

ICANN

**Moderator: Brenda Brewer
January 26, 2016
1:00 pm CT**

Coordinator: The recordings are started.

Thomas Rickert: Thank you so much. And with that we can start this Call Number 80 of the CCWG on the 26th of January, 2016. We would like to do the roll call as we usually do by checking the list from the remote participation room.

So please, for those who are on the audio bridge only, please do speak up. I heard Jordyn stating that he's only on the audio bridge. So we added Jordyn to the list. Anyone else?

Cheryl Langdon-Orr: (Unintelligible) It's Cheryl here. I'll be rejoining the IC, but I'm not here yet.

Thomas Rickert: Thanks very much Cheryl. We will add you to the list. Any further attendees only on the audio bridge? That doesn't seem to be the case. Then the next question as usual is whether there are any updates to statements of interest?

Seun Ojedeji: Yes this is Seun audio only. Thank you.

Thomas Rickert: Hi Seun. We will add you to the list. Welcome. And there don't seem to be any updates of statements of interest. Before we move to the first (unintelligible), let me just briefly respond to that discussion that is going on in the chat of the order of the agenda items today's agenda.

Let me first explain for everyone's benefit why we suggested the change. That is because Leon had an urgent meeting that he needed to attend. And since he was chairing...

((Crosstalk))

Thomas Rickert: Agenda earlier, we wanted to make it possible for him to join. However, as you will remember before we started this intense work phase we said that it should be predictable for everyone if and when we have discussions on certain topics.

And in order to maintain that predictability, we will now move back to the agenda as originally suggested to the group. So you don't need to rearrange your days or nights in light of the suggested agenda change, which is here withdrawn.

That allows us to move to the next agenda item. And that is an update on the chartering organization's input. And that's going to be done by Mathieu.

Mathieu Weill: Thank you very much Thomas, Mathieu Weill speaking, the ccNSO appointed co-chair, and welcome everyone to this Call Number 80. I'm delighted to report, as you've seen on the list that we have received the remaining two chartering organization's feedback ahead of this call.

The GNSO and the GAC have provided very substantial inputs. And their - the goal of this agenda item is a short review to ensure we have a clear view of their feedback, concerns, endorsements.

I think the Number 1 news is that there is no formal caption for any of these two organizations. There is indeed some qualified support and some concerns expressed even within each of these groups. Some objections are noted.

They are consistent with the minority views that were expressed at the time of certification of our third report, as well as with the comments we had received in the public comment period.

And I think you would - I hope we can conclude by the end of this agenda item that we are already working on the concern that were raised. And to introduce the discussion, I will move through the various recommendation of our report and focus on the concern only on, the conditions or the clarifications for support that we have received from the GAC and GNSO.

And so that we can share a common view of what the feedbacks from these two chartering organizations are. So I will not spend any time on the recommendations that are not throwing any significant concern and actually generally supported.

So with regards to Recommendation 1 to start with, the GAC has not reached a formal or final position on being a decisional participant, but is reminding us of its previous input from December but also September in participating to the escalation process.

Within the GNSO there are some positions noted on the basis of the balance between SO and ACs and the shift of balance that our proposal would introduce.

And there is also an expressed condition for the support of Recommendation 1 to include extra transparency measures. And that's precisely what we've been working at on Recommendation 1. So that's for Recommendation 1.

Recommendation 2 is globally supported. Recommendation 3 we have GNSO support with clarification. The clarification is about the need to clarify the process to update the articles of incorporations. That's been our work so far on Recommendation 3.

As far as Recommendation 4 is concerned, we have GNSO support with qualifications as well. That's about shielding community participants from director litigation in the case of board removal. And fixing the escalation timeframe issues, so precisely what we've been working on.

Recommendation 5 is the mission core values that the GAC is setting an expectation that any change will not limit their ability to provide advice or any ability to board to act on this advice.

And the GAC also requires that there is a clear continuation of ICANN's ability to enforce contracts. And as far as the GNSO concerned, there is qualified support with some divergent positions on the scope of contract enforcement. And I think that's the core of our discussion later today on this Recommendation 5.

Recommendation 6 on human rights is also on our agenda. There is no consensus yet from the GAC. They will consider whether to join any

consensus that would materialize hopefully during this call. And the GNSO is generally supports, but some groups believe that it should be detailed in Work Stream 2.

Recommendation 9 is about incorporating the SO and AC - sorry the AOC review teams. And GNSO is signaling limited support with some position. And potentially divergent qualifications. And I think that's also on our agenda, but I hadn't noted any item that was not already in our discussion items.

Recommendation 10 is about the SO, AC accountability. And there's a suggestion by the GAC, which is actually consistent with some input from the GNSO that the reviews should be in cooperation with the SO, AC.

And the GAC also underlined that government's accountability is to their citizens. And that principles of sovereignty may apply. And with it the GNSO there is limited support with (some) position. And the opposition is about those same issues that have been discussed last Thursday in the comments.

Recommendation 11 is obviously a highlight and much anticipated discussion for Thursday. But I think it's important to note that while there is no consensus in the GAC, there's no objection either.

And within the GNSO there is a - there - it's - the (cord) is if there is broader position at its reaching now. And then a list of the concerns that are consistent with the comments we've discussed - we started discussing last Thursday.

And finally on Recommendation 12 there's support, but the GAC requests a clear timeframe. And once again, I think that's consistent with what we've been doing so far.

I'm sorry for being long, just a quick summary before opening for any discussion. I think there is - I would note that there are interesting similarities with the - between the GAC input and the GNSO input.

First of all, it's been a lot of work assembling these inputs. And I think we should all think and express how grateful we can be to the teams that work very hard at providing these inputs in a timely manner.

And there was some divergence within each of the chartering organization. So let's not underestimate the amount of work that has been undertaken by the two providers, some working (good) input.

It's great that we can note that there is an absence of formal objection, although obviously some gaps remain. And it's also good news for us as we've been working since January that I was not involved and I think we haven't been able as co-chairs to look at any of the arguments as being a surprise unknown to our group.

And all of the comments raised in this are consistent with the comments that we've been managing and dealing with during the last three weeks, since the beginning of January. So this is confirming the relevance of what we've been doing so far. Just haven't been spotting anything to redo because of these inputs.

And with that I'd like to ask whether there are any significant concern or issues in the GAC or GNSO inputs that we would have missed and that we would have to take into account or review in the process of our finalizing the next steps.

And would suggest that once our next steps are clear and agreed on, we write to every chartering organization to thank them for the time they've been dedicating to providing us this feedback, and of course provide them with some clarity on next steps.

That's going to be it for this long introduction. And I'm turning to you for any additional point or questions. And first in line is Alan, Alan.

Alan Greenberg: Thank you very much. It's Alan Greenberg. I just wanted to give you a brief update on the ALAC position. We've reviewed the - our original submission and where we are right now.

And at this point we have one item not yet discussed, two items not discussed but we don't believe they're going to be substantive. And two of them are currently under discussion by the CCWG. And we are optimistic that the end result will be something that's satisfactory for us. I'll be documenting the specifics of those five items in an email later today.

Mathieu Weill: Thank you Alan. Can I ask what the item (of discussion) would be about, just to make sure I locate it into the number of recommendations or something?

Alan Greenberg: The substantive one not discussed is under the mission. And I raised that the other day and I presume it's on Becky's list to bring about one point. It's whether market issues are - whether we have any discretion on those or not.

Mathieu Weill: Okay thanks. That was raised at a previous meeting, so it was under our radar. So thank you very much Alan.

Alan Greenberg: Two other items which haven't been discussed we don't believe there substantive, but we would like them raised. But I'll raise them in my email.

Mathieu Weill: Excellent. Thank you very much Alan. Any other comments on this update regarding chartering organization's input? I am seeing none. And as a consequence, I would now turn to Thomas for the next agenda item, Thomas. Thomas are you speaking through a muted microphone? Or have you simply disappeared?

Thomas Rickert: I had to unmute myself, so it took me a while. Thank you very much Mathieu. The next agenda item might be a quick one, but it may also be un-substance.

You will remember that we've asked our lawyers to reach out to (Jones Day to discuss the compromised language on the waiver/indemnification contacts with individual board member removal.

And this discussion between the firms should have taken place earlier today. So let me ask Holly and Rosemary whether there's any progress to report on.

Rosemary Sinclair: Yes this is Rosemary. Can you hear me?

Thomas Rickert: Yes we can hear you alright.

Rosemary Sinclair: So we did have a call with ICANN legal and (John Stay) and our - your two firms on the call. And we got feedback on the waiver language that we had presented to them.

Basically the feedback was that the board still remains strongly opposed to including any waiver, narrowed or otherwise. I think at this point Holly and I think it will be appropriate to share some waiver language with the CCWG. And that should be going out shortly so that you know what we discussed and what the board opposed and what you could consider.

Secondly, we talked about the indemnification. It sounds like they've had some discussions and the board has indicated to (John Stay) that they support having indemnification that would apply to statements that are made in the rationale that's contemplated by the escalation process with some qualifiers.

So this is only for the rationale that's contemplated by escalation process. And it would be only for statements that are made in good faith after due diligence concerning the voracity of the facts that are presented.

There is a current indemnification provision in the bylaws now which pretty much tracks California corporate law provisions on indemnification. This indemnification that I just mentioned regarding this rationale would most likely be presented as a separate and new paragraph.

So it would be probably in the same section of the bylaws, but it would not - we would not be trying to work it into that indemnification language that's already there which has some other qualifiers that wouldn't be present for what the board would apparently support.

(John Stay) is going to draft that language. We don't know yet what the timing will be on, how soon we'll see something from them.

Thomas Rickert: Thanks very much Rosemary. Alan's had is up. Alan please.

Alan Greenberg: Thank you very much. Two points. Number 1, indemnifying only what is actually written in the rationale is somewhat problematic in that the policy we're proposing mandates a community forum and a wide discussion of this.

And if we're only allowed to read the words we published and repeat them six times, that's not going to make for a very productive discussion. That's Number 1.

And Number 2, I'd like clarification on who is being indemnified. At one point the board said the chair. At another point they suggested may be the whole councils or committees. But I think it's rather important to understand who it is that we are potentially indemnifying. Thank you.

Thomas Rickert: Rosemary would you like to respond to that?

Rosemary Sinclair: Yes. We certainly did not tell (John Stay) or ICANN legal that the scope of indemnification that the board proposes was acceptable. We just asked to see language.

And of course that is a very good point, Alan that it is narrow where it would not cover statements that were made during a community forum for example. It would only cover the official statement, the official rationale.

My - We didn't specifically discuss this. My understanding of the import of tying it to the official rationale is that it would cover that language. And so any claim made against anyone based on that language, but not, you know, other language. Other language there's - is if they aren't proposing or they're not supporting at this point indemnification.

Thomas Rickert: Thanks Rosemary. Chris is asking in the chat whether you Alan could say what you think it should cover. So can you share your thoughts on that with us?

Alan Greenberg: Are we talking about what content or who, or both?

Thomas Rickert: Content.

Alan Greenberg: Content. Well if we're going to have a wide ranging discussion which is going to be open to other people to listen to, presumably documented, then I think it has to cover that kind of content as well.

I mean yes, it should be set in good faith. But, you know, subtle differences in wordings can end up with significant results in this kind of thing. So I don't see how we can mandate this kind of wide ranging discussion where other people are asking questions or making comments who didn't issue the rationale. And have them covered as well. So I don't think this goes far enough.

Thomas Rickert: Any more (unintelligible) of that?

Alan Greenberg: If it - I'm sorry. I'm just reading. It's cover the community forum discussions and the rationale. And it included the full committees and/or councils as opposed to just the chairs. That's something I think we could have a substantive discussion on within our - within the ALAC and presumably the other groups could as well. And decide whether that's sufficient. The answer is probably.

Thomas Rickert: Okay. Let me pause for a second to see whether there are more views on that. Greg please.

Greg Shatan: Yes I'm sympathetic with Alan's view. I think that the - if the concern is that there are people who may not be involved in providing the rationale who are just kind of running their mouths off and being completely scurrilous and, you

know, think they've got, you know, pictures of an unnamed board member, you know, with a squirrel or something.

That, you know, that's a, you know, that should not be covered by this even if they're saying that's the reason personally why they supported removal of that board member. You know, there are limits to this clearly so we're not looking for something.

But I think it's, you know, anybody who could reasonably be brought into a suite for the purpose - you know, that based on the rationale at presentation and the like should be covered.

So, you know, if it's - so I think, you know, part of it has to look at the limiting it by in essence the subject matter rather than making it a tentative blanket waiver for all behavior.

There needs to be some understanding that this isn't covering everything for everybody - everybody and everything they do. But the idea is that the rationale itself and maybe some other, you know, at least reasonably related to presenting the rationale, you know, in a capacity needs to be covered.

We just want to avoid people shying away from participating in ICANN governance or having a chilling effect on advancing the community powers out of fear of, you know, being, you know, engaged in litigation just for, you know, kind of in essence doing their job, even if it's not a job. Whatever the hell this is we do.

Thomas Rickert: Thanks Greg. Alan.

Alan Greenberg: Thank you. Just to be clear, because Robin said something about slander. I'm not really worried about slander as such. I'm worried about essentially things like suing for damages because their employment ability is now restricted because of the occurrence or things like that.

So it's got to be general enough to cover that kind of thing, not just accusations of slander or liable. Thank you.

Thomas Rickert: Thanks Alan. Chris. Okay, Chris has lost her courage to speak. Just kidding. I know you never would. There are also some comments in the chat suggesting that, you know, there should be a black check for everyone just to say whatever they wish to say, even if it's defamatory over slander or something else bad.

I think what I'm hearing and reading is that the way you described, you Rosemary described the current state of play with only offering protection for what's in the written rationale. That would likely not get this group's support.

But just to let you know, we are very dependent on the chartering organization's support for the refined recommendation. And we have both ALAC and GNSO's consent on record that they want to see some protection for those who are coming up with reasons why a board member should be removed.

So I think what's needed now is compromised language that captures the spirit of what we've said in terms of the illegible presence for such indemnification as well in terms of substance. So what we saw in the chat and what we heard in this call should be guidance.

And I think we would need compromise language from (John Stay) capturing this spirit before the end of the week. So that we can come to closure of it on the next call on the call next Tuesday.

So I would assume that if that compromise language does not meet the requirements of the chartering organizations that we will likely not be able to further compromise, but go with the broader - with a waiver indemnification language that might be broader than what the board might like. But I guess we need to end this discussion and ensure that we get the chartering organization's support and meet their conditions.

I see that (Sam) has confirmed that the deadline can be met, so that's awesome. Let me also say that nothing should prevent you from delivering earlier. So I think the more time the group has to discuss and refine this on the list, the higher the chances are that we find in a solution that's agreeable to everyone.

So I think with that there is not much more we can do on that topic today, which is why we can now move to the human rights discussion. And that's going to be chaired by Mathieu.

Mathieu Weill: Thank you very much Thomas. And I don't remember if we've presented Leon's apologies for not being able to attend the beginning of this call. But I think he would have like to share that, perhaps. But we'll try to keep up the incredibly hard work that he's been putting up with the (unintelligible) team to move this into a constructive discussion like we've just had on the previous points.

So we've attempted, after the last meeting, to put in writing and describe where we are, taking into account the latest proposals received from the lawyers.

So you have a set of slides, a short set of slides here that you have scroll control on, which is first of all describing the current status. The third draft proposal was - is suggesting the addition of a bylaw to reaffirm ICANN's commitment to human rights.

And also clarifying that it would be implemented in accordance with the framework of interpretation that will be given out a spot of Work Stream 2. There was a significant majority of comments in support, but also some comments that raise concerns, unintended consequences that the recommended inclusion in the bylaws might have.

The board, among others, was suggesting holding any addition of the human rights in the bylaws until the framework of interpretation would be developed. That was the starting point.

On the next slide we did discuss already a few times, must be our third reading on this topic. There still seems to be a broad support for the recommendation, but some confusion and interpretations as well as some clarifications that would be needed to address some of the concerns.

There were different alternatives discussed. You remember Option 2a, 2b, 2c, whatever confusion raised from that. And we haven't been able to reach consensus to the level of the previous one at this point with these alternates.

We also need to remember that there's been work on this topic since basically right after the first public comment. And that was certainly amplified by (Work Body 4) which started in late July.

And the consensus (position) over to a draft consensus. We received another support in the second draft and third draft for comment. So trying to address the different concerns our lawyers have proposed the text for bylaw inclusion. But trying to avoid the unintended consequences that were mentioned by many.

And that would be by adding the sentences in red on Slide Number 4 on your screen. That the bylaw provision will not enter into force until a framework of interpretation is developed as part of (Work Stream 2) by the CCWG accountability. And we're speaking to the requirements here, not bylaw text necessarily, but indeed the framework interpretation is needed for the text to enter into force.

And ICANN shows support (the position) of work of such a group to proceed the development of the framework as promptly as possible. So we would like to - what we would like to do today is test whether these clarifications enable us to lift some of the concerns about intended consequences. Whether this is actually considered an improvement to the previous rough consensus on the third draft. And whether there is - this can be accepted as a way forward for our work.

And with that I'd like to open the floor for interventions, obviously trying to keep in mind that in this - on this recommendation we know that we need to be flexible and listen to each other's concerns, but also find a way to conclude a discussion that is necessarily not going to make everyone fully happy. But we need to get out of this with something we can live with.

And with that I'd like to open the floor for any concern about the proposed text or expressions of support for the previous ones. So after you. And first in line is Tatiana. Tatiana please. Yes Tatiana.

Tatiana Tropina: Hi. Yes, thanks so much. Sorry, I was muted. Tatiana Tropina speaking. Well I have to say that I just, I want to support this proposed text for bylaw inclusion because I think that (we me in the charter) in the middle of this new bylaw text because I do believe that it solves the board's concerns. And it also allows us to have the bylaw text so we will have something to work on in the work stream 2.

I think that they might have some fine tuning later. But all in all, I totally agree with the concept of this bylaw because I think it addressed basically almost all concerns which were expressed. Thanks.

Mathieu Weill: Thanks Tatiana. And indeed, I should have registered for the record. The concerns we've heard about the number of IRP challenges on that basis, which was discussed and also the other concern that the IRP panel might have to provide interpretation for human rights commitments in the meantime before the FOI would be developed, which I think this wording avoids as a risk.

I think that some (into) speakers are trying to make sure they're speaking last or something. And they are surprised that the queue is no longer. But I see Markus hand is up. And Markus I know you're the lead for the board on this, so we're listening to you. Markus please. Markus muted microphone maybe? Your microphone appears muted on the AC room. So you may have to unmute yourself in the room. Markus still no sound. Yes.

Markus Kummer: Can you hear me?

Mathieu Weill: Yes perfect Markus. Thank you.

Markus Kummer: I have a patchy connection, sorry.

((Crosstalk))

Markus Kummer: Yes thank you. I mean we had a (small) discussion on the board, and the - can you hear me?

Mathieu Weill: Yes Markus.

((Crosstalk))

Markus Kummer: Okay, sorry I have a patchy connection. I couldn't hear everything you said, but I get the general. I was saying that at the (smaller) discussion from the board and the board (unintelligible) look and saw the various size (option).

And again, I can't really (repeat) what I said the last time, there's been concern does the outcome lift it? So holding human rights, reading that transmission. That's the (unintelligible) with the community to progress human rights work within ICANN.

And again, the human rights statements we mentioned before, we think is the right way forward to reach a meaningful framework to guide human rights compellations within ICANN's mission.

Now looking at the options on the table, both the A and the B and the C, again without giving preferences, it's after looking at all of them, the board remains

convinced that Option E would remain the best way forward as it would allow (us to) define a framework to proceed before continuing (unintelligible) to include the human rights litigation into the bylaws.

And this may be what we're thinking about. Now we do understand that there are strong concerns that by pushing it down the road, nothing happened anymore. But that is not the intention of the board. The board is clearly committed to dealing with this issue.

And it would propose to include into the bylaws a requirement for ICANN to address the human rights issue as well as a requirement to consider once we do have a framework identification how to include it into the bylaws.

So to sum it up, our proposal would be essentially three-fold. Rather framework identification as part of (working tool). And then to develop a cross-community working group that would be chartered with coming up with a framework identification.

And then with and how this framework identification should be referenced in the bylaws will be another story. And lastly, it would be up to the board to consider the recommendations according to the process assigned for considering these continuous improvement recommendations would be included into the bylaws.

So this is our reaction after a careful study of the proposal. But again, let me repeat what I said at the onset. The commitment here is here. The part of the board to the commitment to upholding human rights as appropriate given ICANN's mission. And that's in a nutshell the result of the board discussion. Thanks.

Mathieu Weill: Thank you Markus. Thank you for the very considerate, and I know you chose your words with care. And after thorough discussion with the board, that's much appreciated.

My understanding is that you're saying that obviously the best - the approach preferred by the board remains to defer into (Work Stream 2). And that you're introducing a new approach where there would be a commitment to address the human rights discussions introduced in the bylaws. But that would not be option - the option that we're putting on the table today.

And so I would like to ensure I understand correctly and the group can understand correctly what in the current proposal is still not addressing the board's concerns, as I think there was a considerable amount of effort from our lawyers in our group to actually find ways to address this.

And I did - maybe I didn't catch correctly the point where you highlighted what was still not address in this proposal. And then I'll turn to the rest of the queue.

Markus Kummer: If I may come back, I would also encourage my colleagues. And we do have lawyers on the board who are more familiar with the legal intricacies of these issues. But I've been involved in discussing human rights for the past 10, 15 years in a more diplomatic quality framework. And human rights is never an easy issue.

And here I think the crux is the board is not convinced that we come to a conclusion whether it makes sense to have a reference to human rights in the bylaws before actually having done the groundworks.

It may be part of the mission statement. Find the two other reference to human rights in the bylaws opens vulnerabilities of issues we have not actually discussed. So in essence putting the cart before the horse in simple terms.

So, you know, let's have the discussion. Let's develop this framework (a bit of a patient). Let's develop a human rights statements. Let other cross-community working group dealing with these issues. And then honestly have done the basic work, come to a conclusion.

So now this may be a slightly oversimplifying into the patient of the board's position. And as I said, I call on my fellow board members and as well on the legal team to beef it up a bit.

But in essence, that's how I understand the results of our discussions. Let's have each discussion on how to develop a framework interpretation first. Then let's see how best we deal with it in legal terms in interpreting it into the bylaws instead of having a reference in the bylaws, however dormant it is.

And then we keep saying once we have it done. So that's how best I can interpret our position. It's as I said, maybe fellow board members may come in and also our legal staff experts. That's hopefully maybe to be clear. And let's discuss this. Thanks.

Mathieu Weill: Thank you Markus. I will turn now to the queue, but would observe that at this point it's a little bit difficult for me as a co-chair, and I've been moderately involved in the discussions, to understand exactly what the board concern - what board concern has not been addressed so far.

And that would be very helpful to understand that. And I think we also need to also understand how this new proposal that the board is introducing would

actually make a step towards those - the initial proposal that was getting a lot of support from our group and in the public comments.

But now I would like to turn to Niels. I think that you - I know Chris is on the line as well. So let's have Niels speak first, Niels.

Niels ten Oever: Thank you very much Mathieu for this opportunity to speak. I am frankly very disappointed by what the board come out with. The board can say that it's committed to human rights. Well I don't see any commitment to that work whatsoever because we have been discussing at length and considerably.

This discussion has been going on since the report that was done by Thomas (unintelligible). We had many meetings about this in LA, in London, in Buenos Aries. We had long discussions in the CCWG. We had long discussions in Working Party 4.

There was consensus also by individual board members that participated. Then there came the comments of the board that came out of the blue. We worked very hard to resolve them with the CCWG lawyers.

We worked together with the lawyers of the ICANN board. We addressed all the issues point by point several times. Had long calls with long work and with a lot of legal work, and not only time but all the money went into discussing this.

And now the board is moving backward. And with this it is insulting the community and the work that has been going into this. And I'm really, really disappointed that we're being put like this and that the board's also not providing documentation to why it's been doing so.

So we're not really having a constructive discussion anymore. The board is actually just coming out that they do not want any human rights commitment in the bylaws. And that's very disappointing to see in here.

And I really do not understand how we can accommodate the board any further than this. So I'm really disappointed and I don't see how we can go further now.

Mathieu Weill: Thank you Niels. And I would indeed encourage all the speakers on the line to maybe highlight any way they would see a way forward, if need be. But I think we'll have to come to closure at some point on this after three discussions.

And we're probably reaching the point where we might have to consider that we're not making any further progress. And then would have to make a decision. Next is Tatiana.

Tatiana Tropina: Thanks so much. Tatiana Tropina speaking for the record. Well the way proposed by the board is not solving the problem at all because to develop the framework of interpretation, we need the bylaw language.

We need to know what we are actually interpreting. Board raised concerns in the public comments. And we were trying to address them. I believe that the proposed text appropriately addressed the concerns.

And this can be a very good way forward. This would - what we can leave with this - what we can use it without being afraid of the IRPs and everything, courts, litigations.

The fact that the board is coming with another suggestion out of the blue which would require another set of discussions and whatsoever, I don't find it a possible way forward.

What I find, I think it's just the statement, my way or highway. I don't see any argument discussions here. I think we can just go forward and just take this bylaw text, the last draft which is now on the screen, proposed because it does address the board's concerns. So I think this can be possibly the way forward. Thanks.

Mathieu Weill: Thank you Tatiana. Very clear. Alan and then Kavouss, Chris and I will close the queue after Greg Shatan, Alan.

Alan Greenberg: Thank you very much. Three quick comments. Should this bylaw that's on the screen go ahead, I have two specific comments on it. One, the sentence (was such of) in particular, this does not create does not sound like bylaw language. It sounds like a prediction of someone's evaluation of what it does. But it's not a guarantee that it doesn't create because the courts or whatever will make their own decision.

So I don't see why that's - I don't see why that sentence is reasonable in a bylaw or to that effect - to that extent, I don't even think it gives me any comfort.

Number 2, a minor thing. In the red text it should say a framework of interpretation of what? We use the term framework of interpretation in many different ways in ICANN, so it needs to be specific.

My understanding of the board's concern is that if we have bylaw language that mentions the term human rights, even if it says it's not an operative bylaw. That it opens up some liabilities, some risk.

And I would like to have at least a couple of examples from the board of the kind of risk they're talking about so that we can evaluate whether indeed this is something that is substantive and we need to worry about. Or it's just, as some people have said, you know, they don't want the words.

So some feedback on what the difference is between not having anything and having this which says it's not operative would help understanding that.

Thank you.

Mathieu Weill: Thank you Alan. I would note that we indeed asked for some concrete examples already when we started this discussion and just your work obviously.

The first two points I think can be addressed. I think this is lawyers provided input. So I would tend to think that this was addressing your first point about does not create any new whatever, liability. But it's to be checked, no problem. Kavouss you're next. You sold us a solution.

Kavouss Arasteh: Can you hear me please?

Mathieu Weill: Yes we can hear you Kavouss.

Kavouss Arasteh: Yes. Mathieu it is very surprising situation. We are touching on a most important element of our (unintelligible). I think it is very difficult to decide at this very meeting.

We have two options. One option is whatever we have now on the screen, it is more or less the consensus emerged that we reference the bylaw of however effective date or date of putting into force will be postponed until the framework is approved. That is one option.

The second option that I propose for consideration. ICANN board would pass immediately a resolution. In that resolution all of the commitment that Markus mentioned in detail will be mentioned with all reference to what work you have done. Mention all of those commitment.

That resolution will be sent to CCWG. CCWG drafts a new resolution. In that resolution, mention the issue that is a bylaw at this stage does not have the effective date because of this. However, attached to this resolution is the ICANN commitment.

This is something that all entities outside the ICANN they do whenever they have problem to work on a sort of the provisions in the constitution convention charter so on and so forth. They would have a resolution.

Resolution would have the same problem, but is not part of the treaty text or part of the legal text. So I would see this as a second option. But we have to really see what would we detect the language of the commitment with respect to implementation or commitment of the respect of the bylaw between now and until the framework is finished.

Once we have that resolution, we would try to see to what way we can seek resolution. Either we have another resolution of CCWG cross-referenced to that and attach it to the bylaw, which would not be part of the bylaw but is (concept) of the bylaw.

Or we go to Option 1 that we have - what you have on the screen. These are the two options. We could not start a new discussion on the proposal in the drafting of bylaw. I think we're at the end of the process and we have to take any of these two options.

Take it as it is or ask for the commitment in the resolution, cross-reference that resolution in one way or other within the bylaw. Thank you.

Mathieu Weill: Thank you Kavouss. And that's - I thank you for the proposal. And I think we need to test whether there's - that seems to be something that would address some of the concerns raised on (for sights) or not.

And I noted that basically that would still say the preferred way of the CCWG is, and that's unless we get the satisfactory board resolution and can endorse it. Next is Chris. And Chris I know you're - you have the lawyer hat where you can provide us some insights...

((Crosstalk))

Chris Disspain: Thank you. Thank you for that. You know, this is a very pass - this is a subject that brings passion to our discussions. And I acknowledge that there are a number of individual people on this call (unintelligible). That's why we hear words like disappointment and so on.

I want to try and be as straightforward as I can be about this. And especially knowing that what I'm about to say is not going to be satisfactory for many. First of all to be clear, the board's position has not changed.

It - the board's proper position (unintelligible) started discussing this. What we've put on the table today is a suggestion of a way to move it forward. The principle problem I think is that - is two-fold.

One that by putting it in - this dormant bylaw thing is complicated and difficult. And we don't really understand why it's even necessary. There's a process in place for dealing with (Work Stream 2) work.

That process is very clear and has been accepted by the community. And where things go into (Work Stream 2) there will be a bylaw that ensures that the (Work Stream) team will be dealt with properly.

For some reason this human rights issue seems to have been lifted to a different level where we're creating a whole new process. Where it gets mentioned in the bylaws in a dormant manner, (with Work Stream 2) work being done. And that seems to us to be a slightly weird way of doing it from a consistency point of view.

Secondly, there is in our view a risk that because this construct of dormant bylaw isn't really tested or doesn't really exist in general terms, there is a risk that it could have led itself open to interpretation of (unintelligible) or in a court. But notwithstanding the fact that it claims to be dormant, it's still there.

And thirdly, there is an assumption here that work on human rights fully agreed should be done. And we're very comfortable with (Work Stream 2) will result in a bylaw. And that's not necessarily so. It may result in provisions being made in other ways (unintelligible). It may or may not result in a bylaw.

So the board is extremely uncomfortable with the assumption that is being made that the work of (Work Stream 2) on human rights will lead to a bylaw.

It's uncomfortable on the risk analysis of putting in something that is a constructed - there's no basis for really a dormant bylaw and how that may be treated by a panel or maybe by a court.

And what - and our suggestion is very clear language in the (Work Stream 2) bylaw that sets out very clearly that there will be a (unintelligible), or whatever you want to call it, however it works that at the end of the day will produce a series of recommendations.

And those recommendations will be treated in precisely the same way as any other recommendations that may come through. And it will be subject to all of the community empowerment mechanisms that have put in place in (Work Stream 1).

So that's currently - that's our position. And I appreciate that that is not going to satisfy (people). I think that the suggestion that we might have (unintelligible) within (Work Stream 2) is a sensible way forward. So thank you.

Mathieu Weill: Thank you Chris. I have closed the queue after Greg. And Tatiana you spoke already twice, so I would be tempted to keep that closing. I'd like to turn now to Luca from Switzerland. And then Greg and we'll close the discussion.

Luca Urech: Yes thank you very much Mathieu. And I would like to of course share many of the voices that have expressed their support to maintaining that recommended reference. That is clearly one of the important outcomes of this whole process. And very dear to a large parts of the community.

Now what I would like to suggest that we maybe take a step back and look at the whole process and where we've come from. And we believe that the

language that we've been seeing even before (unintelligible) addition today is already quite narrow.

It has been valued down. Many of concerns have been accommodated. The language made clear that it doesn't - the commitment doesn't create any obligations for ICANN or any other entity. So from a legal point and perspective, we don't see any risks or unintended consequences as the language is already very narrow and clear.

And secondly and most importantly we believe that rejecting that recommendation would send a rather negative message out for this important thing that has been very important to us, the whole purpose.

So in the state of compromise, I think it would really be favorable for ICANN, for the whole transition process to maintain the text as we see it today. Thank you.

Mathieu Weill: Thank you very much Luca. And then next is Greg, if I'm not mistaken, Greg yes. And then we'll close.

Greg Shatan: Thank you. Greg Shatan for the record. And I think the remarks on behalf of the board, you know, point out even more, you know, the validity of the compromise proposed on the screen. That it is a compromise and a meeting point hopefully among a number of different positions.

Those who wanted more, those who wanted less, those that wanted something different, those who wanted something later, those that wanted something earlier. You know, this is kind of - I see this as the center point.

And I think this, the language on screen is important as the stake in the ground and the starting point from which we work. I think that, you know, so I'm not, you know, sitting here saying I'm disappointed in the board. But I'm saying that the board is at one of those points that is still away from the center.

I would encourage them to join the center there so they're willing to have some language that references human rights in the bylaws. I think that the, I mean the concerns that were expressed, I didn't really find deeply concerning as, you know, likely to occur in that sense.

And, you know, they can be controlled for as well. I think that, you know, to do less than this really, I wouldn't say it's a step backwards for the board, but I think it will be a step backwards for all of us.

You know, this is not perfect, but this is at least the starting point from which we, you know, generally seem to agree. We want to start and we go from there - from here forward in the (Work Stream 2) with speed, and not merely deliberate speed to arrive at the point where this can and will become enforced and understandable and, you know, predictable.

And that's where we need to go. So I hope that, you know, we see, you know, others saying that they are disappointed but willing to live with this. I think that should be the general theme. You know, if nobody's perfectly happy that's usually a sign that we've actually achieved our objects. So I hope that's where we're going today. Thank you.

Mathieu Weill: Thank you very much Greg. I will make a conclusion in a couple of minutes, but I seen Holly had a few points in the chat. And I would like to ensure we got all the legal inputs before concluding. Holly, any short last comment?

Holly if you're speaking, you're on mute. We cannot wait for hearing from you.

Okay so you hung up. So that's - I don't know if Rosemary or any other lawyers has - are you able to speak up at this point? If not, I will certainly conclude because I think the direction of this discussion was actually pretty clear.

I think there's still a lot of input from the board on this proposal. But I haven't heard any traction for the counterproposal for the board. And as such, after our third discussion on this, I think the proposed text on your screens with the clarifications that were asked for Alan among others is a way forward.

And I'm - I would say we can move forward to the next finalization steps of our work on this basis. We keep in mind Kavouss' suggestion that of course if the board cannot set an action that would be such a demonstration of its commitment that it would convince our group of the fact that this final inclusion would not be necessary anymore, then we might have to review this on the basis of a formal action from the board.

But I think unless that happens, the proposed text with refinements is our way forward. And I'm turning back to Holly for a few words if you have Holly.

Holly Gregory: I'm very sorry all. I've become absolutely incompetent with hitting the unmute button. We heard the concerns that the board raised to the earlier draft language and drafted this language specifically to underscore that and IRP or other enforcement effort would not be available at this time. Until such time as the (Work Stream 2) effort had been undertaken and the bylaw had formally come into effect.

We've been trying to understand sort of post this language what possible risks or fears the board might have that are realistically grounded in law. And frankly, I'm struggling to find them. I'm unaware of any legal basis for the concerns that they're raising about the impact of this current language.

I do - would welcome any case law or statute citations that the legal team, the ICANN legal team or the (Jones Day) team can point us to. But we really have drafted this in a very targeted fashion. And therefore, I think with the risks and the fears that have been stated on this section of the discussion are fairly unfounded. That's all I wanted to say.

Mathieu Weill: Thank you Holly. And that's certainly confirming the way forward. So way forward is going to be based on the comments we heard today to finalize the wording of this recommendation.

And of course stay open in case the Kavouss option of the resolution was coming up in the next few days or weeks. Then we might have to reconsider. But I think that's our basic option. And the burden is now on the board to demonstrate otherwise after three discussions and certainly taking all the concerns very seriously into account.

I'm - (Sam) I'm sorry, I have closed the queue. And so I will move to the next item to Thomas. Thomas you may be speaking to your muted microphone.
Thomas?

Thomas Rickert: I do apologize. Yes, we can move to Agenda Item Number 4 now, which is another discussion of the mission statement. And for those who have read the agenda, it actually said that we're going to spend 445 minutes on this, and maybe we will. But for the time being, let's try to keep it to 45 minutes.

And Becky has ably taken care of that probably for months and months now, so over to you Becky. Maybe you can give us a brief overview of where we are. We found resolutions on some items. And let's try to drill the remaining questions as well.

Becky Burr: Thank you. So we spent a lot of time on the last call talking about the consumer trust issue. And I believe our conclusion based on confirmation and regarding the intended meeting of the affirmation of commitments was that the language as drafted right now would remain, which is to say the bylaws would reference the affirmation of commitments review of new gTLDs, including consumer trust. But that we would not have a general reference in the mission commitments and core values Article 1 of the bylaws.

As Alan has mentioned, in several cases, in several discussions we did remove language from affirmation - from Core Value 4, which now reads that ICANN will depend on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.

This was initially - this initially in the current bylaws read where feasible and appropriate, ICANN would depend on market mechanisms to promote and sustain a healthy, competitive environment in the DNS market.

There was one other provision in the bylaws language that had that caveat where feasible and appropriate. We took - we initially in the first and second proposal, draft proposals, we eliminated the where feasible and appropriate language given a sort of general language there - general balancing language with respect to core values.

In Dublin we discussed both of these and we agreed to re-insert where feasible and appropriate for I think it's Core Value 5 or 6, but not to reinsert it here. I am going to scroll down - do I have scroll control? Yes.

If people would scroll down to the core values I think. Actually let me just ask questions. Do you want me to go through these and just give a summary and then we'll go back to do the detailed discussion Mathieu?

Thomas Rickert: I would suggest we do that Becky.

Becky Burr: Thomas okay. Okay so that is one issue that we need to discuss. We are awaiting the board input on the root server language in the mission. And I believe that there may have been a call on that today, but we don't have the results of that yet.

We have had a very lively discussion about the language relating to the numbers organization, including a contribution from the numbers organization this morning, which we can discuss in more detail.

We have discussed but have not reached resolution on issues relating to mission language regarding ICANN's regulation of services that use the Internet, unique identifiers or the content that such services carrier provide.

ICANN shall have the ability to negotiate, enter into and enforce agreements with contracted parties and further - and actually it's in service of its mission. I don't know why the red lining didn't go out there. And so it's in service of its mission.

As I mentioned, the vast majority of commenters in the third round were supportive of this language. The ICANN board has suggested that this kind of language is inappropriate in a bylaws provision.

They have not objected to that concept, but they have suggested that that language be sort of moved to the general notes to the drafter section. And ask the final bylaws drafters to find appropriate solutions to it.

And our - they asked our council on this and they supported the notion of drafting general principles into the governing documents and providing a mechanism for interpreting those in specific situations. So, you know, general mission, the principles at a general level appropriate for inclusion in the bylaws, understanding that refinement and interpretation will be needed thereafter, presumably through the IRP.

Our lawyers also raised a number of questions regarding grandfathering including, you know, what would be the effective date for any grandfathering. Whether it be a date specific or an event, how the grandfathering would work with respect to registry agreements for new gTLD applicants who have not yet signed registry agreements.

What would be the effect of the grandfathering language on renewals of existing registry agreements? And again, we - this is something that ALAC raised and ask for assurance that existing registry agreements could be renewed as currently drafted. And that registry agreements that have not yet been signed for new gTLD applicants could be entered into and could contain pics for example. The attorneys also asked what the effect of contract modification would be. And whether there should be a sunset on grandfathering.

And then finally, we have received requests for impact assessments requested by several group members. And I think this really goes to the discussion that we've had on the list in the last couple of days regarding the standard pic specifications, which is is there a way to look at these things?

So for example to look at the standard pic specifications in the registry agreements and say are these things all within scope or are they not as a way of understanding what it is we are doing by way of mission language. So that's the summary.

Thomas Rickert: Thanks very much Becky. Shall we go through the individual (lines) one by one now?

Becky Burr: Okay so the - if we go to the chart, I think the first item that we need to discuss is the language in Core Value 4 and ALAC's concerns about the where feasible and appropriate.

So if you scroll down to the chart that appears at the bottom of this, you will see Core Value 4. And this appears on...

Man: Page 17.

Becky Burr: Thank you. Page 17. So and you will also see that Core Value 2 is where we have added it back. So just to put this in context, we had two core values that has this feasible and appropriate caveat in it, one regarding ICANN's delegation of coordinating functions to recognized expert bodies or internal bodies and the depending on market mechanisms to promote and sustain a healthy, competitive environment.

We took these out for Draft Report 1, 2, ALAC raised this is in both cases a concern. We agreed in Dublin to reinsert this is Core Value 2 regarding delegation. We did not agree to reinsert it into Core Value 4 where ICANN is called upon to depend on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.

ALAC has objected to the deletion of that language and continues to advocate that it be put back in. So that's the discussion on the table.

Thomas Rickert: Thanks very much Becky. I see Kavouss has raised hand for a while. So Kavouss would you like to speak to this?

Kavouss Arasteh: Yes I would like to comment on Core Value Number 2. At the beginning you have this section or policy that to the extent (deliver) no problem as appropriate. Who decides that this is appropriate or not appropriate?

If it is clear for everybody I think this qualify could serve in order to reach some consensus and agreement that before delegating any actions also onto board, they should seek two conditions.

One, whether it is feasible to do that. And second, whether it is appropriate. My question is that decision entity is who? Is ICANN board or is somebody else? Thank you.

Thomas Rickert: Thanks very much Kavouss. And since that request is coming from ALAC, maybe Alan can also respond to that question.

Alan Greenberg: Sure. Just to point out that I don't think Core Value 2 is under dispute right now. Those were the words that were in the bylaws and we're simply recommending that they stay there.

So I'm not sure we want to be in a position right now to investigate every word in the bylaws and make sure that we all have a common understanding of it. We're going to be here for a very long time in that case.

I presume it is the board that determines what's appropriate. And the various appeal processes can question if someone thinks they're wrong. So I certainly don't want to go into a further investigation of that.

In the new Core Value 4, which was Core Value 5 before, our concern is very simple. Right now, and I'll give an example. There may be more examples, but to be honest, I haven't gone to find them. But the one example I hope will suffice.

In the RCEP process, in the procedure by which a registry can ask for an amendment to their contract, ICANN asks the registry to answer a number of questions. One of the questions is are there competitive issues involved with making this change? Is this going to affect the competitive environment?

The answer to that, we evaluate it. If we determine that there may well be some significant competition issues, we refer to an external agency. But we do the first evaluation ourselves. Without this clause there, I suspect we cannot even ask the question, never mind evaluate the answer.

So we're taking ourselves completely out of the issue of concern of whether there may be anti-competitive or competition issues involved. And that is problematic in my mind. It's something that we currently do. If take ourselves out of that business, then we have to stop doing that. And I don't understand the issues well enough to understand - to say that that won't harm ICANN or its ability to effectively be a custodian of the gTLD space.

Thomas Rickert: Thanks Alan. Becky. Becky, are you there? Becky if you're on, we can't hear you.

Alan Greenberg: I must have silenced her. That's a joke.

Thomas Rickert: She's just typing that's she's dialing back in.

Alan Greenberg: We have to keep those un-mute buttons far away from the hang up.

Thomas Rickert: Which is correct. So let's just pause for a second. And while we're waiting for Becky to come back, Kavouss' hand is raised again. So Kavouss...

((Crosstalk))

Kavouss Arasteh: Yes. If you hear me, I want just to (observe) the grandfathering issue. We have no problem for grandfathering. Whenever you want to give some stability for something which already existed, you can grandfather that. And it is everywhere I have seen many, many things.

The date of grandfathering it depends on the people implementing that. Until the time that this grandfathering is required, it will be maintained. So we don't need to talk about up to what date it will be continued to implement it.

However, a change of the date or raising the grandfathering issue it should be by the community.

The term issue I'm very sorry we cannot legally grandfather something which we don't know the content of which; i.e., any future agreement that we are not aware cannot be grandfather (by) this moment or at this moment. Thank you.

Thomas Rickert: Thanks Kavouss. We will surely address the grandfathering topic a bit later in this call. Let's try to focus on the market mechanism question now. So Becky's back with us. Becky, it's your turn.

Becky Burr: Thanks. And I think Alan's pointing to the RSEP processes exactly - goes to exactly my concern on this issue. I think that it is absolutely that the virtue of the RSEP process is that ICANN does not make a determination about whether it can or cannot rely on market mechanisms in that process.

If it sees something that it has a question about, it simply refers that to appropriate sovereign bodies with the expertise and authority necessary to make determinations about antitrust law.

And it waits a period of time for those bodies to act. And if those bodies do not act, it permits the proposed service or product or whatever it is to move forward and be offered.

That is not a case of ICANN not relying on market mechanisms. That is a case of ICANN giving appropriate bodies a reasonable opportunity to weigh in on something where they have a question.

I don't see that there's any issue with ICANN continuing to do that. What I do have a significant problem with is ICANN determining in any particular case that it cannot rely on market mechanisms as - when it does not possess either the kind of sovereign authority that competition regulators operate and the necessary extremely sophisticated and frankly diverse from jurisdiction to jurisdiction law that relies there.

So Alan - so I think both Alan and I agree that the resolution in the RSEP is perfectly appropriate and should be continued. I feel strongly that any

language in the bylaws that gives ICANN the authority to say it is as opposed to a regulator that it's not appropriate to rely on market mechanisms is very problematic.

Thomas Rickert: Thanks very much Becky. I'm not entirely sure whether Alan's hand was an old hand or anew hand. Alan...

((Crosstalk))

Alan Greenberg: ...hands are in order that they were raised. It's a new hand.

Thomas Rickert: My device is not showing them in that order necessarily, which is why I'm asking. So Alan, it's you turn then.

Alan Greenberg: Thank you very much. If we were changing the wording to saying something closer to what Becky was suggesting we not be able to do to prescribe that, I can probably live with that. But that's not what it's saying right now.

Becky described the RSEP as if every time we get an RSEP, we go to the competition bodies and ask them is there a problem. That's not the case. I - maybe I don't know whether we have ever asked them if there's a problem or not. The rules certainly allow for us to do that.

Currently we do ask a question and we evaluate the answer. And if we believe there may be some issues, which are questionable, which require professional judgment, we do refer them to the outside bodies as applicable.

My concern is if we are saying that it's completely hands off and we must not even consider competition issues, it's not clear to me we can ask the question or do the initial evaluation and that - it becomes critical. Now as we said, there

may be other cases. This is the one that came up in the discussion. So it's an easy one to discuss.

I don't see how we can walk away from being concerned about it but we certainly don't want to be making the detailed kind of judgments that regulatory authorities or others that have jurisdiction can make. But that's not the same as walking away from the issue completely.

Thomas Rickert: Thanks Alan. Greg.

Greg Shatan: Thanks. Greg Shatan for the record. The way I look at this language overall is it promotes essentially a laissez-faire sort of posture for ICANN. You let the market work its way out of things and basically hands off.

And, you know, that is one economic theory perhaps, not that I'm an economic theorist. But - and that - and I think we're confusing a competitive environment and antitrust violations.

There's quite a big spectrum between a really, you know, robust and healthy competitive environment and one that actually, you know, is - violates antitrust laws or competition laws.

So and I think the idea that we can, you know, run around and get advisory opinions from, you know, in the U.S. the DOJ, FTC or Germany the Bundeskartellamt or from, you know, the EU is not something I think that is done regularly. If - and it may not even be something that can be done at all.

Typically those kinds of, you know, there are specific places you can get, you know, no action letters and the like but I don't think this is one of those places

anyway. So I think we're kind of losing - we're talking about a lot of hypotheticals that I don't think are actuals.

So I think that, you know, the point here is that, you know, where feasible and appropriate language gives ICANN some discretion to look at whether the market mechanisms are promoting and sustaining a competitive environment and that, you know, has nothing to do really with antitrust laws.

You can have an environment that is not particularly competitive or is not really working as a competitive environment but no antitrust laws are being violated. That's - and that I think is where, you know, concerns may rise. You know, not in out and out competition law violations, which is a whole separate problem - really I think a separate problem from what's being discussed here. Thanks.

Thomas Rickert: Greg, would you suggest altering the language or keeping it?

Greg Shatan: I think going back to the language, you know, the where feasible and appropriate language I think is appropriate. I think it's feasible as well.

Thomas Rickert: So let's hear Sebastien and after that Becky will have a last word on it and then we will have our break. Sebastien.

Sebastien Bachollet: Yes. Thank you Thomas. Maybe - no, surely it's my difficulties on the - this difficult language that it's English. But my understanding was that if we take out where feasible and appropriate, that's been that - the only way to promote and sustain a competitive environment is to depend on the market mechanism.

And I don't think that it's the only way - the only way. Market is one way. There are other things that we can do. And it's maybe because a lot of people within ICANN forget where feasible and appropriate that we are with the current new gTLD program where very few proposal from some continents (were there). And I really think that we need to keep it. And Greg has better (word) than mine to explain why. Thank you.

Thomas Rickert: Thanks very much. Becky.

Becky Burr: So I will just close by saying I think I've said what I need to say. I think that the bottom line is ICANN doesn't have the skill set or authority needed to maintain competitive markets in any other way because that is fundamentally the role of a regulator. And there are regulators that have that authority and power.

So I continue to think that that charging ICANN or empowering ICANN with some ability other than market mechanisms for maintaining competition puts it in the role of regulator in a very highly regulated and highly specialized skill set area.

Thomas Rickert: Thanks very much Becky. I have closed the queue on this. Since Steve has not spoken to this, I will allow Steve to speak and after that we're going to break.

Steve DelBianco: Thank you. In the existing (by the) question for the lawyers on the call, feasible and appropriate is in the existing bylaws. Feasible and appropriate depend on market mechanisms to promote and sustain.

Is the implication there that if market mechanisms cannot feasibly or appropriately promote a competitive environment that that core value reflects

back upon ICANN and makes it an obligation of ICANN, not the markets to promote and sustain a competitive environment?

In other words, and I'll paste it into the chat. This is Core Value Number 5. Does this core value as written today's bylaws - I'm just trying to interpret today's bylaws. Does that core value limit what ICANN should do in depending upon the market, i.e., when it's only feasible and appropriate, or does it say that when markets cannot do it that ICANN must do it?

And I'll stop now and take an answer from Becky or anyone else who can help us interpret this.

Thomas Rickert: You know, since we've run over time already a little bit, I suggest that we keep your question in mind. And when we reconvene after the break we're going to continue the discussion with (exactly) answer to your question.

We'll now go to break for ten minutes and we're going to reconvene at 8:15 UTC. Talk to you in a bit. Thank you. And for those who have refreshments, they can make this a refreshment break.

We will reconvene in one minute. This is Thomas.

Rinalia Abdul Rahim: Thomas, can you hear my audio?

((Crosstalk))

Woman: Yes we can Rinalia.

(Renalia): (You).

Thomas Rickert: Hi everyone. This is Thomas. Let's continue our conversation. I saw the recording has been restarted. That's great. Steve had asked a question before we took our break. So Steve, if you're on the audio, can you maybe repeat your question so that we can get it answered?

Apart from that I think we don't seem to be able to find compromised language on this during this call. So let's move to the next agenda item and try to advance the discussion on the mailing list in the meantime. And then we're going to close this during the next call. Steve.

Steve DelBianco: Thank you. I'll just quickly repeat the question because it would help me to understand how to react to the ALAC's proposal. I repeated in the chat what the bylaws already say; where feasible and appropriate depending on market mechanisms to promote and sustain a competitive environment.

My question is does that simply explain the conditions under which we depend on the market and leave it at that? Or does it mean that where the market is either not feasible or inappropriate to promote competition that ICANN must step in and do other things to promote competition?

In other words, does this item simply say that the market can be depended upon or does it turn around and give ICANN carte blanche to pursue other measures of increasing competition? Thank you.

Thomas Rickert: Thanks Steve. Does anyone volunteer to respond to that or shall we take it to the list? So Greg volunteers so Greg, if you could keep it brief because I think we need to move on to the next item.

Greg Shatan: I would say that the feasible and appropriate language does not give ICANN carte blanche. It really means that the - in essence the market gets the first crack at promoting or sustaining a competitive environment.

But if the market, you know, you know, (unintelligible) capitalism or whatever you want to call it is not producing and sustaining a competitive environment that ICANN can take action, you know, to improve the situation.

And I would note that, you know, market mechanisms as I understand the term really refers to nothing being done by any source. It's just letting the market itself work. And that's that. And so even artificial scarcity round black box bidding and reveal dates are all non-market mechanisms. And I won't even touch digital archery. Thanks.

Thomas Rickert: Thanks Greg. And thanks for refreshing our memory on digital archery. That's a trauma that I had (first had come over) or I had overcome. Alan, I have indicated that after Steve's question we would move on to the next item. In the essence of time I would suggest we stick to that.

Since there is objection at this point on the record from a chartering organization, let's try to bring this closer to compromise between now and the next discussion on this. And we will then close this item during the next meeting when we discuss this. The - I'd therefore like to ask Becky to bring up the next question.

Becky Burr: Something happened to the document. Okay. Great. If we go to Page 10 of the document; this is the ASO language. I think that the issue here was that there was concern and objections about referencing the MOU.

So some language was proposed and reiterated and then Izumi submitted some other language. So on Page 10 where you see the yellow and blue highlighting, both of these things are proposed change language.

So up until (this morning) we were discussing the coordination of numbers with the language further it ratifies or implements or ratifies and implements at the global level policies related to these IT and AS members and developed according to the ICANN Address Supporting Organization memorandum of understanding between ICANN and the Number Resource Organization dated 21 October 2004.

I think that this was pretty - that we were pretty close on this. Izumi further offered to refine this in the blue highlighted; in this role ICANN provides registration services and open access for global number registries as requested by the IETF and the regional Internet registries and facilitates the development of related global number registry policies by the affected communities as agreed with the RIRs.

The language highlighted in blue as Izumi says is the most recent proposal from the Number Resource Organization. I don't know precisely where to take this given the fact that we have now two fairly different constructions here. And maybe we should have - go to comments from people.

Thomas Rickert: Becky, I guess that's an excellent idea. Let me just say that removal of explicit reference to the ASO MOU has been requested by Izumi and I think others have gone on record as well that they would want this. So I suggest that we try to honor that to (require) - I think that's the spirit of which we're trying to achieve is it's (setup) quite clearly.

So as you prepare for commenting on this, maybe you might wish to consider that we tried to capture this and that we leave the exact wordsmithing to the implementation phase. First in line is Greg.

Greg Shatan: Old hand. Sorry.

Thomas Rickert: Then Izumi.

Izumi Okutani: Thank you. So I'd like to explain the intention - the (reservation) behind coming up with this latest text. So I do acknowledge and understand that this appears as quite substantial changes from the previous suggested text. And we may appear as if we're coming up with something (apparently) new ignoring the discussions within the CCWG.

However, it is actually a reverse. This latest language being suggested is the result of trying to incorporate substantial key issues (in relate) to the suggested language.

So the first - on the point about reference to the ASO MOU, I see that there still are some concerns being expressed in the course of our CCWG discussions. I think I've already seen the latest proposed from Kavouss for example who remains opposed to reference to the ASO MOU. So this is now removed.

And on the other part of the language is basically reflecting other feedback from the CCWG lawyers on their request to remove the word ratification and replace with implementation.

We felt that this suggested language did not quite capture what's exactly being implemented and ratified. So instead of ratify, we tried to explain ICANN's

role of in terms of the approval of the global number resource policy, which is in Point 2 of the language that I shared.

And then in terms of implementation we tried to explain ICANN role in terms of the number of resources registration services. To that basically intention and, as I mentioned at the beginning, it may appear as though we're coming up with something totally new.

It's as a result of trying to incorporate the key issues being raised and we're trying to reach a point that - to be approved by the CCWG. So that's all for me. And I would be interested to hear any feedback.

Thomas Rickert: Thanks very much Izumi. Any comments on that? So for those (who are) using or making use of their scroll control, we're looking at Page 10 of the document and Izumi has just spoken to the text highlighted in blue. And it looks like Izumi's suggested text does get traction.

Woman: (Unintelligible).

Thomas Rickert: Let me ask if there are any objections to replacing the text in yellow by the text (unintelligible).

Woman: (Unintelligible).

Thomas Rickert: And if that weren't the case, then I suggest that we note that there is no opposition to the new text. Chris has indicated in the chat that the Board needs to take a look at that and comment ASAP. And Chris, just as an encouragement your comments might just be a thumbs up. It can be as easy as that.

And in the absence of further comment or objections, let's assume that this is our new language for this paragraph and we'll need to take a second reading in due course.

So that's been a good discussion. Thanks so much. And Becky, let's move to the next item.

Becky Burr: Okay. Thanks. The next items are Item 6, which is the regulatory language, and Item 7, which is the grandfathering language. I'd like to suggest that we talk a little - that we reverse the order of these things and start with grandfathering - the grandfathering language first.

And in order to sort of move this - hopefully move this discussion forward, one of the big issues with grandfathering is can the contracts with PICs in them be renewed without change? And can new contracts that are not executed yet with existing registry applicants contain PICs going forward? Now I am mindful that the PICs process sort of permitted registry applicants to include lots of their own language.

But at least with respect to the - it seems to me that a more meaningful way of looking at this is to think about the standard PICs commitments in Specification 11 and understand whether the CCWG is content that those provisions can be - can continue to be put in new gTLD agreements and agreements containing those commitments can be renewed without change.

So I guess the question I have is do we have any discussion on that. Is there any - is there any objection to ensuring that the PICs and the registry agreements as they stand now and the - including the PICs can be renewed without change and that new gTLD applicants in the round that has completed but where not all agreements have been signed can enter into those?

Thomas Rickert: I guess Becky we should have that discussion.

Becky Burr: Yes.

Thomas Rickert: Let's try to keep it relatively brief. So I'll ask the speakers to be as concise as possible. Alan.

Alan Greenberg: Thank you very much. I think the answer is relatively simple. The current round of gTLDs allows for PICs both some specified ones, some that apply to everyone, some that apply to only some TLDs in response to the GAC Beijing communicate on sensitive TLDs and some that are specified by the registry in their application or following their application PICs were - didn't exist at the time of the application.

I think if we say that they can go poof and disappear because a contract is renewed even if some other clause in the contract changes, but if the PICs aren't changing then it has to be able to continue. Otherwise we're not fulfilling our commitment to the market - to the registrant if no one else to maintain the rules that were under which the TLD was deployed.

And the same applies for contracts that are not yet signed. We can't say that just because we have some new bylaws in place that we suddenly have a completely uneven playing field that some disputed TLDs that were delayed for various reasons when they're finally signed that don't have the same rules apply.

So I think we have to take into account the TLDs that aren't signed yet. And I believe we must continue renewing at infinitum as long as we're not changing those specific terms that we're grandfathering.

Otherwise we end up with a market where the rules are changing and I don't think that's acceptable. That's not the way that we deployed these TLDs and I don't think we can make changes after the fact like that. Thank you.

Thomas Rickert: Thanks Alan. I think we need to remind ourselves that the question in front of us now is whether there's any objection to allowing for existing contracts to be renewed. So that's the first thing. Let's talk about the possibility to enter into contract with applicants that haven't yet signed afterwards.

But I think the only way for us to really make progress is to just by slicing and dicing the discussion. So I'd only like to hear or read from those who do object or have an issue with allowing for existing contracts including PICs to be renewed. So let's move to - I think it's Chris who's next. Chris. If you want to speak to another topic, just indicate so and you can remain in the queue.

Chris Disspain: I thought it was Greg who was next.

Thomas Rickert: I'm sorry. Again, my device doesn't really show me the order properly. Greg please.

Greg Shatan: Hi. Greg Shatan. Thanks. Thanks Chris. I object but not for the reason that they shouldn't be renewed. I object for the - on the ground that it should not be a question of whether grandfathering is required to allow the renewal of these PICs. That assumes that but for the grandfathering, all of these PICs would be out of scope and un-renewable. And I think that's assuming facts not in evidence.

I know that we've circled around this question more than once. I think Becky got us closer at least by putting up the standard PICs. And - but - and I think

that discussion there indicated that at least all but one PIC was kind of faithfully within any definition of the mission.

So I think by putting this under grandfathering we're confusing the issue and confusing the scope of the mission, which is critical to a successful outcome in this - in our exercise here. And I should say that not confusing the scope of the mission but clarifying it is critical to a successful outcome.

So using grandfathering, you know, broadly to kind of save us from looking at things is kind of cheating, if you will. I think we - grandfathering should only apply to those things that require grandfathering. And if we are not sure whether something requires grandfathering or not, we have to ask that question. We can't just use grandfathering as some sort of all-purpose way of not defining the scope of the mission. Thank you.

Thomas Rickert: Thanks Greg. Chris.

Chris Disspain: Thanks Thomas. The Board has some comments already and we'll forward those in a note soon after this call. But I just wanted to pick up on two things. We do have concerns about grandfathering. We have concerns about treating (equally). We have concerns that something that's previously being allowed wouldn't be allowed in the future and so on.

And so we do have some issues with that. And we also want to make sure that wherever we end up (unintelligible) necessarily specific to the topic we're on right now. But since I've got the microphone, let me also say that we need to ensure that wherever we end up we retain the power to contract and enforce.

And that applies (unintelligible) regarding the current PICs, which are contractually binding. We obviously need to be able to support those. But

some more detail and that perhaps easier to understand the concern if we put it in writing. (Unintelligible). Thanks.

And I'm sorry. Just to acknowledge Becky saying in the chat that's already in the language. I'm assuming that you're referring Becky to the enforcement bit and that's fine. Thank you.

Thomas Rickert: Thanks Chris. Next is I think Becky (unintelligible).

Becky Burr: So I just want to say that I think that grandfathering language, which is in the direction to drafters does say specifically for the avoidance of doubt. And that it should be understood that there is no presumption that things that are grandfathered and are outside of that.

And if we say we're grandfathering the existing - the language of the existing agreements including the PICs, I don't see how anybody could possibly make the assumption that that means that the existing agreements are not in that language.

That said, I frankly, you know, personally wouldn't, you know, wanted to have the discussion about the existing PICs precisely because I think that in fact there really isn't very much of a debate about the existing standard PICs with the exception of the one - the very last one that goes to closed generics, which I think is problematic in the absence of a policy supporting that and indeed in the face of policy that suggested that closed generics would be okay.

So I understand what Greg is saying. But I just - I mean if we're going to get through this efficiently, you know, that the notion of the grandfathering was to grandfather language for the existing gTLD round, existing contracts

presumably, you know, all bets are off for the next round and policy needs to get developed on the registry agreements there.

But I don't think that we're going to be able to move forward in a timely fashion if what we wanted - if we want to either eliminate the concept of grandfathering or go through each and every provision and decide whether it is or is not within ICANN's mission.

Thomas Rickert: Thanks Becky. Last speaker on the topic is Malcolm.

Malcolm Hutty: Thank you Thomas. I don't believe that anything that we've done has changed ICANN's mission. All we're doing is clarifying it and making it so that it's possible to hold out ICANN accountable to it.

But there are some people that fear that ICANN has already in signing some PICs acted in a way that was really outside of what it should have done - outside its mission and that when they're - but it was never possible to hold it to account for that.

And that when it is possible to hold it to account then we may find that some of the existing PICs on which people have expected it to be bound - people to be bound by might no longer be enforceable and that that would be disruptive.

And the grandfathering clause seeks to address that by preferring to avoid the disruption over holding ICANN strictly to the limits and missions. And say well for those things which you've done already, we'll put that beyond doubt so that nobody can argue and it's not open to anyone to argue that that's outside the mission.

That is regardless going to be acceptable for the avoidance of the disruption that (with new clause) to challenges things that are already in place. So if that's the principle, the avoidance of disruption, then I think we need to apply the grandfathering clause according to where it is necessary to avoid disruption to what we've done already.

Now so with that I think - on that basis, I think it would be fair to say that any PIC which is already being offered even if it hasn't been signed could be something that it might be disruptive to the existing process that we are - in the process of going through on this current round if we were to say that those - that some of those PICs were potentially open to challenge.

So I think we - what we could say is that the grandfathering clause will put beyond doubt anything that as of essentially this date has already been proposed and that that will continue until such time as the Board determines that canceling it is no longer disruptive to the established order.

And the Board is obviously always able to cancel a contract and put - indeed cancel the - a PIC and say if they'd put in place some alternative arrangement to satisfy it. But it may be that no alternative arrangement (would ever arise). That's when they'd have to be renewed.

And in that case I think the PICs would be renewed indefinitely again on the principle of the avoidance of disruption as long as it was that - as long as that was necessary but not added to, not extended, not - no new PICs or changes to those PICs would be added.

But the same thing could continue in force essentially indefinitely or until such earlier time as an appropriate mechanism satisfactory to the Board as arrived at. Hello.

Thomas Rickert: Both Greg and Kavouss' hand have been raised after I had closed the queue. So I would ask for your understanding that we move to the next sub question. The way I understand the discussion now is that we're very close to compromise.

And I would suggest that instead of discussing this in the plenary now, we ask Becky to update the draft accordingly and refine on the list so that we can take it to last reading in front of the group during the next call where we'll bring this up.

The next sub question was where the applicants that are to sign contracts with PICs in them shall be allowed to do so. So does anyone object to that notion? I'm not sure whether Greg and Kavouss want to speak to that. Greg.

Greg Shatan: Just briefly I offered a solution in the chat to the problem of overextending PICs and just to say that to the extent that, for instance, PICs may be found to be out of scope then those PICs are grandfathered in. I think that solves the problem of falsely - false grandfathering.

Thomas Rickert: Thanks Greg. And just to be clear, I may not have been outspoken enough but I was thinking exactly of this conversation that you had with Becky. I would only ask Becky to incorporate that addition to the document then. And then I think we have something that we can confirm as agreed during the next call. Kavouss.

Kavouss Arasteh: I think we are not lucky tonight. Everything we have there are some people constantly and systematically opposed to everything. I don't think that is correct.

Grandfathering existed in all constitution, convention and even in charter. Whenever an issue is under a regime and that issue needs to continue on the existing regime whenever the new regime is provided all is applied, that is grandfathered.

I don't understand some people saying that grandfathering is black market or black and so on so forth. This has existed until the time that black - the grandfathering (is date). I don't understand this argument. This is not effective. This is not (protected) that somebody opposing to every point. Thank you.

Thomas Rickert: Thanks Kavouss. And I'm afraid I can't confirm this impression because I do think that we do have a solution and that there was no fundamental opposition to the notion of grandfathering. But that we just have a demarcation inserted between those contracts that really need grandfathering and others that don't.

So I think with the additions as suggested and that is getting a lot of traction in the chat, we do have a solution for that point. And maybe we can bring that up in the note section so that we can read it out for everyone's benefit after we went to the second question - the sub second - sub question on whether contracts that are yet to be signed and that includes PICs should be allowed for. Any objections to that?

I have seen two or three statements in favor of allowing that, i.e., not objecting to allowing for that grandfathering. And I should say with the same caveat there that Greg mentioned.

And those who are not speaking, please do mute your microphone. We hear some typing in the background. Malcolm.

Malcolm Hutty: No objection to the grandfathering, no PICs that have not been signed that have been submitted. But we shouldn't be inviting people to rush to put in PICs that are (devious) post this point. So I would say that PICs that have already been submitted but not signed should be grandfather. But PICs that have not yet been submitted should not be. Thank you.

Thomas Rickert: And Malcolm, do you have a practical suggestion on how to fix that?

Malcolm Hutty: I think that can be given as a direction to (no adds) but essentially PICs already received but even if not executed as of essentially this date - as of, you know, (30) January 2016, whatever would do, anything like that. If you want that wording from me, I can offer it on the mailing list. That'd be easier.

Thomas Rickert: So let's see what the discussion goes for the moment. Thanks for the offer Malcolm. Let's hear Alan and then Chris.

Alan Greenberg: Thank you. I'm not an expert on the contracting process for new gTLDs. There are a number that are on hold or in various stages of not yet being signed.

It is possible but I may be incorrect completely that one of the ways of getting something out of hold to resolve the problem that is perceived is fore the registry to volunteer a new PIC, which could resolve the dispute that's currently or the problem that's currently there. I don't know if that's the case but if it is, we do not want to prohibit that. Thank you.

Thomas Rickert: Thanks Alan. Chris.

Chris Disspain: Thanks Thomas. Just Chris speaking personally, (unintelligible) from Malcolm, I think it's problematic to start to try and interfere with ongoing

contractual processes on the basis that some of it hasn't been (unintelligible) bylaws hasn't been signed - hasn't been agreed by NTIA, et cetera, et cetera, et cetera.

I have no feelings about any - feelings about grandfathering generally. I don't see how you can make the recommendation and expect it to be dealt with, you know, from a previous date.

Thomas Rickert: Thanks. I have to confess I also have issues with trying to interfere with the queue of contracts to be signed at this stage. Malcolm, you want to get back on that?

Malcolm Hutty: Yes. Exactly. I mean that - avoiding getting - interfering with that queue was exactly what I was proposing. We clearly can't be grandfathering in things that haven't even been suggested yet. It's not possible to grandfather in something that doesn't even exist.

But any document that has already been submitted by an applicant, if ICANN should choose to accept it, then that's under grandfathering provision, would be immune to challenge under the grandfathering clause.

Now that of course doesn't create any obligation on ICANN to accept such an offer. ICANN can choose not to. I mean in no way interferes with that. But we are just simply limiting the ability to challenge an offer that's already being made on the grounds that it's out of scope if it's been received by this date. That's a perfectly normal procedure to do.

As Kavouss said, this happens in many cases. I don't see that (unintelligible) any possible reason to challenge on the (ground that) it's normal or anything like that. This would be a perfectly reasonable thing to do.

Thomas Rickert: Thanks Malcolm. And being conscious of time, we need to close this topic in the next few seconds basically. I would suggest that we come up with revised language capturing what's been said here, particularly Greg's suggested language and further discuss this on the list.

Becky during her introduction mentioned a couple of questions with respect to the issue of grandfathering. We would suggest that we come up with proposed answers so that the group can confirm agreement with this or raise a position so that we can probably come to a solution very soon.

And let me just go on record stating or confirming that I see the concerns expressed on the list for example by (Robin) and we will certainly take that into account when suggesting how to move on.

Becky, we should take very few minutes - five minutes max to give and update and discuss the contract enforcement issue. So maybe you would like to - you would like to give a quick intro on where we are with that issue.

Becky Burr: Okay. So my understanding is that we have broad agreement that ICANN as part of its mission has authority to enter into and enforce agreements with contracted parties in service of its mission. That's the language that we've discussed at great length. And I don't believe anybody objects to that language.

The language that the ICANN Board has objected to is language that says ICANN shall not regulate services that use the Internet's unique identifiers or the content they offer or carry. The Board has objected to that language on the grounds that while it agrees ICANN is not a regulator that the language itself is not appropriate in bylaws.

And the ICANN Board has proposed instead that the - that specific provision be included as - if I understand the Board's proposal was that that specific language be moved into the drafting notes so that it is taken into consideration and accounted for by the folks drafting the final bylaws for our consideration. But that the - and that that be reflected that that be a principle that gets reflected in the bylaws as opposed to a sort of specific tenant of the bylaws.

Thomas Rickert: Thanks very much Becky. I don't see any hands raised. So Malcolm.

Malcolm Hutty: Okay. I'm a little confused as to what's being suggested there. Perhaps Becky could clarify.

Becky Burr: Yes. I wasn't...

((Crosstalk))

Becky Burr: I wasn't really suggesting anything. I think that the situation is that while most of the commenters on the third draft proposal supported the language that says ICANN shall not regulate services that use the Internet's unique identifiers or the content they carry.

That the Board objected to that language as a bylaws provision and urged us to include it rather in the note to drafters so that the overall concept would be reflected by the drafters of the bylaws language as opposed to having it as a specific provision in the bylaws itself.

And that was not a suggestion or proposal Malcolm but a articulation of what I believe the current status of this issue is.

Malcolm Hutty: Okay. But I - it's that last bit that I'm confused about. If the Board is proposing that this not be included as a specific provision of the bylaws but instead it be written as a guidance to the (people) drafting the bylaws language, but guidance to do what - guidance to create something else that would be a specific proposal that would reflect this principle? If so, I can agree with that.

If not, I don't know what it is being proposed - what's being proposed. And I - if the Board is saying well even though it's a bit - even though there was a overwhelming majority of people that supported this language they still want it out and nothing can go in it's place, well then I wouldn't agree with that. I'd go with the overwhelming majority of people.

Thomas Rickert: Greg is next in line. And since we have a couple of Board members on the call, maybe one of them would care to clarify that point. Greg.

Greg Shatan: Thanks. This is Greg Shatan. I think this is actually emblematic of a larger problem in the approach of our proposal, which actually had some discussion within members of my constituency who have not been following this as closely as those on this phone, which is we say that the so-called bylaws language that we have prepared is not the final language where only amateur bylaws drafters even if, you know, some of us are lawyers.

And that we're going to turn these so-called bylaw drafts over to our Council and have them, you know, turned into, you know, more proper and appropriate drafting but carrying through the concept.

And then we also have these notes to drafters in a couple of places particularly here. But the - what is unclear is the weight that the - that our Council needs to give to what we've called the bylaw language versus the weight that's given to the drafting notes.

If there's no difference between our kind of amateur attempts to express ourselves in bylaw language and our attempts to express ourselves in non-bylaw language, then the Board's point is really not a point at all.

If however there is a considerably greater amount of deference that needs to be given to our draft bylaws - indeed if the final bylaws are really supposed to look like our draft bylaws as much as humanly possible unless we just, you know, screwed up from a point of view of proper legal drafting then the Board at least has a point. I'm not sure if I agree with it but it's at least - it's a point.

And I - the reason I framed this in the context of speaking to people, you know, other than the - than those of us who are drenched in this stuff is that, you know, people who are looking at this, you know, only look at the three proposals for instance and not at everything in between, they look at what we call our draft bylaw language and they think that's actually proposed bylaw language.

They think it's actually what's going to appear in the bylaws, you know, subject to maybe some very, very minor tweaks and not that it is just basically, you know, an expression of hope as to what a bylaw, you know, might intend - might carry out even if it doesn't actually use that language.

And I think that I know in a sense it's probably too late to clarify - to change our approach on that and - but I think we may need to clarify more clearly that, you know, what we call a draft bylaw is really no more than an instruction to the drafters that, you know, is in the form of a draft bylaw because that's kind of how we started before we realized that we couldn't finish drafting bylaws by ourselves.

Now if people disagree and think that the draft bylaws really are kind of pretty final and that the - and then that the notes are less important, then I think we need to consider that. But trying to convince people that language problems in the draft bylaws shouldn't, you know, shouldn't be dealt with as long as the intent is clear.

You know, it doesn't work if you tell people that this is actually the language people are going to have to deal with. So I think we need to figure out how we're working with all of these, you know, so-called draft bylaws and notes.

And it's not just the notes to drafters. It's really the whole recommendations around the bylaws; the extent to which those will be taken into account. If everything in our recommendations is equal and fair game for our Council, then, you know, we can just talk about concepts and not worry about where those concepts are placed. Thanks.

Thomas Rickert: Thanks Greg. I would like to briefly respond that we made it clear in our report that language that we're putting in there is subject to, you know, drafting work by lawyers doing the bylaws. So I think that the reports that we put out there are clear on that.

And also we do have an implementation oversight team there to ensure that what we're doing is in line with the spirit of our recommendations. So I'm not sure I agree with the notion of expressions of hope in our report. I think, you know, that's maybe a little bit too sloppy for describing what we've been working on for more than a year now. Becky.

Becky Burr: Oh, I'm sorry. I think that's an old hand.

Thomas Rickert: Okay. Thank you. I think that the - what I'm hearing is that we might need to work a little bit more on capturing what we're trying to express here but that this can also be done during implementation by way of giving direction to those that are coming up with the final language.

So Becky, in concluding this agenda item, thank you for serving it up as always. And let's try to continue the conversation on the list and bring it to a close very soon.

With that, I think we should move to the next agenda item. And if I'm not mistaken, the next agenda item is the discussion on AOC reviews. And that was ably taken care of the Steve DelBianco. We've done a first reading on that a week ago and we're now going to do a second reading but there are a few remarks - few more remarks Steve that you wanted to make. Right?

Steve DelBianco: Yes Thomas. Thank you. So on the Adobe is Annex 9. That's the incorporation of the Affirmation of Commitments pursuant to Stress Test 14. We circulated the document you have in front of you on the 20th of January. There were no list comments received as of the beginning of this call from members.

Our lawyers however gave us two comments on the 24th of January, Sunday. I'll paste those quickly into the chat and see if we can dispose of those. The first was our lawyers suggested we try to define what diversity means.

And that's in Paragraph 54 of the document you have in front of you wherein we described how the Chairs of the ACs and SOs would select the members of the review teams based on considerations of skills and diversity.

To reply to that I did want to suggest that diversity itself is defined two times in our comments - in our Draft 3. And we didn't define diversity. We just mentioned diversity in our third draft.

And then it's 12 times in ICANN's bylaws today. The word diversity appears 12 times in the bylaws today. It's mostly with respect to the Board of Directors.

And in a couple of instances the bylaws ask for cultural and geographic diversity. In one other instance it talks about a diversity of skills. And finally for the NonComs selection of directors, it suggests that the geographical region diversity.

So it's true that there are times that the word diversity is preceded by the kinds of diversity sought, skills or geographical. But our intent, and the drafting team came up with this. Our intent was that the diversity would be at the discretion of - and the judgment of the group of Chairs of the ACs and SOs.

And those are the Chairs that will take these nominations from each of the ACs and SOs and select up to three from each AC and SO and that select is supposed to be one that's based on diversity and skills.

Now that does not require that they pick 21. It's up to 21. And not every AC and SO has to get three. They may choose to only want one or two. And in those cases additional slots in the 21 could be allocated to the other ACs and SOs.

So my view on this is that diversity does not need to be defined since we haven't defined it in the bylaws or elsewhere in our proposal. And it doesn't have to be constrained to say it's geographic or cultural diversity. There may

be other considerations of diversity such as gender or diversity of views in the ACs and SOs.

And I don't really believe we - with all respect and I appreciate our lawyers' suggestion but I don't believe we need to define it. Thomas, back to you to see whether you want to have further discussion on that and then I can do the second item from our lawyers.

Thomas Rickert: Thanks Steve. I suggest that we ask the group for objections to sticking to what we have in there. And I understand that this was your recommendation how to deal with it. I see Rinalia's hand is up. So Rinalia, the floor is yours.

Rinalia Abdul Rahim: Thank you Thomas. I actually would like to give a Board response regarding Recommendation 9. So if Steve would like to finish the issues that he wants to raise, then I can go after.

Thomas Rickert: Thanks Rinalia. So Steve, I see support for your suggestion in the chat. I haven't seen opposition to that. So we should view your suggestion as accepted. But before moving to the second item, I see that Sebastien and Greg have raised their hands too. Sebastien goes first.

Sebastien Bachollet: Yes. Thank you Thomas. I just remind you that we have something on this issue on the Workstream 2. And I guess I will support what Steve suggests. And if something happens during the Workstream 2 work, it will be time to revise it if necessary. Thank you.

Thomas Rickert: Thanks so much Sebastien. Greg, if I could ask you to keep it brief. Your last intervention was quite excessive.

Greg Shatan: Excessive. Well. Pardon me. Briefly I think that, you know, diversity is a worthy goal but I think as I - I think (Jonathan) actually said it better in the chat so I'm just going to say what he said, which is the kind of diversity we need for (routines) has got to be substantive not arbitrary.

And, you know, counting there, you know, it depends - we really need to look at what kind of things we are counting. I'm not saying that we should define diversity here but I think the language has to. Balance for diversity and skills seems to be fairly a lot like a requirement. And I think there needs to be - it needs to be more of an encouragement than a requirement.

You know, getting the right people in there even if seven of them happen to be from Uruguay, you know, should be what's important, you know, rather than trying to balance redheads and left handers and the like. Thank you.

Thomas Rickert: Thanks very much Greg. Let's then move to Steve's second one please.

Steve DelBianco: (Becky Thomas). So now I'm going to discuss the second of the two recommendations made by our lawyers on Sunday regarding Annex 9. The second one I just pasted into the chat.

They suggested to state regarding Paragraph 54 and what I would do is invite each of you to scroll to Paragraph 54, which is describing the composition of review teams. It's on Page 9 of the document that you have there.

So looking at that our lawyers suggested that the group of the chairs can look for additional nominees or appoint less than 21 to avoid potential over representation if some nominate less than three.

In fact the recommendation we have is up to 21. It does not require 21 at all and it does give discretion of the chairs to allocate some of the unwanted seats by and AC and SO for other ACs and SOs who may have a greater stake in the outcome.

So (Rosemary) and (Holly) may not have been aware of this but two of the reviews regard only the gTLD space. So it's highly unlikely that we wouldn't have seen much demand for three review team members from say the ASO or the ccNSO for something that affects Whois.

So this would affect only the gTLD space. That's just an example and I realize that (unintelligible) community may suddenly become really interested in the next round of gTLDs or Whois.

But the flexibility that's there on Paragraph 54 actually is intended to allow representation that's proportional to the level of interest that's shown from ACs and SOs while still guaranteeing that each of the ACs and SOs have the opportunity to get three times seven or 21 up to 21.

So I don't think we need to make a change for this since your notion of over representation may well be intentional and discretionary at the part of the chairs based on the demand that's shown. And we have never intended that that had to be 21 members. It could be less. So Thomas, I'll put it back to you. But it's my belief that we don't make any change pursuant to our lawyers' advice on this one either. Thank you.

Thomas Rickert: Thanks Steve. You're receiving a green tick from (Tara). And let's see whether there are more comments on that point. Otherwise I would suggest that we also follow your recommendation on that point. And that allows us to move to Rinalia to speak to the Board's response to this.

Rinalia Abdul Rahim: Thank you Thomas. Let me start by reiterating the Board's support for incorporating (unintelligible) reviews into the bylaws. In our comment in the third draft, we (moved) it be important of maintaining operation standards for reviews outside of the bylaws.

While we agree that operation standards should be in alignment with the provisions of the bylaws, we view operational standards as a more suitable place to address review related operational items that we feel do not belong in the bylaws.

So there are a few specific areas that the Board is flagging in relation to the operational standards themselves. First, the Board is concerned about potential constraints that may limit flexibility and effectiveness in the operational standards and that certainly CCWG Accountability recommendations may not be aligned with best practices or industry standards.

And I'm going to highlight the examples. Fix numbers for the review team members as well as fixed allocation among SO/ACs without consideration of specific issues and requirement expertise for a given review.

Second, unlimited number of participants in a position to be appointed review team members potentially affecting the team's productivity. And third, (exact to the point) for the commencement of reviews without taking into account the community bandwidth or the state of (unintelligible) implementation (authority).

While on the number of review team members to accommodate (unintelligible) reviews, the Board recommends leaving the number of review

team members to the selectors of the specific review teams and (unintelligible) prescribing a specific formula for composition.

This could be to the selectors' flexibility for example to include more members from a specific SO or AC but (is more in fact) advice (specific) review without hard coding numbers into the bylaws and might need to change later.

And the Board is concerned with the CCWG Accountability's recommendation on determinations of how consensus is applied. Imposing bylaws requirements and allowing participants and observers or requiring consensus polls are other examples where trying to hard code specific requirements for reviews now might actually develop reviews that are less efficient, more resource intensive and detract from the responsibilities of the review team.

What we say is that keep it out of the bylaws. Put this on the operation standards and be aware of the constraints and impact on the review itself. Now the Board notes that the ICANN community would benefit from a review schedule that would take into consideration community bandwidth and ICANN resources in developing a (saga) of base review schedule.

We feel that these factors should be (unintelligible).

Thomas Rickert: Rinalia.

Rinalia Abdul Rahim: Yes.

Thomas Rickert: Rinalia, this is Thomas.

Rinalia Abdul Rahim: Yes.

Thomas Rickert: I'm sorry for cutting across you. We have seven minutes to the top of the hour in this three-hour call. It sounds like you're reading the Board's comment to us. Is that correct?

Rinalia Abdul Rahim: Yes. I'm sharing it with you.

Thomas Rickert: Okay. May I suggest that we take the Board's comment to the notes to this call so that it's on record and we'll vote to bring that back during the subsequent call so that everybody gets a chance to read through it. And we will respond to the Board's comments on the list in the meantime. That an acceptable way forward?

Rinalia Abdul Rahim: Yes, it's acceptable.

Thomas Rickert: Thanks very much for your understanding, Rinalia. Steve, I think that with respect to the two points that were needed to discuss, we have confirmed with the group that there's no objection to your suggestion. So I suggest that we put that in writing and put it out to the group as the new consensus position.

And with that, I'd like to thank you again Steve for taking such good care of the topic. And I'd like to hand over to Mathieu for the next agenda item.

Mathieu Weill: Thank you Thomas. And we're two hours and 54 minutes into this call and coming to a sort of second reading on the timeline and next steps. So I won't bore you with a lot of detail.

You've probably observed on the list a number of exchanges about finalizing the various recommendations. You will observe that tracked changes are available as well as all the legal inputs we are receiving for everyone to see.

I think we have already concluded on the pilot testing on the process for a couple of recommendations. I see the exchange with the lawyers have been very fruitful in clarifying our text. There were not new very substantial issue raised that we have to further discussion but that's - that may not be the case in the future.

So we are I think in a position to move forward with this process. And I would suggest and ask for your confirmation that we can keep going this way to - on the route to finalizing our processes - our recommendations, sorry, and focus our energy at the same time in the plenary sessions on finalizing the last remaining issues because we still have a few gaps to address.

Thanks to the GNSO and GAC inputs we are now in a position to discuss them all. And I think we are - we really need to focus our energy on that now. It's still a little bit early because there's still some uncertainty about those gaps in - to provide actual delivery dates.

I am - I would say that we - probably the level of confidence that we can deliver a supplemental draft during the month of February is raising but there's still challenges ahead.

And I think that's - that should be for the moment enough to proceed forward with the process we have described during the last meeting to finalize our recommendations. And hopefully by the end of the Thursday meeting we'll have better view of estimated time to conclude so that we can make progress on the dates.

And I think with that I would like to just check that there's no objection to keeping this tracked changes, transparency on the list and moving forward so that everyone is comfortable with the way we are undertaking the finalization of the recommendations.

And I'm seeing none. Some would say it's agreement by (exhaustion). But it might be excessive to say that. I don't know if that translates. And so I think with that we'll move on with this process and obviously keep assessing what our next steps are.

Next agenda item is the AOB and I'd like to check whether there's any AOB from the group. No AOBs. Leon, would you like to provide us with other business? Any other business?

Leon Sanchez: Thank you very much Mathieu. No, I think you've called for any other business and I see no hands showing. So I think we don't have any other business Mathieu.

Mathieu Weill: Well, thank you for joining us. I know you had another meeting at the same time. And we made some good progress. It's sometimes a little bit slow. And I think I would take (Andrew)'s point that the more we can achieve on list, the more efficient our calls will be.

So I would certainly encourage that we focus the mailing list discussion on the substantial issues and trying to move them forward in a constructive manner. I think that's the key for our ability to close the remaining discussions.

And with that, I thank you. I thank everyone, the Rapporteurs, the staff also because it's a tremendous task they're undertaking at this point. And I'm not

only speaking about the notes for this three-hour call but also all the recommendations to be finalized.

Thanks also to our lawyers who are providing us with very timely feedback and extremely useful insights and for the Board who is - which is actually tipping the pace of providing us timely feedback on recommendation-by-recommendation basis, which is immensely useful. And we really appreciate that.

And with that, it's the top of the hour. So I would say talk to you very, very soon. Thanks everyone.

Woman: Thanks everyone. Bye.

END