 4 basically on the screen.

And so my suggestion will be that we have this conversation put on the agenda of another meeting and I'd like - to Steve to see whether he agrees that - about this approach, Steve.

Steve DelBianco: Thank you Mathieu. You're right Items 2, 3, and 4 get to this tradeoff. This tradeoff is suggested to achieve the agreement and support of the GAC and the entire CCWG.

The goal was to raise the standard permanently for how GAC advice had to be approved in the absence of an objection because that's not in the bylaws today.

And in exchange for that to raise the boards voting requirements from a majority which is 9 votes to 2/3 which is 11 votes. And that tradeoff is one about which reasonable people can disagree about whether it's an appropriate trade to make.

And that's a good debate for us to have perhaps next Tuesday is to debate the marriage of that. But this isn't the question of language right? It's a question of whether that tradeoff is appropriate for CCWG.

And it really isn't a question of wondering what Fadi said to the U.S. Senate Congress Committee in February of 2015. He was asked at that point about the board's proposal to change the bylaws to a 2/3 back in October of 2014.

And at that time there was no discussion of doing it as a trade for locking in the GAC on a very strict rule of consensus. So Fadi's answer to the Senate Committee was about that standalone October 2014 initiative to raise the 2/3 and the community had voiced its concerns then and that was taken off the table as Fadi said.

It is now back because in Dublin the GAC said that the 2/3 is quite interesting and valuable to the GAC and that created the opportunity to give something it thought was valuable in exchange for locking in much stronger language on how the GAC achieves consensus on the advice this deserves as higher threshold.

So that is the debate to have (Matthew) whenever you believe it is time to have it but it's not about the language and it doesn't really matter about what Fadi told the Senate Committee since that was in relation to a very different initiative of the standalone changes concerns. I hope that helps.

Mathieu Weill: It does Steve I think it's a very good reminder of the context of this discussion and I think we really need to keep that in mind when we get back to these items later in our deliberations at the next meeting.

And as (Jorge) was mentioning that with the tradeoff that everyone is equally - seemed at the time equally and happy about and that might be actually a good sign of a good negotiation if you think of it in a certain way.

And I think with that we'll close with an action item for our lawyer to come back to us on the language where Rosemary expressed some concern and some suggestions.

Taking into account Greg's comment as well and discussion on the rationale and we'll do that before this next meeting and I'm now turning to (Thomas) for the next agenda item.

I think we'll try to close this meeting in two hours instead of doing a break, if you don't have any strong objections. I think that's an achievable goal. What do you think, Thomas?

Thomas Rickert: I do agree, Mathieu. And let's try to continue the focused discussion. We have been quite quick on the first couple of agenda items. We made a lot of time there. And if we keep up the momentum, we can donate back one hour of your day or night to you.

We're now going to discuss the topic on the GAC as a decisional party of the community, or the empowered community. Please do note that while GAC feedback is still pending, we still think that this question can be discussed. Certain aspects of the GAC's involvement certainly do require formal feedback from the GAC and not only from the individual GAC members, but this is a question on whether the empowered community should include the GAC for that matter as a decisional party.

We had extensive debates on that question pretty much from the beginning of the work of the CCWG. We have gone through three reports now where the GAC was included as a decisional party. On this recommendation, we had - or in this report we had a minority statement from Robin Gross specifying that she does not support the notion of the GAC being a decisional party in the

empowered community, and this has been supported by some in the NCSG. And there seems to be different views on the position in the GAC.

So according to our working methods, it still seems like the concerns expressed about the GAC's role are not sufficient to jeopardize the overall consensus that we have achieved over the last year. Nonetheless we would like to give the floor to all of those that want to speak up in favor of reopening the debate so that we can see whether there's sufficient traction for potentially changing this.

And I should clarify that the minority statement may have been written, I think that Robin may have been a part in drafting in but it was NCSG. So sorry for me having misspoken on that.

So any hands raised? I don't see any hands raised. Ah, now I do. I see Kavouss is first and then Robin. Kavouss, please.

Kavouss Arasteh: Thomas, in the GAC there was some discussion first of all about the definition. What is decisional making steps? We can see that the decisional making step has two categories. Step one to five, and a step six to seven. For instance the first group that meets is starting to initiative a decision or starting to participate in the forum, I don't think that that is a decision-making which is typical. How you could prevent that the GAC participate in the forum or the exchange of information for clarification and so on and so forth.

The issue importantly is the steps six and seven. Now my question is this: suppose that some people I don't name want the GAC totally excluded. Assume or imagine that some community or some agent start to propose, or ICANN itself, propose modification of articles and bylaws relating to the

GAC advice. Do you think that GAC does not have anything to say about that? Because it's excluded. It cannot discuss.

So what is the situation? All in the mission relating to these legal or public policies, all in the (unintelligible), how is it possible that for the issues which relate to the GAC activities and if GAC, by consensus, decides to participate in that particular condition, decides by consensus to participate in the decision-making, how you could exclude GAC from that. This is very, very important. GAC is considering currently in a case by case, have not yet decided, that may be one possible option. But this option is not excluded.

So I'm just arguing with those people that want to totally exclude GAC from anything, even from the area that public policy issue a mistake. That is the mission of the ICANN states and that article 11 states how it is possible really do that. Thank you.

Thomas Rickert: Thanks very much, Kavouss. Thanks for expressing some concerns with the concerns that have been expressed. And let's just clarify that being a decisional party means a decisional part of the empowered community. So we do not make a distinction between the various escalation steps and the role that the constituent part of this community might play in the specific stages.

I would suggest that as we continue with this conversation that only those who are in favor of reopening the discussion in a sense that the GAC should not be a decisional party, speak up. Those who are in favor of maintaining what we have in our report, maybe hold back so that we can first determine what traction this minority view and the request for change gets.

If I'm not mistaken, I have a little bit difficulty. I'm working with a mobile device here that doesn't necessarily display the hands raised correctly. So I see Robin and then Martin.

Robin Gross: Thank you. This is Robin. Can you hear me?

Thomas Rickert: Yes we can hear you all right. Go ahead.

Robin Gross: Okay. Great. Yes, I still have significant concerns, and NCSG still has significant concerns about this recommendation and changing the role of GAC into a decisional participant for ICANN governance purposes.

It's interesting in one hand that the GAC is not allowed to select a board member, that that's part of the organizational design of ICANN that the GAC doesn't select board members. But here we are changing that such that the GAC is now going to be empowered to remove board directors and doing things like approving budgets and all sorts of things that the GAC was never designed to do.

So we're creating a significant shift here of empowering GAC to be more than an advisory committee. Now it's got a very significant decisional component in these new powers that we've created, and couple that with the additional power in recommendation number 11 and I think that we've just killed any hope for this transition to go forward any time soon. The U.S. Congress is simply not going to accept a proposal that provides GAC with decisional authority and goes against the private sector-led design that ICANN was established under.

So I think we significantly risk killing the whole deal and the whole accountability reform work by all of this additional powers to the GAC and

particularly changing the GAC's role from being an advisory committee to being a significant decisional authority on important governance features of ICANN.

So I think that we will continue to hear more and more about this issue as we go forward, not less. I don't think it's an issue that we can just sweep under the carpet. This is something that public comments was against. Every time the issue went out, this is something that the public comments in last year's - in the previous proposal that the board was dealing with just over a year ago to provide GAC with powers similar to the one in recommendation 11.

All of these things are against public comments. So I think we need - we've got to start taking the will of the community into consideration here and we can't just continue to just march forward and sweep these concerns about GAC empowerment under the rug. Thank you.

Thomas Rickert: Thanks very much, Robin. And before we move on in the queue, let me just clarify that there is no intention whatsoever to sweep this discussion under the carpet. In fact we do have the discussion right now. We had it previously, and thanks for refreshing our memories on the concerns that have been expressed in various written and oral statements.

With respect to the queue, I would suggest that we only hear those that are in favor of Robin's views or variations thereof. So if you want to speak in order to support consensus that still exists in our group, I think we might be able to shortcut the process. Martin was next and then Alan.

Martin Boyle: Thank you, Thomas. I must say I do rather support or tend to support much of what Robin just said. I do think this may cause real problems outside the CWG. I do think that this may raise the issue, real issue, particularly the two-

thirds thing, but the other changes combined with that as to whether or not ICANN is becoming or may be starting on a road to becoming more inter-governmentally led in violation of the NTIA's key criteria.

That said, I've also read Becky's statement. Look, haven't we really moved on from this? Haven't we really - aren't we really past this point in the CCWG? And I also must say I'm persuaded by that. I think we probably have. But that argument becomes self-fulfilling.

If when you ask, when you Thomas as chair ask, are there people that are still concerned about this, if we who are concerned remain silent in the belief that well we're past that point within the CCWG even though we're unhappy about it but we feel that the CCWG has lost, if we remain silent then that becomes a self-fulfilling prophecy.

So I'm not really asking you to reopen this on a - procedurally, but if there is a groundswell of people who feel like I do that actually this is a problem and it's unfortunate, then I would want to be counted among them.

Thomas Rickert: Thanks very much, Martin. And let me just clarify that certainly from a procedural point of view, we could as well just have moved on to the next topic but we do feel that some in our group feel quite strongly about this point. And so as we've done with other recommendations, we brought the main concerns that have been expressed to the plenary for discussion.

But let me just add that in fact if you look at the public comments received, we had 48 in support of this recommendation, only ten against, eight neutral and (unintelligible) were 24, which adds up to the 90 comments that we received.

Last is Alan and after that I'd like to end this conversation and take stock.

Alan Greenberg: Thank you very much. I am not supporting the recommendation that this change and I will not go into any detail - in the specific detail as to why the implications on what - how this would impact the ALAC as the last remaining advisory committee. I won't talk about the concept that we're changing the roles of all of the bodies in this.

So the only point I do want to make strongly is if we were to follow this and eliminate the GAC from the overall community, empowered community, we are left with only four ACs and SOs, and all of the thresholds that we have been talking about no longer work. So the whole model disappears if we go down from five to four. If we're going to consider anything, we have to factor in that too. Thank you.

Thomas Rickert: Thanks very much, Alan. The point that you're referring to is a slightly different one, not pertaining to this particular point whether or not to include the GAC as a decisional party. Nonetheless it's well noted. With that, I think we can end this first reading on this topic and conclude by sticking to the language as it is in our third report. We will bring back that topic during the second reading in a week's time.

And with that, I'd like to hand over to León for the next agenda item. Thank you.

León Sanchez: Thank you very much, Thomas. This is León Sanchez. Our next agenda item is on SO/AC accountability. This is the first reading for this issue. And during the third public comment period we received a series of comments from different commenters of course. And what I would like to do at this point is to

confirm that all comments received can be handled as part of our workstream 2 deliberations.

And for these, we have a summary of comments, which you can see at the top of the document in Annex 10. And these comments refer to the perception or the agreement from the wider community that SO and AC accountability is considered critical given the powers and roles of an empowered community that this decision would provide the community with. So this should definitely be further explored in our workstream 2 work.

Then there is a comment about how accountability to the global community is also really important. And in this context it was established or suggested that three levels of accountability were established, the first one being the accountability of SOs and ACs to the whole community, the second one, the accountability of the SO and AC representatives to their communities or their designators, and third, the future structure of ICANN resulting from our transition, including accountability aspects as related to checks and balances.

And the third substantive comment that was received is that there is also a suggestion that independent reviews should be done at the request of a majority of the SOs and ACs and that any recommended changes occur only with the approval of the SOs and ACs acting through the community mechanism.

Then the last one is that some commenters believe that SO and AC accountability improvements need to be given immediate attention by creating a mutual accountability roundtable involving representatives of the ICANN board, community and staff, developing (unintelligible) SO or AC accountability and applying the independent review process to SO and AC activities are considered crucial to workstream 2.

So our document actually reflects these kind of tasks for workstream 2. So I think that if we have no objection, we could just confirm that the comments received would actually be part of workstream 2 deliberations and we could just maybe verify that the language that we have in our full report does comply with the comments received. So I see Ed Morris' hand is up. Ed, could you please take the floor?

Ed Morris: Thank you, León. The concern we have in workstream 1 a proposal that the recommendation in terms of reviews can be implemented through amendment of section four of article four, the ICANN bylaws. That pretty much gives the board unilateral control over the reviews. I'm not comfortable with that.

Are you willing or are you proposing to -- and that's included in some of the comments you read -- are you suggesting that we take this action and put that into workstream 2?

León Sanchez: No, no, no. Actually the proposal is to stick with - to what we have proposed in our third document. That would remain the same. I am only trying to confirm that the comments received would be able to be dealt with as a procedure in workstream 2.

Ed Morris: Well if we amend the bylaw of section four or article four in a way proposed in the document, some of the comments that were made really workstream 2 will be too late to deal with it. We'll have already changed the bylaw, unless we're proposing an amended change to the bylaw again after workstream 2.

I think there's a problem with the recommendation, and that is it allows the board to restructure the governance of SO/ACs through the review process in a way that the community has no involvement in. That's not the bottom-up

method. So I would object to continuing in this manner in workstream 1 as proposed in the current proposal.

León Sanchez: Thanks, Ed. I think that we could clarify that in the language. And I believe that your concern would be actually addressed because when we do this, the bylaws would no longer be able to be changed without the community input. So I'm not sure if that would address your concern. I see you're being supported by Avri.

So what I would suggest is to actually take a look at this point that you're raising and just check whether the language in our report does actually address this concern. And if not, we'll of course we would be doing some kind of clarification.

Ed Morris: Thanks, León. And I would also note that I would expect the GNSO response that will be transmitted hopefully tomorrow or very shortly will also have this concern in it.

León Sanchez: Thanks, Ed. So that's another good point. I think that we can wait for the GNSO input so that we have a wider view on this issue.

Are there any other comments in regard to this agenda item? Okay, so seeing none I will then hand over the floor back to my co-chair Thomas for the next agenda item.

Thomas Rickert: Thanks very much, León. And we're approaching the end of this call rapidly. Now we're going to discuss annex number eight, recommendation eight with respect to the reconsideration process. And there are primarily three concerns that have been raised, one of which is that this tool, i.e. the reconsideration

process, should not be regarded in isolation but as part of a bigger toolset amongst other mechanisms.

Then there was the concern about the ombudsmen not being sufficiently equipped and knowledgeable to do substantive evaluation. There was also the suggestion that an independent party such as the ombudsmen provide an initial assessment to the board as to the merit of any and all reconsideration requests.

And thirdly is there is a cause for the reconsideration process to be transparent and fully communicated to all ICANN stakeholders. So we can discuss these points now, but if I may I'd like to just share an observation with you. And that is that these points do seem to be issues that can be tackled in the implementation phase.

So I think that looking for resources or explaining the bigger picture, i.e. whether reconsideration process is placed in the overall accountability architecture, those are -- and transparency issues -- maybe can be tackled as we move on into implementation.

So let me throw out this suggestion to the group that we acknowledge these concerns so they shall not disappear but that we would actually work on those as we work on the implementation language. Ed has his hand raised. Ed, the floor is yours.

Ed Morris: Old hand, Thomas, sorry.

Thomas Rickert: Thanks, Ed. Any further wishes to speak? In the absence of any interventions, I would understand and take stock that there don't seem to - there doesn't seem

to be any opposition to my suggestion to acknowledge these points as important issues and work on those during the implementation phase.

So with that, we're actually in a position to move to the last agenda item, and that's back over to you, León Sanchez.

León Sanchez: Thank you very much, Thomas. And at this point I would like to call of any other business, just noting that while I was turning the call back to Thomas after discussing SO and AC accountability, I note that there is a discussion in the chat box which I unintentionally skipped, and that is GAC being subject to accountability reviews.

I just note that we acknowledge this discussion and of course we'll be further discussing this point. So for those who are raising the issue, you can be assured that this will be also something that will be discussed.

I note that...

Roelof Meijer: León?

León Sanchez: Yes, Kavouss. I was going to turn to you. So please go ahead.

Roelof Meijer: No, this is - León, this is Roelof. Can you put me in the queue please?

León Sanchez: Oh yes. After Kavouss, it will be your turn, Roelof. Thanks. Kavouss, can you please take the floor? Go ahead, Kavouss.

Kavouss Arasteh: We wish, at least I wish, if everybody agrees with me I don't know, to really recognize and appreciate the full support and the devotion of the ICANN staff that really this month they made a considerable amount of work. That is

(unintelligible) and others, Brenda, and so on and so forth. So we really need to appreciate the efforts beyond the call for duty and that is much appreciated.

I'm not sure we should appreciate now the chairs and co-chairs at the end, but at least we really recognize the good and efficient roles which has been done and is being done by the ICANN staff. And I hope other people may join me for that appreciation. Thank you.

León Sanchez: Thank you very much, Kavouss. And I think that we couldn't agree more with you. We would like - I see - I believe that Thomas, Mathieu, myself, and I believe everyone in the group joins you in that recognition that you're going to have some support and, well, just to say that we agree fully with you.

And next in the queue I have Roelof Meijer. Roelof?

Roelof Meijer: Thank you, León. Roelof Meijer for the record. Yes and you mentioned that there was a discussion going on in the chat room. For those of us who are using the phone connection, it sounded very cryptic. So could you just tell the subject? You don't have to explain what the discussion goes into in detail, but I would just like to know what it is about.

León Sanchez: Thank you, Roelof. Yes the discussion is around the review and the GAC haven't been subject to a review to date. So Robin wanted to comment on that, but while she was raising the point, I turned the call to Thomas so I wasn't able to actually follow up on her comments.

But it is acknowledged that is a precaution that needs to happen so we have some members and participants from this group that would like to go deeper into the issue. So that is a discussion that will be pending. And of course we will be following up during the next phase in the list.

Roelof Meijer: Okay thank you, León.

León Sanchez: Thank you, Roelof. Next in the queue I have Thomas.

Thomas Rickert: Yes just a very quick point. Thank you, León. There has been some communication in the chat window I think from (Mark) and others who said that we should be driving quickly and that we should try to end our work prior to Marrakech. So I would just like to encourage all of those that a few ways of expediting the process to share those approaches with us. I think it would be very helpful for us co-chairs to get support and more views on how we can finalize this process, which is in a very advanced stage. So I think that would be much appreciated. Thank you.

León Sanchez: Thank you very much, Thomas. So I guess that leads us to the end of our call. We made in two hours. Thank you everyone for your efforts, for your very concrete participation. And that would end this call.

So thank you everyone and talk to you soon. Bye-bye.

Thomas Rickert: Thanks, everyone. Bye.

Man: Thank you. Bye-bye.

END