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OLIVIER CRÉPIN-LEBLOND: ...something so. Well, that I know of.

Okay. Maybe we can start the call and get the ball rolling please. Start the recording and everything.

TERRI AGNEW: Certainly. We'll go ahead and begin at this time.

Good morning, good afternoon, and good evening. Welcome to the At-Large ad-hoc working group on IANA transition and ICANN accountability, taking place on Wednesday the 17<sup>th</sup> of January, 2016 at 12:00 UTC.

On the call today we have Gordon Chillcott, Olivier Crépin-Leblond, Tijani Ben Jemaa, Alan Greenberg, and Avri Doria.

We did have Barrack Otieno on, and he has since disconnected and we are continuing to try to reach him.

And since we started roll call, Sébastien Bachollet has joined us as well.

Joining us a little later on the call is León Sanchez.

We have apologies from Heidi Ullrich and Jean-Jacques Subrenat.

From staff we have myself, Terri Agnew.

Our Spanish interpreters are Veronica and David.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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I would like to remind all participants to please state your name before speaking, not only for transcription purposes but also for our interpreters. Thank you very much and back over to you Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Terri. Olivier speaking. And today we have an agenda that will focus essentially on CCWG accountability. And I don't know if we missed anyone in the roll call, if you could speak up please. Sébastien.

SÉBASTIEN BACHOLLET: Yeah, just to be sure that, I just arrived and I am on the call. Thank you.

OLIVIER CRÉPIN-LEBLOND: Yeah, thank you very much Sébastien. It's Olivier speaking. We have recorded your arrival. That's good. Are there any amendments to the agenda?

No one is putting their hand up, so the agenda is adopted as it is on your screen at the moment. A review of the action items from our last meeting. There were no action items recorded. So we can move then to the CWG IANA stewardship transition, and an update on this, which could be quite fast.

Essentially there has been a discussion on the mailing list about request for guidance on the PTI and the IRP, coming from the cross community working group on accountability. There has been a discussion going back and forth. I have read the whole thread. It seems to be dealing

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particularly with details of arbitration and contractual arbitration in the contest of gTLDs but also ccTLDs. I'm not quite sure whether there is anything that we should intervene on specifically. I open the floor to anyone else who has been following this thread closely.

I'm starting to think this is all coming to implementation and little details, which I'm not quite sure we have very much of a consensus point on in this working group. So, I open the floor for any comments on this.

Seeing no one putting their hand up, it seems that this debate is very exciting. So we can close on this. Now there has been, we have been informed by Jean-Jacques Subrenat in his apology, that there has been no debate with the IANA coordination group. And that, therefore, takes us over to the CCWG accountability part of this call. And for this, I hand the floor to a very wide awake Alan Greenberg. Alan, you have the floor.

ALAN GREENBERG:

And what do you want me to do with that floor?

All right, let me get the list of agenda items on my screen so I can look at them.

And we're going to... We did receive a statement from the GAC yesterday, or two days ago, I believe. And we'll go through that moderately quickly. You can read it, those make interesting reading. And a couple of things to highlight that I found interesting, others might find them less or more so.

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Largely they are supportive of the report. They do have a number of caveats that are not particularly surprising. Some of them could be show stoppers, and some of them might not be. To a large extent, I'm just going to try to identify the issues where they say they are not supporting it, or you know, whatever.

Recommendation one and two, essentially, they are supporting it. They are, refer to a previous statement on whether they will be involved in the community mechanism. And which essentially, if I remember correctly, says yes they will, but they may choose to exercise it or not when they, you know, as they decide.

In terms of the mission, they are again, supportive, but one of their buts is one that corresponds with ours and that is, essentially, the changes in the mission should not stop contracts from being enforced. They don't go into the kind of detail we have in terms of defining that. They are, of course, relatively worried about changes in the mission stopping their ability to give advice, which it doesn't.

And changes which may stop the Board from following their advice, which it does, potentially. So I'm not quite sure how we finesse that and provide any level of guarantee that the changes will not do that, unless the changes are very streamlined from where they are now, and we do not have closure on that at this point.

Recommendation 10, recommendation six rather on human rights. As you could expect, the GAC is interested. The document seems to have disappeared.

No, no, no. We're staying on the GAC document right now please.

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TERRI AGNEW:                      Okay, thank you.

And it's back up.

ALAN GREENBERG:                And let's go back to it then. Recommendation six. The GAC has a strong interest, and most of the very ardent supporters are from the GAC or related agencies, not all of course, with deference to Avri, among others. So they are watching it. It's not quite clear where, how they would come out if something changes drastically, and we'll talk more about the human rights issue later.

Recommendation 10 on ACs and SOs, which says ACs and SOs should be accountable, and among other things, reviews should look at that. That's an interesting one. The GAC is explicitly excluded from the review process. There was a discussion which was interesting to me because it was before my time, that the bylaws about that were written.

Apparently, at the very beginning of the process, it was not clear if the GAC was actually part of ICANN or a group looking at ICANN from the outside. And therefore, it was not something that we felt that we could mandate reviews on. On top of that, and the GAC, in this statement, reminds the CCWG that the GAC is made up of representatives from sovereign countries, and you can't tell sovereign countries how to run their business.

So that seems to be the reason the GAC is excluded from the review process. That has attracted a number of comments from other people

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in the CCWG as to whether we should be giving them new powers without putting the same responsibilities on them as other groups have. So interesting to see how that one goes forward.

Going back, for instance, on number six. The words they use, and I read them exactly, are the GAC has not yet reached a consensus on this, six is human rights, on this recommendation, which itself is still under discussion in the CCWG.

So they said the GAC has not reached consensus, implying they plan to, or will try to. On recommendation 11 which is the one related to the stress test that is so inflammatory within parts of the GAC, they say there is no consensus within the GAC to adopt a formal position on this recommendation.

These things are worded carefully, they're not accidental. And what that says is that they may well, and at this point going forward, they are likely to simply be silent on this recommendation. That's not unexpected because there are some people in the GAC who are vehemently against the change, there are others who are supporting it strongly. The GAC cannot make a decision in the presence of strong opposition, or perhaps any opposition but that's mute at this point.

There certainly is strong opposition to all possible answers. And it's not 100% clear how the CCWG will handle silence on a particular recommendation. So should be interesting. But it looks like they will not likely object to it, which is a potential way of going forward. And on 12, they would like to see a time line on work stream two.

Well, everyone would like to see a time line on work stream two. Tijani.

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TIJANI BEN JEMAA: Thank you Alan. Sorry for the delay. Tijani speaking. You said that you don't know if the GAC is part of ICANN or if it is something outside of ICANN [inaudible]...

I think that the GAC is part of the community of ICANN. It is [inaudible] and we would not be multistakeholder if we excluded the government. So I know that there is a lot of, how to say, [inaudible] or rejection of the idea of having governments inside ICANN or leading ICANN, etc.

It is not about the governments leaving ICANN. The governments are part of the community of ICANN, if the commitment of ICANN is multistakeholder I think all [inaudible] all the stakeholders. Thank you.

ALAN GREENBERG: Thank you very much Tijani.

Sorry, I was having trouble with my phone. Just for the record, I didn't say the GAC was not part of ICANN. I said in the early years of ICANN, it was not clear if the GAC was going to be a part of ICANN or a group looking at it from the outside. And at that point, that might have been one of the reasons that the GAC was excluded from the rotation of reviews.

The other reasons might have been because they are, it is composed of representatives of sovereign governments, and therefore we could not review its processes because that's reviewing the processes of sovereign governments. So I don't know what the exact reason is. Those two have been raised as things that might have caused those

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bylaws to have been written in 1999, or whenever it was the GAC was put into the bylaw process. Certainly there is no question that today that GAC is part of ICANN.

Any other issues?

Then let's go on to the next item on human rights.

OLIVIER CRÉPIN-LEBLOND: Alan?

ALAN GREENBERG: Yes, go ahead. Oh sorry, I didn't see your hand Olivier. Go ahead.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Alan. Olivier speaking. I actually did put my hand up a bit late. Just on the issue of GAC, I did have an informal chat with the GAC chair, I saw him yesterday. He seems to be steering the GAC in a direction which will basically not, hopefully not make the GAC proceed with not moving forward, and therefore you sort of objecting or anything like that.

But as you know, the way the GAC works is quite complex, and at the moment, he's pretty confident. But as you know, there are some meetings, or as you may not know, there are some meetings of the GAC on other matters, later on this week in Brussels. And it's likely that we might see, or we might have a bit of information by Friday, as I'm sure that in the corridors some matters will be discussed.



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So things are likely to continue moving in one direction or another. Having read the document and the response of the GAC, I was expecting worse. Worse as in more objections and so on. We all know that stress test 18 has got a big [inaudible], but yeah, all together, I'm confident that...

I thought there might be more problems than what there are here. So thank you.

ALAN GREENBERG:

Thank you Olivier. Any other issues? Then Olivier, I presume that's an old hand you haven't lowered. All right, human rights. If you can shrink it so that you can see the whole thing on your screen, or at least the center part, and scroll to page three, the last one, which is the relevant one that we're going to be discussing.

Now, you all have known the story and I hope we're not going to repeat the pros and cons at this point. The CCWG in the current draft report has said that we will have a bylaw on human rights, but effectively it will be pending, waiting until the framework of interpretation is done, which is scheduled to be done within work stream two.

The Board was vehemently against that, and basically said they do not want a bylaw which might be used for IRPs or court cases, even if it says the items are not operational. And that is where we stood. We've gone through a number of iterations, and the current iteration of the bylaw suggests...

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There have been talks between our lawyers and ICANN's legal counsel, and the lawyers came back and said it was interesting and illuminating. We now understand what the concern is. And the concern very much was, at least as stated, was that there is a concern that even if the IRPs are, don't have substance they could spend a lot of time and money on them.

So the current version says, has language that's added in red, and I'll point out there are some errors in this, but accept it for the moment. Essentially it says, the bylaw is not operable. It's not in force until the framework of interpretation is done. Now it says until developed, it clearly means developed and approved by the Board.

So essentially it says, it is sitting there occupying space in the bylaws, but has no effect until the framework of interpretation is done. The comments from the Board say things like, it's silly to have a bylaw which isn't, doesn't have any effect. And they believe there are some reasons that, you know, some fears that something could be triggered by its existence even if it says it is not operable.

We have asked them explicitly to identify some examples of such things, so we can attempt to respond to it. There has been a lot of, in my mind, reasonably negative comments saying, we responded to what you say the problems were, now you're saying you still don't like it.

And so it is not clear how we're going forward at this point. The issue is not closed. And we'll see what comes back. The concepts of having bylaws there which have no effect is not new. There is a number of them in article 20, if I remember correctly, the transition bylaw which

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covers a number of things such as the creation of the CCNSO, where they say, you know, this has no impact until...

We now have Spanish on the English channel.

There are a number of bylaws that already exist, which say this bylaw does not do anything until something happens. So it's not a new concept, and even if it's a waste of space, it doesn't sound like a show stopper, which is the tone that the Board has been using. There actually was some discussion on this from Board members, not satisfying from my point of view, but there was some discussion.

In some areas, the Board is simply reading out their communiques, which is really irking to a lot of people in the group, that is we're taking time to have a Board member read something, which I think is somewhat, if not insulting, at least not the proper use of all of our time.

I see a hand from Tijani. Go ahead.

TIJANI BEN JEMAA:

Thank you very much Alan. Tijani speaking. I will repeat something that I said before but it is necessary that I repeat it because I have to explain [inaudible]. The work stream two is a part of the duty of the CCWG.

The CCWG will not complete or finish its work, it is that they still finish work stream two. So saying that the work of the work stream two might be done by a group chartered by one organization, one SO or one AC, is very dangerous for me. I don't know who had this idea to shorten the mission of the CCWG.

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It is not the right of anyone. It is the chartering organizations that approve the charter. They are the only ones who have the right to change it.

So [inaudible] now, since it has not changed the work stream two will be done by the CCWG only, not by an organization, not a group chartered by one [inaudible] organization. And this group may give up the frame of interpretation that will trigger the, or that will make the bylaw provision about human rights enter into force.

So this is very important. I think we will not have, I personally think we will not [inaudible] with this language. It has not changed and keep the mission of completing the work stream two to the CCWG and not to any other group. Thank you.

ALAN GREENBERG:

Thank you Tijani. I believe the language is there because the issue has been discussed. I said discussed, not decided, in the CCWG, and it was proposed by the Board and, in fact, by others, that going forward, it might be possible that instead of the CCWG addressing all of the work stream two issues, that it be done through some other mechanism.

And I agree. That would be done with the agreement of the chartering organizations. So we're not saying violate the charter. We're just saying as the world unfolds, we may decide there is a different way of doing things, and the lawyers were simply putting in words that there is a commitment to do a framework of interpretation through some valid and approved mechanism.

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And I think that is all they were trying to get at. Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Alan. Olivier speaking. And thanks for providing this background. I would tend to agree with Tijani on this point, in that strictly speaking, this entered the whole CCWG accountability, and I mean, we are in a political situation here where I totally understand that the proponents for bylaw inclusion for ICANN to respect internationalized recognized human rights, is of a high concern.

And there needs to be some commitment that the work will take place. So I would entirely support that the work will continue as part of work stream two of the CCWG accountability. But what it does say here is, or another cross community working group chartered for such purpose. So first, or another cross community working group, and that to me, starts putting a barrier, saying, well what if another cross community working group does not get chartered?

This kind of pushes the court further out and it might be a way for some of the supporting organizations or advisory committees to block this. Furthermore, it then says chartered by one or more supporting organizations or advisory committees. A cross community working group needs at least two, so I think that supported by one doesn't make it a cross community working group anymore, and I feel equally as concerned as Tijani on this.

Politically speaking, and in order to reassure the proponents of the clause on internationally recognized human rights, I would say we should push for keeping it as part of work stream two, in the CCWG

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accountability, and making sure that that's my other concern, because we heard so much fear, uncertainty and doubt on this, that work stream two actually does happen.

And it doesn't get blocked by whatever Board or other parts of ICANN, and so on. And I know there is an issue of trust here that because so many people had their [inaudible] trust over the months, and over the past couple of years by affirming all sorts of things, we need to make sure that takes place.

That, I hope, would be, it certainly would reassure me that this is going to take place, and I hope that it will reassure people who are in the, are pushing for human rights, are delicately pushing for human rights, to be reassured as well. Thank you.

ALAN GREENBERG:

Thank you Olivier. I really feel that you and Tijani are raising, are fighting a battle which is not the core battle right now. The words one, CCWG chartered by one organization, clearly it's bad wording from the lawyers. So to focus on that simply says, they were simply trying to adapt to what they hear might be the way going forward.

They're not dictating the way going forward, they're simply trying to cover it. You're both showing a belief that if it continues as part of work stream two, we will have closure on it. We might not have closure. We don't have closure on things on work stream one yet, and it's not clear how we're going to get closure on them.

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So the world has certain variables and uncertainty associated with it. That is simply the way the world is, and certainly the world within ICANN. The way I read this wording, and this was not bylaw language as the ultimate, but the way I read it says, we have a commitment to human rights, but it's not useable until we commit a framework, we adopt the framework of interpretation of human rights.

For instance, it doesn't say what framework of interpretation. The framework of interpretation on ccTLD re-delegation could be implied by that unmodified framework of interpretation there. So the wording is clearly not the right one. It is simply saying that we do not do it until we get the framework of interpretation.

Which yes, is subject to a certain level of uncertainty at many different levels. The real substance is not the wording of who does it. The substance is, right now the Board is saying no bylaw, period, goes in at this point. And that's the discussion that we have to resolve. The rest are details, in my mind. Tijani, go ahead.

TIJANI BEN JEMAA:

Thank you Alan. Two points. The first one, the issue of the trust, some people think that work stream two will not happen because the Board will not permit it. But this is not true. If the community wants to, or if the community continues to develop other [inaudible] accountability through work stream two, the Board must approve it, must accept it, otherwise we have the [inaudible] now.

Since we finished, since the bylaw is modified, and we have those powers even to remove the Board. So the Board is [inaudible]... I don't

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think this is [inaudible]. The second point is about, we will not come to closure in work stream two, so we didn't do work stream one. This is very dangerous. That means we will want to form another group come to closure. That means we will reject people who will be against something.

It's not good. I think the CCWG is something, representing the whole community of ICANN. That is [inaudible] that the SOs and ACs inside ICANN. And it is chartered to finish the work. So the CWG must change the work, and if the CCWG decides to include a bylaw provision about the human rights, the Board cannot refuse it. Thank you.

ALAN GREENBERG:

Thank you. Sébastien?

SÉBASTIEN BACHOLLET:

Yes, thank you very much. Sébastien Bachollet. A few points. The first one, I am not sure that the question of what the Board is trying to do with this cross community working group outside of the work stream two is not the art of the problem, because they already say that work stream two are a multiple cross community working group. And if we end up with that, we will have any power with the work stream one, but we will not be able to complete the task of the CCWG.

CCWG's work stream one plus work stream two, and all what is included in the work stream will need to be dealt within work stream two, and with the organization we want to put, not the Board want to allow us to put.



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Second point. I am not sure at all that because we have the possibility to fire the old Board that it will happen. We are in front of one interesting situation here. We say, oh, if it not happen, we will have a new Board, but we know, we know that it will never happen.

It will never happen for one single topic like, even important like the human rights. It will be... If it happens, it will be something much more important that will jeopardize the ICANN situation, but if we want to do it then. I really think that the situation... And from my point of view, I don't get why one topic of the work stream two is more important that the other.

For me, there are topics as much as important as human rights within ICANN in the work stream two. And I am not seeing how we can have a bylaw for each and every topics. What I would like very much is that we struggle all together to have a strong work stream two, in good condition, with a budget, with some timeline, with staff support, with good people taking care of, and that will be the win situation today.

If we are going in different battles, and it is what we are doing now, we will lose everything, even if we think that the Board has nothing to say at the end, they will sign off. And I really want us to be very careful on what we say, how we did do it, and what is our role.

My goal is, if the work stream one is finished in good condition, and we need to start the work stream two with the same type of possibility, same type of support, and same type of goal. Thank you.

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ALAN GREENBERG:

Thank you very much. Let me make what I was trying to say clear, because I guess I haven't been. In this discussion, I'm certainly not advocating splitting things off or any of these options. Even if this bylaw were to be enacted and saying, work stream two of the CCWG, some future action could say, when we said work stream two of CCWG, we are interpreting it as meaning something else.

So it does not preclude that that will never happen, I just don't think that's the battle we're fighting right now. Right now the battle is whether there is something to be included in the bylaws today or not. And I think our energies are misdirected by looking at the other alternative, which can always happen should all of the parties agree.

So but that's my call, maybe I'm wrong. Anyone else on the human rights issue? In any case, right now we have a stalemate. The Board has said no bylaw. They have not come back and given a rationale, which they are obliged to, other than they don't feel comfortable with it, or it looks silly.

Neither of which are appropriate rationales. Olivier, go ahead.

OLIVIER CRÉPIN-LEBLOND:

Thanks very much Alan. It's Olivier speaking. I wanted to touch on another angle on this, with regards to our message to the CCWG. I've had some side discussions here in Brussels in the past couple of days, just casual discussions about this specifically, and some have told me that the ALAC is against the inclusion of a bylaw about human rights.

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It's just as an overarching thing. And I think there might have been some misunderstanding because I was under the impression that we were against having a deadline for, put in the bylaws, since that would risk making ICANN break its own bylaws if the work of the working group had not concluded by them.

But I was under the impression that we support the inclusion of a bylaw about human rights, in whatever form that it will take, but obviously the working group will decide on what to do. I wondered whether you could clarify on this, and I was hoping that we could also make sure that our position is quite clear.

That was one thing. Secondly, since we happen to have, or I think we had Avri on the call, do we have Avri on the call? We do have Avri on the call. I wondered whether she could share with us her insight as to where this is going. She has been a strong proponent of the human rights [inaudible] to hear from her as well. And I don't know if she's ready to speak about it here. Thank you.

ALAN GREENBERG:

She's probably more ready to speak if you say she's been a supporter of it, not an opponent of it. In terms of the ALAC position, the ALAC's formal position is, we support it but we're concerned with the deadline, which now is off the table. There have been some representatives of the ALAC who have said they would prefer to see no bylaw enacted until the framework of interpretation is done.

Some people may have interpreted that as implying we are against human rights, or against inclusion of a human rights bylaw ultimately.

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So you know, we have heard that debate on this call between Avri and Tijani. So yes, some people have said that. Our formal position is, we support recommendation six. Avri.

AVRI DORIA:

Thanks. Avri speaking. So yeah, I am much more a proponent than an opponent a bylaw for human rights. [Inaudible], I think without the bylaw, the issue is pretty much lost. And even if it's not lost, it's lost for at least another five years. So I remain on the side of a bylaw, even one that is so watered down that to some, it feels like no bylaw because, you know, they say it's dormant.

Yet it does include the content of how it becomes un-dormant. How it wakes up. How it becomes active. And puts that issue strictly on the table. So I think to say it's a null bylaw is false. I think in terms of the impression that ALAC is against human rights and against any bylaw that would ever deal with that, is because the strongest voice people hear from ALAC is the voice against.

So I think that that's one of the reasons people have gotten the impression. ALAC hasn't been in the meetings arguing, and while I happen to be an At-Large member, certainly when I speak, people don't hear ALAC. So you know, that's probably one of the reasons that the impression is, is what it is. And you know, it really doesn't matter how often we say, but no, I'm really not against something. I'm just against this [inaudible] of it, people hear it as a form of being against that something.

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So protesting otherwise doesn't necessarily help. So yeah, to me, I was willing to accept that bylaw. I don't know. This has basically been, you know, floating the stronger human rights in work stream two. I have trouble understanding what work stream two is, it's about modalities.

I think Alan is correct that someone could come along and say, "Work stream two is a top level construct, and it has all of these other little groups within it that are formed in various ways." We really do not know what work stream two is, we also know that it will have no time binding on it. So it will be something that drags out for a very, very long time. Thanks.

ALAN GREENBERG:

Thank you. Tijani. I really would like to bring this to a close sometime soon, by the way. We could devote the whole meeting to it, if you would like though. Go ahead Tijani.

TIJANI BEN JEMAA:

First of all, I am not against human rights [forum?]. I have said that from the beginning, but I've said from the beginning that I have [inaudible] that the content will take very, very soon this provision of human rights. This was my [inaudible] several times, from the beginning.

Even before the work part was formed, I told the chair and, the chair of this group, publically in the meeting, that this is my chair. And he agreed with me 100%. He felt that I agree with you 100%. So this is my problem. And I had some problem to understand why we make

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anything bylaw for the human rights and we don't do it for the accountability of the community. We take some of the power of the Board, so it must be also [inaudible]. And this is something very important for the accountability group that we are.

So those are my, if you want, problems with this. I am not... I accept this language, assuming that we change it and remove this groups that are chartered by one organization, etc. I made it clear on the mailing list today. Thank you.

ALAN GREENBERG:

Thank you Tijani. Sébastien.

We don't hear you.

Sébastien, we're not hearing you. Are you speaking?

We seem to have lost Sébastien one way or the other. Is there anyone else who wants to speak on this issue, or should we go on to the next one?

Let us go on. The next issue is market mechanisms. Can we bring up the document associated with that please? And if you can scroll down to page 17. Terri, perhaps you can take control of it and scroll down to 17, I'll tell you exactly where to stop.

A little, just a little bit further please. That's perfect. Thank you. We're looking at the items numbered five and six on the left hand side, they're labeled four and five on the right hand side. This is the issue that we raised, that there are currently the wording says, where feasible and

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appropriate depending upon market mechanisms, to promote and sustain a competitive environment. With some minor changes, the first lead in phrase was omitted. And we are saying that there must be some discretion within ICANN to consider market issues.

The example we gave in our submission was in the registry request to change the registry agreement, ICANN asks about, are there competition issues and then evaluates them. If it appears that there are competition issues, it refers them to outside agencies. But it first asks the question and gets an answer.

There is also the question of, we are about to embark or are embarking on a review of competition, and if competition and competition issues are outside of our scope, then why are we bothering to do that? And lastly, if you look at the next statement, it says introducing and promoting, in the registration of domain names where practical and beneficial in the public's interest as identified through bottom up multistakeholder practice.

Now, if we are introducing competition, then we have to think about competition. And from my point of view, four and five are at odds with each other. The discussion was, in the meeting yesterday, focused on a number of things, but included... This is the first time we talked about this issue, by the way. And people were proposing definitions of market mechanisms, which were at odds with each other.

So different people were saying, "This is a market mechanism, and what we do by introducing new gTLDs is not a market mechanism." And other people are saying, "It's exactly a market mechanism because

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you're introducing new competition into the market." So, at this point, we are standing relatively alone in this position, we have been supported during the discussion by Greg [inaudible]. Other than that, we have not had a lot of support. I have somewhat of a problem with this whole process because the rapporteur for work stream one, not work stream one, for work party one, is essentially, at this point, acting as the appeal judge when she was also the judge of the initial decision.

And I think it's going to be very difficult to get a change put in place without massive support, which is not likely to turn up, because we're simply repeating the same arguments over and over again. So it's not clear where this one was going to go. We've only had one discussion on it, and there will be some more discussion on the list. I'm not optimistic however, unless we get some other support that this is going forward.

Now whether this is a show stopper for us or not, I'm not sure. I suspect if we put in place this revised core value, or I'm not even sure what it is, it's a something. We may end up having to change what we do in some cases. ICANN probably won't dissolve because of it. The world may become a somewhat uglier place because of it, but that's where we stand right now.

It's not at all clear how we're going to go forward on this. And there aren't a lot of people in the CCWG supporting it. And in fact, I think I've been the only one to speak within the, not true. Sébastien and I have been the only one to speak as ALAC representatives talking about this. So, we're voices in the, out in the middle of nowhere right now. Olivier.



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OLIVIER CRÉPIN-LEBLOND: Thanks Alan. It's Olivier speaking. Am I correct in assuming that the reason why there is a wish to strip ICANN of the competition issue is that because the AOC only, is interpreted as only mentioned in the context of new gTLDs?

ALAN GREENBERG: No. The belief is somewhat confusing. You know, the statements made are that, introducing a new gTLDs, is certainly I believe, that is one of the things that we have done to increase competition. We have invoked a mechanism within ICANN, because we're effectively a regulator, even though we don't use the words, that we do control the flow of gTLDs.

And therefore, that is part of our responsibility. We are going to do a review to say, were are successful in increasing competition? And presumably the answer is, if not, we'll do something different. So I don't think we can say, we will rely purely on market mechanisms, because very clearly, in my mind, we are not relying clearly on market mechanisms. We are controlling that market.

Or at least who the players in the market are. So I don't think we can walk away from it, but that's my, the position I've taken, the position ALAC has taken in its formal submission, but it is clearly not being [inaudible]. Sébastien, go ahead.

SÉBASTIEN BACHOLLET: Yes, thank you. I'm sorry I was cut off. I just wanted to say one sentence about the previous topic. I would like to say that if we join our

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force to have a strong work stream two, it will be better than anything else to try to one of the work stream to done one way or the other.

Now, regarding this subject. Two thoughts. The first one, who was in charge to write the first bylaw of ICANN? And who was it that had that duty at that time? I have no answer. I don't know. But it would be interesting to know.

ALAN GREENBERG:

I believe that [CROSSTALK] at that point.

SÉBASTIEN BACHOLLET:

Thank you for that Alan. And when the same want to correct mistake, they think they have done three years ago, it's not the best place and person. I feel as it's a conflict of interest, this place and this discussion.

Now, going into, or trying to understand in English, just if we reverse, when no market mechanism promote and assist a competitive environment, are available, ICANN needs to act. And exactly what ICANN is doing in Latin America, in the African countries, and the Middle East.

For example, with the creation of DNS, I don't remember the title of the board, of the officer, the DNS market [inaudible], but there is an observatory in Latin America, and something about market... ICANN is acting because the market didn't have enough host, enough element to get a competitive environment. Then we need to have ICANN able to do that here.

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And then it's very important. And my last sentence, if we don't get it, it's once again, my conclusion is divide [inaudible].

ALAN GREENBERG:

Thank you Sébastien. Maybe the reference is to developing countries need to be raised, because that hasn't, in my consciousness, been raised within the CCWG. And it is purely Western powers saying, "We believe in competition. That's sufficient to do everything." And clearly that is not the ALAC position, but your arguments are good ones and we should raise them.

I think we need a few more voices on this side. Go ahead Olivier.

OLIVIER CRÉPIN-LEBLOND:

Thank you very much Alan. Olivier speaking. And if you recall, indeed, I agree with what Sébastien has mentioned here. It would completely throw out the applicant strategy of ICANN, which is to foster competition in Africa and promote the markets and the use of registries and so on. Well, having local registrars and registries in Africa. It's just going to throw a big spanner in the works, so many of the programs that ICANN is doing today, I have a great concern about it because politically speaking, it's not good for ICANN.

It certainly would raise a lot of voices against ICANN, in basically saying, well [inaudible] corporations that are trying to put their hand on it. Obviously, when you are the top of the pen, it's a lot better to say, oh well, you know, we just want market competition to happen and that's it.

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When you are further down the pen, it is a lot more difficult. And I hope that we can stand our ground on this. I'm not sure who else we can reach out to, what other parts of ICANN we can reach out to so it's not just us speaking.

And finally a concern I have obviously, I've said it in the past and it might be just an empty thing, but we're stripping now the competition. We're stripping the consumer trust. We're stripping the human rights. We're stripping a whole number of things which ICANN, which certainly makes ICANN maybe not more accountable specifically, but certainly more ethical than really risked reducing ICANN's mandate to what some parties really want, which is, hey it's just going to be a technical organization that deals with technical, a very small remit of technical stuff, that's there to serve registrars and registries, and that's it.

And at that point, I feel that we can then go home. At the end of the day, a big part of the mandate of ICANN, when ICANN was created, and I was around before ICANN was created. I was working on the Internet ad-hoc committee, [inaudible] proposition, the only reason why, or there were several reasons why ICANN was finally agreed for by people working on the other things, was because okay, very much, the White House was very much behind it, but they also said, "Well look. This is going to be public facing. This is going to be really for the people of the Internet."

Remember, ICANN version one was all about At-Large. That got stripped out so that for the public, for the people of the Internet mandate sort of took one step back. Now what we're basically risk doing is to close the door completely to the public, and leave that in

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industry hands. And that's a very slippery slope indeed, in my view. So I hope that we can, maybe we have to get in touch with other component parts of the GNSO who we know might agree with us, and make front and really raise some worries about this. Thank you.

ALAN GREENBERG:

Thank you Olivier. I'll commit to do a post on, with at least part of the substance soon after this call ends. Please other people on the accountability list, respond, widen it, and yes Olivier, forward it to other people who you think may be supporters. I will do a bit of research on the African and Latin American strategy so I can quote words, and I will do some posts.

But follow up on it if you care. Just convincing this group doesn't really help a lot. Thank you. The last item, and we don't have a document on it, the last item that I wanted to cover is indemnification of the people who make statements regarding Board members in the process of trying to remove them.

And we had raised an issue that we would like to see protection provided. The protection was suggested in two forms. One was through a waiver that the Board members would sign, committing not to take any action. And the second was indemnification should they, regardless they take action. And it wasn't clear who would be indemnified.

The Board is adamant that there not be such a waiver, that that would be a free license to slander and come up with a specious reasons for removal. And it's not 100% clear that under law you can ask someone

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to waive those rights in any case. So it's quite clear that the Board will not accept a waiver. They have tentatively accepted indemnification. Initially they said the chair is now, perhaps a wider group.

And they came back with a proposal they would indemnify us purely for what is the words that are written in the rationale that must be provided. I made the statement in response saying that is not acceptable. To say that we have to have an active community forum with people talking about the issue, but we're not going to be indemnified for what we say, simply says that community forum cannot happen.

So they verbally came back, or at least Chris verbally came back and saying, "Well, if we indemnify what is said during the community forum, does that also cover it?" That's not a formal Board position. So it has been sent back to the Board. Again, if we do not end up with some indemnification, I think what we end up with is a power which cannot ever be exercised for fear of repercussions against the people who try to exercise it.

At some level I can live with that, because our ALAC position to begin with was what, what was, we were left adamant than other people about the enforceability issues, or you know, even though we were pushing for at least removal of individual Board members. So I think I could live with it, I don't know whether the rest of the ALAC would agree to.

But clearly, it's a power that we've put an awful lot of energy into that in my mind could never be exercised if we don't have appropriate

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indemnification. So that is still waiting for Board reply on that. To be honest, I think they'll come back with something which is acceptable to us. But that's where it is playing out. That's all of the issues that were discussed that need reporting.

There was one other one that I can't remember, that I chose not, did not think that it needed to be brought up today. The meeting we had yesterday was probably the least productive CCWG meeting I've sat in on in quite a while. We talked about a lot of things, we made almost no progress on anything.

There was a lot of grumbling about that, but that is how it turned out. I have nothing else that I think I can report on at this point, and we're a little bit past the top of the hour. So I'll open it up to any other issues related to the CCWG, and barring those, I'll turn it back to Olivier.

Seeing nothing, hearing nothing, Olivier, it's yours.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Alan. Olivier speaking. And thanks for this. I guess we can move to any other business.

I don't see anyone putting their hand up. So just one thing. As you know, I'm also in the cross community working group on it, and it [inaudible] as co-chair. We've had a subgroup that has been working on preparing a proposal for workshop of the WSIS forum in Geneva. The WSIS forum, we were present at the WSIS forum in Geneva last year, in the IT [inaudible] five different UN agencies.

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Last year we presented the process of IANA stewardship transition working group and how we reached consensus, etc. It was also a very similar workshop at the IGF in [inaudible]. This year we are proposing that we do a similar workshop, this time on ICANN accountability.

And I have emailed the co-chairs of the accountability working group. We've had so far one reply from [inaudible], who has been very positive about this, and [is ready?] to participate. And on Friday, the cross community working group on Internet governance will decide whether to proceed further with filing that workshop proposal.

And that's basically it. I just thought I would let you know about this. We're not exactly sure of how it's going to be structured, but certainly we will focus primarily first on the process, how it links with the CWG IANA, and then perhaps with a helicopter view of the results, or at least the proposal. We have no idea when...

The WSIS forum takes places in, I think it's April or May. We have no idea where we will be at that point, but certainly there will be the ability to provide a PowerPoint presentation about the main line or the accountability process.

And that's it. So seeing no hands. Thank you very much. It has been a very efficient and very helpful call. So I would like to thank our interpreters, Veronica and David... Terri, you wish to find out about next week's Doodles.

TERRI AGNEW:

Yes. And would you also like a call on Friday? This Friday.



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OLIVIER CRÉPIN-LEBLOND: Big question. Alan, do you think we need something on Friday as well? Sébastien, do you have an idea? Tijani?

ALAN GREENBERG: Well to be honest, if we make as little progress on Thursday as we did yesterday, there will be plenty to discuss but not, I'm not sure a lot of merit. I'm optimistic that there will be, so let's schedule a call. But if we can possibly do it... Terri, was a time selected for Friday?

TERRI AGNEW: Yes. 13:00 UTC.

ALAN GREENBERG: Better than 12:00 I guess, at least for me. I would say we have to keep that one on the books at this point. We may choose to cancel on short notice, so people check your email before getting up if you have to get up for this.

OLIVIER CRÉPIN-LEBLOND: Thanks Alan. Tijani Ben Jemaa.

TIJANI BEN JEMAA: Thank you very much Olivier. I really hope that we will not have a call on Friday, because Olivier, I have two calls, DNS [inaudible] and the finance and budget subcommittee, and the call of Thursday will be the

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last one and it's serious. We may have other calls later. So we may program a call...

OLIVIER CRÉPIN-LEBLOND: Tijani?

TIJANI BEN JEMAA: [Inaudible] very, very [inaudible] for me. Thank you.

ALAN GREENBERG: I could certainly... Olivier, it's Alan. I can certainly live with doing it on Monday instead. I'm assuming if there are calls next week on the CCWG, remember they don't do Doodles, they just simply tell us when the calls are, if there are calls, there will probably be also Tuesday and Thursday, so why don't we reschedule a call, do a Doodle if necessary, for a call on Monday and skip the Friday one?

OLIVIER CRÉPIN-LEBLOND: Okay. That works for me. It's Olivier speaking. That works for me. And yeah, let's do that. Let's do a Doodle for Monday/Tuesday. So Monday the 1<sup>st</sup> Tuesday the 2<sup>nd</sup> of February.

ALAN GREENBERG: What do you mean by Tuesday? That might be after the CCWG meeting. I think we're probably back to an early UTC time for the CCWG, if they do schedule one.

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OLIVIER CRÉPIN-LEBLOND: Understood Alan. So let's then do a Doodle for Monday the 1<sup>st</sup> of February please.

ALAN GREENBERG: Let's schedule a Wednesday one at the same time.

OLIVIER CRÉPIN-LEBLOND: And one for Wednesday, okay. Monday the 1<sup>st</sup>, Wednesday the 3<sup>rd</sup>. And with this... Terri, noted?

TERRI AGNEW: Thank you very much, noted.

OLIVIER CRÉPIN-LEBLOND: Thank you very much Terri. Well thanks to all of us, thanks to our interpreters, Veronica and David, and that, we need to say that this call is adjourned now. Thank you and have a great weekend.

**[END OF TRANSCRIPTION]**