ICANN

Moderator: Brenda Brewer
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6:00 am CT

Mathieu Weill: Hello, everyone. This is Mathieu Weill speaking. Can I have the recordings started please?

Coordinator: The recordings are started.

Mathieu Weill: Thank you very much. Mathieu Weill, the ccNSO-appointed cochair to this cross community working group. Welcome to our Meeting Number 83. I would like to start, as usual, with the roll call. And invite any member or participant who is on audio only to signal their presence so that they can be added to the roll call.

Holly Gregory: This is Holly Gregory. I'm on audio. I'm also on Adobe but I don't have chat capacity. Just wanted you to know that.

Mathieu Weill: Thank you, Holly. Welcome. Any other person in audio only? No, excellent. For the sake of completeness, is there any statement of interest updates? And I think with that we will be able to move to our very busy agenda today. We've come a long way all across January on many of the issues raised on our third

draft. And it's been an opportunity for a detailed debate and taking into account all the concerns raised.

It's now hopefully time to come to closure on the very few remaining issues. And without further a due I will now turn to Thomas for agenda item number two which is one of these outstanding issues. Thomas.

Thomas Rickert: Thank you very much, Mathieu. And hello everyone. This item two we are going to discuss and hopefully close on the topic that has become known in the trade as a waiver indemnification. And the background to that is that when the community power to spill the board (unintelligible) board members is executed there was the request that those who are making those claims, those who are potentially criticizing directors should not run the risk of being exposed to liability risks.

And you will remember that we had a tack suggested by our lawyers to then task our lawyers to get in touch with ICANN Legal and Jones Day to further wordsmith language that is agreeable to both sides. We then received an update from Holly and Rosemary and February 4. And since we do know that Holly and Rosemary and their teams spoke to ICANN Legal and I would like to hand over to either Holly or Rosemary to give us an update on hopefully an agreement that have been made between the two legal teams so that we can then close the issue by agreeing with the suggestion that you're making.

Holly, Rosemary, I'm not sure who wants to speak? Over to you.

Holly Gregory: Hi. This is Holly. I can report in and Rosemary can add in. Can you hear me okay? I'm getting some feedback. So we had a good call yesterday with ICANN Legal and the lawyers from Jones Day. And we've agreed - I think we have a proposal in principle. We did not fine-tune the bylaw language on

the theory that that could be more of an implementation stage issue. But we have come to what we think could be the grounds for an agreement that we think that, you know, we thought was acceptable from a legal side and we can share with you and discuss further.

And last night late they sent us over some bullet point language which Thomas, I have just - we've tweaked gently and I sent you a few minutes ago. I don't know if there's capacity to get it up on the screen. But I'll read it to you.

Rosemary Fei: Holly?

((Crosstalk))

Holly Gregory: Yes.

Rosemary Fei: Let me just tell you - I also just sent it to the staff because I think they may...

((Crosstalk))

Rosemary Fei: ...posting it.

Holly Gregory: Great. Terrific. So maybe the staff can post it. But what it says or maybe somebody who's more technical than I could cut and paste it into the chat.

((Crosstalk))

Rosemary Fei: I just did.

Holly Gregory: Thank you. In order to encourage and promote healthy discussions and the director removal and board recall process, here's the notion that if a director were to initiate a lawsuit in connection with an effort to remove that director or to recall the full board, that ICANN would provide indemnification. And this would apply to the example that's been raised that a director has claimed that they were liable in the written rationale calling for removal.

The indemnification would be available to a member of a supporting organization, advisory committee, the Nominating Committee or the empowered community who's acting as a representative of such organization or committee for actions taken by the representative in their capacity pursuant to the bylaws, so for example, the chair of a supporting organization who was submitting a written rationale for the removal of a director.

And as required by California law and consistent with ICANN's current bylaws, indemnification would only be available if the actions were taken in good faith. And there is a limitation of the law so that is the most you can get. You have to be acting in good faith to be indemnified. And also in a manner that the indemnified person reasonably believed to be in the best interest of ICANN.

And ICANN would develop guidelines or ICANN - or CCWG in the implementation stage would develop a set of guidelines that would define the behaviors that constitute sort of a safe harbor. We felt that it was important, and we agreed with ICANN Legal and Jones Day, that it's important to have a document that doesn't dictate behavior but describes the kind of behavior that if you follow you're safe so to describe the kind of diligence that it's helpful to ensure that you're safe from a liable claim.

So that's the sum of what we thought was doable. And we open it clearly for discussion and would like to get your guidance and feedback. Thank you.

Thomas Rickert: Thanks very much, Holly. And thanks very much, Rosemary, as well as thanks to ICANN Legal and Jones Day for working on this and coming up with this proposal. I have one clarifying question to you and that is that you will know that whenever you enter the (unintelligible) participation room you have to tick that you agree with ICANN's expected standards of behavior. So basically if I understand your recommendation correctly, if you abide by those then you should be safe when making (unintelligible) or participating in the deliberations (unintelligible).

Holly Gregory: Yeah, I think the notion would be that there would be a little bit of specialized guidance that's specifically around the concern that's been raised about liable or defamation so that, you know, as a tool - and it could be included in your standards of behavior but, yes, some little guidance about, you know, not getting into areas that could be libelous. And it would be provided in a positive way, not like a list of don't dos but here's the kind of things that - the kinds of ways in which you contribute in good faith.

Thomas Rickert: Thank you so much. Thank you so much. I can only speak for myself but I find this quite smooth solution because when we discussed the ideas of waiver earlier you had advice - you and your colleagues, Rosemary and team, had advice that even a waiver would not hold water in court if the person making certain statements actually (unintelligible) provides inaccurate information or if it's in fact libel. So looks like you've encapsulated responses to the concerns that were raised.

But let me check with me the wider group whether there are any objections to proceeding as you suggested. Remember that we had agreed on the general

principles earlier that we wanted to leave the wordsmithing to the legal experts. And I see Alan's hand is raised. Alan, please.

Alan Greenberg: Thank you very much. Since I started this thing I may as well be the first one to speak here. Two questions. It says, "people thing as representatives of the formal or of the organization." In your mind do you believe there will be sufficient if for instance the ALAC passed a motion saying that for the purposes of the action of the removal of directors all ALAC members are acting as representatives of the ALAC. So there's 15 ALAC members, most of them are not empowered to be representatives in a normal case. In fact, only the chair is and even that has very strong limitations.

So would it be sufficient if we simply deemed, and went on the record, and said all 15 members are in fact representatives for the purposes of this one process? That's a question.

The second question is, the term "indemnification" often means after-the-fact, that is if there were any action taken that person would be in a position to defend themselves and then, should they be able to demonstrate they acted in good faith, be reimbursed. Is that how you read this? And that would be problematic certainly for many people within our environment who come from developing countries and are not in a position to advance money towards this kind of thing. So how do you read that? And can we fix it if it's a problem? Thank you.

Holly Gregory: So we haven't specifically addressed advancement of expenses. And, you know, we certainly can. You know, Rosemary, you can weigh in as to whether under the statutory provision advancement is required in certain circumstances. I don't know the answer to that under California law.

Rosemary Fei: It's not required, it's permissive. And it's permissive only with an undertaking to repay in the event that that person is deemed not to have met the standards.

Holly Gregory: Right.

Rosemary Fei: So if it turns out they were acting in bad faith after the fact and of funds were advanced then that person would have an obligation to repay them.

Alan Greenberg: Sure.

Holly Gregory: That's certainly a reasonable ask and fairly standard so we can certainly, you know, raise it with ICANN Legal.

Alan Greenberg: And what about the first question?

Holly Gregory: And the first question was - if you could restate it?

Alan Greenberg: Yeah.

((Crosstalk))

Rosemary Fei: ...representation.

Alan Greenberg: Yeah, the question is can we deem that everyone is - everyone was in a certain class or group is representing for the purposes...

((Crosstalk))

Holly Gregory: Okay here's what I think is going on. This is the sort of key point. I think, you know, if you look at the indemnification that's currently there, it applies to,

you know, agents of ICANN and it identifies as agents data members of the ACs and SOs. I think to the extent that we, you know, here a representative is, you know, we could have a similar concept. But again, that's kind of a fine tuning that will have to be worked out. How broad, how limited. I think it's reasonable to say that it, you know, applies to members of the group.

Rosemary Fei: Alan, I would also point out that I think it's likely that an organization - well one of the committees or the supporting organizations would be able to decide who its representatives are in the manner you described. But don't forget that you also then have to make sure that the actions in the next sub point are taken in a capacity that is described in the bylaws.

Thomas Rickert: Thanks, Rosemary.

((Crosstalk))

Thomas Rickert: I would suggest that before moving to Kavouss and then Alan it appears to me that the first question with respect to who can represent or not, that's something that is - that can easily be controlled by every organization by just authorizing either one person or multiple persons who would then act as representatives. So I think I can likely be controlled.

With respect to the second point about indemnification after-the-fact or before, I would suggest that we just take and make a note that during the implementation a way should be sought that allows for financial aid or support during the process and not only introspectively. I think, you know, these are operation details that shouldn't go into our broad recommendations on this point.

Kavouss.

Kavouss Arasteh: I have a question of Alan. Yes, thank you, Thomas and thanks, Holly, for the suggestions. I think we add to what you said that if so requested, we don't want to go to put advance statement to everybody. We could say if so requested because Alan referred to some certain cases. So no problem.

With respect to the second question, I see some difficulty. Not every SO and AC are as ALAC having 15 members. I don't think that in some others would be difficult. So I don't think that we could convert the issue to a forum of so many people. They have to decide on their representatives after the minimum necessary but not having everything in case of GAC, I don't think that we should have 154 representatives in that. So it would be difficult.

So let us not go to do that detail and just say representative and that's all but not all representative with S in round brackets. But not to mention that all 15 ALAC would be represented if ALAC so desired. It would not be practical. Let us not make it so difficult. Thank you.

Thomas Rickert: Thanks, Kavouss. Alan, you have the last word on this one.

Alan Greenberg: Yes, just a follow up. If you recall, the offer we had originally from the board was they would indemnify the chairs. And - or they would indemnify the person who wrote the document. The issue I brought up is we have a required community forum or possibly a teleconference ahead of time which is a process to convince the other parts of the community that there is a problem and something must be done.

The purpose that we went back and said just the chairs, or a single representative is not sufficient, is you can't have that kind of real dialogue in a public forum unless those people are indemnified. That's why we were saying

that it can't just be a single representative. A single representative is not likely to be able to convince the varying parts of the GNSO, for instance, that they should be taking action. So that's just the rationale.

I can live with it all being implementation but understand that the reference to chilling effects that was made I think in the - in our legal counsel's comment that in the prep for today, is the real issue here. And if we set the target so high that we will either have chilling issues or never be able to convince anyone else to act, then the whole power is essentially a paper tiger. Thank you.

Thomas Rickert: Thanks, Alan. I suggest that we try to close this now. Your points are being recorded. I think it's not necessary to augment the recommendation at this stage, to include a specific number of representatives that can be indemnified. In my view, and I don't see any further interventions or wishes to intervene now, take that - those that remain silent are in agreement with the middle ground that has been suggested.

So it's not only the SO/AC chair that's representative so that's (unintelligible). And let's - let us please let the mechanics be worked out by those who do the implementation. And if all else fails then during the community forum you might elect to have a spokesperson that makes official representations of the respective groups.

Let me now proceed to asking whether there is any objection to proceeding on the basis of what's been outlined by Holly and Rosemary and pause for a few seconds. There does not seem to be any objection. Alan is typing so let's just wait for a moment to see whether that's an objection. But Alan was fine...

Alan Greenberg: I'm not objecting, I'm just clarifying.

Thomas Rickert: Okay, excellent. So we can then deem this language as our consensus position and I thank you all for supporting this or at least not objecting to it. So we have something to proceed on and include in our report. Thank you so much and with that I'd like to hand over to Leon for the next topic and that is human rights.

Leon Sanchez: Thank you very much, Thomas. This is Leon Sanchez. And there was an email sent to the group in which we reflected some comments by the board. And there was attached to that email the redline version that described the different changes made to our proposed report. And I'm not sure if we can have this on the screen, it would be useful of course.

That the main issues on this topic are to confirm that we of course received input from the board in regards to human rights. And that this input has been duly taken into consideration. And this feedback was accepted by the CCWG. There has been of course fruitful discussion on the list in regard to this topic. I think we have reached, of course, consensus and closure on the topic of human rights as far as our recommendation is concerned.

So the only one thing that we would like to confirm with the group, and I think that is also is something that has been discussed widely in the list is if you go to Page 2 of the document you will see that the redline version of the proposed bylaw text would be actually the guideline for the lawyers to draft this final bylaw text, has a highlight in general that refers to some text in parentheses or brackets the custom of (unintelligible) might be.

These - this highlighted text states that the framework of interpretation for human rights is available by the CCWG Accountability. And in parentheses we have highlighted, or another cross community working group chartered for

such purpose by one or more supporting organizations or advisory committees as consensus recommendation (unintelligible).

So the only thing we would like to confirm, and from the discussion that has been held in the list we feel that the CCWG would be the actual group that should be taking care of developing this framework of interpretation as part of Work Stream 2. And in the case that another group should be chartered for this task then this would also be something that - or this group should enable participation from all stakeholders of course and all sectors of the ICANN community.

So what we are asking from you is that you confirm that we can delete this text from the final report so that it doesn't talk about other cross community working groups but just the CCWG as being the one responsible to develop the framework of interpretation as part of Work Stream 2. And we have always envisioned as part of our working plan for Work Stream 2. And this way we should close this issue and it should be clear that the CCWG is the one that should be in charge of developing this framework of interpretation.

And I see some hands up already so I will hand the floor to Kavouss first. Kavouss, could you please take the floor.

Kavouss Arasteh: In favor of your proposal that deleting every other CCWG and I think that you tried that one first. Should you agree on that I have no comment. But should people want to talk about any other CCWG I have also no problem but I have serious difficulty to the rest of the (unintelligible) or by any other SO AC. I don't want to go to that level of detail and I don't want to limit this very important to only one or two so on so forth. So we don't need that one.

So please kindly try your first proposal which I'm fully in agreement to delete everything after the CCWG. And nothing else. If you want to take that any other CCWG put the (fullness) of that but don't go please to the parting that or more by one or more supporting organization advisory - this part I have difficulty with that. Thank you.

Leon Sanchez: Thank you very much for this, Kavouss. And, yes, that is the proposal to actually delete this part of that is highlighted in the document. So we would be getting rid of this. And actually confirming that the CCWG the actual CCWG would be the one in charge of developing this framework of interpretation. And next in the queue is Tijani Ben Jemaa. Tijani.

Tijani Ben Jemaa: Thank you very much, Leon. Tijani speaking. And so I am in full agreement to remove the text and the brackets - bracket regarding any other (unintelligible). I have another point that I mentioned in my email. The board removed the mission and replaced it with core value. I don't have any problem to put the core values but I want the mission to be there because we don't want ICANN to be obliged for anything out of its mission. So within its mission and core value it works for me. Within its core values only, no. thank you.

Leon Sanchez: Thank you very much, Tijani. I think that the mention of core values was discussed widely in previous calls. And actually I believe that there was consensus that we could be switching from a mission to core values as the framework of interpretation but of course - would of course be limiting the scope of work for human rights. And also we have some other provisions that would prevent ICANN from deviating from its mission throughout other recommendations in our document. So I guess that is - will - being taken care of already. But thank you very much for proposing this, Tijani.

Next in the queue I have Brett Schaefer. Brett.

Brett Schaefer: Thank you, Leon. I have a question in regards to the sentence - the second sentence which was deleted. We had gone through quite a lot of debate in the working group on the fact that ICANN should not be obligated to protect or enforce human rights beyond what I guess what's stated here, beyond what's required by applicable law.

And I see that as required by applicable law was added to the top sentence. But the no obligation to protect or enforce human rights was deleted and was not replaced elsewhere. I was wondering if that is something that we could put into the - into what is now the second sentence and say, "This provision does not create any obligation - any additional obligation for ICANN to enforce or protect human rights or to consider any complaint," and sort of insert that there so we cover both bases in the edited text.

If this is covered explicitly somewhere else I'm just not seeing it. And perhaps Rosemary or Holly can explain why the existing text would be sufficient and equally robust as the text that was deleted. Thank you.

Leon Sanchez: Thank you very much, Brett. I think that we have discussed this. And I don't want to reopen any issues of course. It would be very problematic to reopen any issues at this stage. And let's not forget that what we have here in the guidelines for our lawyers to actually draft the final bylaws. So...

Brett Schaefer: I'm sorry, Leon. You said that we are here to discuss this edited text. So I'm not reopening...

((Crosstalk))

Leon Sanchez: ...but I might have not been clear about this but I was referring only to the highlighted part of that - that is in between brackets. So we are discussing or the intent of this part of the call is just to discuss the highlighted text in yellow or confirmation that we should be deleting this from the final proposal. I am sorry if I was...

((Crosstalk))

Leon Sanchez: ...if I was not clear.

Brett Schaefer: Can I get confirmation from those - from you and I guess from the substance of the previous emails that there is no intent whatsoever for ICANN to enforce or protect human rights?

Leon Sanchez: I believe that is accurate, Brett.

((Crosstalk))

Brett Schaefer: ...the lawyers who will be writing the bylaw, correct?

Leon Sanchez: Absolutely, the lawyers that will be drafting the bylaws should have these in mind. And I think that they have very clear panorama about this. And I think that they wouldn't be missing this one.

Brett Schaefer: Thank you.

Leon Sanchez: Thank you, Brett. Next in the queue I have Alan Greenberg.

Alan Greenberg: Thank you. If we're only discussing the words in yellow then this is out of order but I'll say it anyway I'm afraid. I find it rather unusual that - I

understand these are not the final bylaw terms but I would find it rather unusual if a bylaw makes reference to a transient working group which isn't otherwise defined in the bylaws. So I'm assuming the final bylaws may not in fact refer to CCWG Accountability but will allude to it with the appropriately couched term so it's understood what it is. Thank you.

Leon Sanchez: Thank you very much, Alan. And, yes, this is something that of course our lawyers will also take into account when drafting the final version of the bylaws. Next in the queue I have Kavouss.

Kavouss Arasteh: Yes, as I said, I prefer not to change anything, not to reopen this discussion. And Alan point is right but I don't think that anybody is against that this issue must be discussed by a CCWG whether it would be this one or any one. But that is - so I am just once again in favor of deletion of the yellow part. Thank you.

Leon Sanchez: Thank you very much, Kavouss. Okay so for the sake of clarity and confirmation I would like, at this point, to ask for any oppositions to deleting the yellow text that is highlighted in the document in your screen. Are there any oppositions to deleting this highlighted text? Okay so seeing no objection we will be deleting the highlighted text in yellow so it won't be included in our final report.

Okay so I guess this would conclude this part of our call. And I'd like to hand it back to my cochair, Mathieu, for the next agenda item.

Mathieu Weill: Thank you very much, Leon. And it's already great progress that we are moving forward on human rights and this outstanding in the mitigation discussion. We are now coming to the recommendation Number 5 on ICANN's mission. And we've spent a considerable amount of time in the last

few weeks discussing various aspects of this recommendation. And I think we made a breakthrough last week when we found a way forward on most of these issues.

Just to recap where we are now, last week we found an appropriate way forward on contracting and the enforcement discussions, which is - appear to be consistent with the latest board input we've received. We had extensive discussions on the concept of grandfathering.

And we concluded that the term grandfathering might raise concerns for some, including the ICANN board, but it was a drafter's note that we would provide for the avoidance of doubt the concept of not affecting the existing agreements was our intent and we would task the implementation team and our lawyers when they draft the bylaws, to incorporate this concept appropriately.

We've had extensive discussions on Core Value Number 5 and the market mechanisms and so on which were settled last week going back to the existing bylaw wording. There's some discussions ongoing on the numbering, mission of ICANN in the root server language. But they're almost final with - we're really at the wordsmithing level and I think any - the concerns have been removed.

We have received just, you know, only a few hours ago the proposal from Bruce Tonkin on the root server mission from ICANN. And but I think it's - we're at the stage where we're just fine tuning this for - and I would like to make sure with Bruce if he has the opportunity to contribute here whether that has been agreed on with the root server community or whether it's a proposal for us to forward to them. But I think it does not create any significant issue at the recommendation level for our group and actually does not prevent us from moving forward.

I think the idea of this part of the call as it's really a final reading of this is to ensure that we - there is no strong concern or objection to the Recommendation 5 as modified during our deliberations in the last few weeks and that we have - we are all clear to finalize this. And that's the - where I would turn to the room for questions, comments, concerns. And obviously Becky Burr is going to be ready for answering any of the questions that you may have. And I'm seeing Kavouss in the line, so, Kavouss, if you want to take the floor.

Kavouss Arasteh: Mathieu, two quick. I would like to sincerely express I think not only my thanks but I see many other people to Leon for a very, very hard difficult and delicate issue that he has handled. It must be in the record of this meeting that for months he was so patient, so kind and I'm very happy that this issue is completed. And ICANN board is happy with that. That is just a point that I wanted to put in the record not only in the chat. Thank you.

Mathieu Weill: Thank you very much, Kavouss. And I fully concur with that. And I think Leon deserves praise and recognition for the tireless work that he has been conducting on this human rights discussion as early as - I mean, back from probably the Paris meeting and that's outstanding.

Back to the mission. Are there any key concerns? Yes, Alan.

Alan Greenberg: Thank you. We raised the issue of the expression "policy development process" with regard to doing things which impact on leaving the market forces alone. We still have a concern that the things such as, and it was just an example, but things such as the African strategy, although developed through a bottom-up multistakeholder vehicle, it's not clear that the term "policy development process" applies. Policy development process in the rest of the

uses within the bylaws typically are a formal process that is well defined with multiple steps and things like that.

However, given that we have not - we had not raised the issue originally, and at this point we're not going to pursue it or at least I'm not going to pursue it and I believe the ALAC will support that, there was a discussion within the support group to take that position and so at this point we are not raising the issue. But there's still a level of discomfort with the current words and whether in fact covers the kind of things we want ICANN to be doing. Thank you.

Mathieu Weill: Thank you, Alan, for reminding us of this point, which should definitely be borne in mind. This is extremely - I think there's no intent to have the consequence that you're rightfully being concerned about. And hopefully we can clarify this in the next stage of our work because it's certainly not a requirement that it prevents ICANN from things like the Africa strategy or any of the similar initiatives.

Alan Greenberg: Yeah, just to be clear, Mathieu. There was never a presumption that we were doing this deliberately but this was one of the unintended consequences potentially of doing - of using words like that and that was indeed our concern, not the presumption that someone was trying to sabotage the process. Thank you.

Mathieu Weill: I fully agree. And I was stressing this so that it's on the record and can be used in the implementation phase if need be as a testimony that it was not the intent of the group. I think that's important. Are there any other key concerns or objections on Recommendation 5? Okay, that's excellent. I think we have our final reading.

A quick word of congratulations to Becky Burr and the Work Party 2 team who worked tirelessly on this as well. And I think it was - it is no more feat to have conducted this discussion which touches upon the most fundamental aspect of ICANN bylaws because it's obviously the mission, it's going to be the standard of review of many tests and expectations were very high.

And I'm delighted to be able to come to a fruitful compromise and consensus compromise on this key aspect. It's a remarkable achievement and Becky deserves our praise and recognition on that because she has been working tirelessly on that. Thank you very much, and thank you to everyone who contributed.

Kavouss.

Kavouss Arasteh: Today you have always consensus. Thank you very much. Thomas says that Leon is a star. I think that Becky is not super star, is also on the star. Thank you.

Mathieu Weill: Thank you, Kavouss. Next is Alan.

Alan Greenberg: Thank you. Sorry to go slightly backwards. I did want to raise the issue that Andrew had raised that is in the section of the judgment-free DNS he had raised the question of what does the word "technical DNS" mean? And it may well allude to things that we didn't want to allude to, that is implications of UN organizations being responsible for the policy part of DNS as opposed to technical. And I had proposed a very small change saying remove the word - where it says ICANN should be - sorry, I don't remember the exact words.

But talking about a judgment-free DNS and I would - I suggested removing the word "technical" but using instead of the "the" it's - so in other words

making it clear that this bylaw is referring to what ICANN does with regard to the DNS, not other people's parts of the DNS. And it's very general thing so it includes policy or the technical operation as appropriate but if it's within ICANN's remit. So we can certainly provide that as a note to the lawyers or something like that, which may make it clearer and remove the word that some people had significant difficulty with. Thank you.

Mathieu Weill: Thank you, Alan. Andrew's hand went up as soon as you raised his point...

((Crosstalk))

Mathieu Weill: Excellent. Alan. Andrew, sorry.

Andrew Sullivan: Hi. Thanks. So as I guess I also said on the list I'm a little sorry that I raised the issue in the first place and I am perfectly prepared to, you know, ignore this or else make this little tweak that people seem to be okay with on the list. I don't especially care.

Mathieu Weill: Thanks, Andrew. And I think that's really something that can be fine-tuned in the implementation stage because there's no ambiguity about the requirement here. So if we can close it easily let's do it, otherwise I don't think it should prevent us from closing the item at the high level - at the requirement level.

I would note a question the was raised by Izumi in the chat asking for - confirming that the 26 of January language suggesting on the number resources was the reference text for the mission in terms of numbering. And I think that is the case. That is the case indeed, Izumi, so that is the one version that we will move forward with. I think it had sound agreement on every side.

And with that I think we can move on to the next agenda item. And I am turning over to my superstar cochair, Thomas.

Thomas Rickert: Thanks very much, Mathieu. Thanks for the kind introduction. We're now going to continue our conversation on Recommendation 11. And as cochairs, we've discussed and thought about how to introduce this quite a bit. But we do feel that we should frame the discussion and the next steps a little bit so that we all better understand where we came from and what the next steps are going to be.

And we said multiple times during the last calls that it was our aim from the very beginning to reach consensus on each and every aspect of our proposal. We indicated more than a year back that we would do what we can to avoid polling not only because we wanted to avoid being forced to make a distinction between our dedicated members or devoted members and our not less devoted participants. We succeeded in doing so until today. And we hope that we can continue to avoid polling.

We've been criticized for I guess almost everything that we did in the last 12 months except for one item and that was our endeavor to seek consensus in this group and let discussions continue longer and longer in order to help consensus to emerge and to confirm that with the group.

And we've been successful in doing so. In most areas there were a lot of very tough decisions to be made. There were a lot of very challenging questions in terms of this group. But this group has actually mentioned to come together and find ways forward that not everyone was necessarily happy with but that everyone could live with. And in a few instances we saw individuals issue minority statements to make themselves heard and that is fully okay and that is part of the process.

Now this topic of Recommendation 11 seems to be particularly challenging because in our view, it encapsulates not only issues that are or that can be resolved inside the CCWG but we also have to deal with issues that go beyond our control.

For example, there has been some discussion about Stress Test 18 requirement that has been established by NTIA. And that has been perceived to have been introduced to the process at a late stage. There was also a lot of internal disagreement inside the GAC on how decisions should be made inside the GAC. And you will remember that we said earlier that we would very much prefer for those discussions to be held in the GAC and to be resolved inside the GAC. Yet we saw over the last month that a lot of these discussions were actually held in our group.

And what we see today is that despite very long and very engaged discussions we seem to be at a point where we cannot go any further. I think we've exhausted our possibilities as a CCWG and as CCWG cochairs to work more on the consensus position. We do see that there is a lot of middle ground but there are two sides at the end of the spectrum that we don't think we can bring on board for actually liking compromise language.

So I think everyone is trying to find ways to imagine where the places of the various groups within the ICANN community will be in a post-transition ICANN. And there are some who think that with the accountability enhancements that we're working on that governments would be unduly empowered. Another thing that governments are not sufficiently empowered, particularly not sufficiently empowered to be an equal stakeholder.

We can't offer answers to those issues but this is just to illustrate that, you know, we're really dealing with views that are all the way through the spectrum of views there can be. So we think that this new situation, you know, with respect to undue empowerment of governments, none of the ICANN communities had voting power so far. So while everyone is taken to another level of responsibility and power inside the ICANN community, one may say that although there are changes the relative power of an individual group does not increase.

So those who claim that governments are not deemed equal stakeholders in the multistakeholder model maybe it's a little bit of comfort to say that the carve out that we've been discussing would only be applicable for instances where the GAC choose formal advice to the ICANN board.

And the GAC can preserve full decision making capacity by engaging with the community during the engagement phase as well as during the escalation phase, making itself heard, participating in public comment periods and otherwise and not make that formal advice. And then the GAC would actually be equal to the other component parts of the ICANN community.

I'm sure that these offers of explaining where we are with the two extreme positions that are being taken are of (unintelligible) comfort but we just try to illustrate that, you know, there are different views to all aspects of what's being discussed here. And we think that with all the deliberations we have exhausted our means and it's particularly difficult for us as cochairs to close this and see this emotionally-loaded debate.

But while it seems to such highhanded debate at times the best way to deal with it is actually take a step back and look at the charter and look at the processes that we have used over the last month. And this is what we're going

to (unintelligible) during this last phase of our discussion, i.e. we are going to check what the level of objection to the compromise language that has been agreed during the Thursday and Monday single topic call is and we're going to assess where the objection comes from, i.e. does it come from a single group? Is there objection coming from all over the community? And then we will assess whether there is the presence of consensus or the absence of consensus. And even if there is the absence of consensus we will then state so because our charter allows for us to do so.

As said, we're trying to close this today. We would - we will certainly offer the opportunity to those that are dissatisfied with the outcome of this discussion to publish minority statements with our supplemental draft or our final report. And before we open it up for comments from your side, let me just use this opportunity to thank Steve, Cheryl and the stress test team for their tireless efforts in trying to help reconcile the differences and the diverging views inside our group and come to consensus.

So with that we would like to proceed to opening it up for your comments. You know the language that is on the table. It has been circulated previously. And we would now like to test whether there is objection to the compromise language that we've been working on during the two meetings that were held earlier.

First to speak is Tijani and then Kavouss.

Tijani Ben Jemaa: Thank you very much, Thomas. Tijani speaking. I have a question. Are you doing this for only for the change or the language of the Recommendation Number 11 or it is also for the consequence on Recommendation 2 and 1?

Thomas Rickert: Thanks for the question, Tijani. Our request or our encouragement to those who wish to object to state their objections now refers to the package, i.e. the compromise language that is rooted in Recommendation 11 but it does have impact on other recommendations too. So yes, if you want to speak to that please do.

Tijani Ben Jemaa: Yes. I'd like to say that I don't object to the consensus that you found on Recommendation Number 11. But what is for me unacceptable is that you will be able to - the board with only three SO and ACs accepting to remove it. So for me it is something that I cannot accept it under any circumstances. Thank you.

Thomas Rickert: Thank you very much, Tijani. Let's hear from others first and then we will get back to you with an answer. Let me, you know, since there is a longer queue forming we have 40 minutes for this discussion so we can continue until 1335 UTC. Let's please use the no more than two interventions from any speaker rule that we established a while back. Please keep your statements to a maximum of two minutes. We would not like to use the clock.

And for those who just want to speak in support of what has been previously said please do just state so and not engage in repetition of arguments that have been made before. So with that let's go further down in the queue. Kavouss, the floor is yours.

Kavouss Arasteh: Thank you, Thomas. I think we - at least I fully agree with you that we are dealing with the whole package, Recommendation 11, Recommendation 1 and Recommendation 2. We should not separate one from the others and should not reopen because that might have consequences of each. That is the first point.

Another point, important point I would like to make. There is - not there is - there might be or may be some misunderstanding that the ICANN community marginalize GAC. I have noted that not only the role of GAC is felt very important by entire community but it has been highly recognized and appreciated what government is doing in this process. So let us remove this sort of misunderstanding by some of our colleagues. I have noted that everybody agrees recognize and observe and respect fully the role of the GAC. That is the first point.

The second point is you have mentioned but let me say that everybody is okay but the problem is not that everybody is okay, the problem is that people should just agree with each other to the best of our understanding, to the best of our knowledge, to the best of ability. This package would cover the issue that if everybody is not equally happy at least everybody could be or would be equally unhappy. There is no changes between here and there. So I suggest that we take the entire process, the entire package and do it.

And I request that people they are not starting the I don't agree with this so people might have difficulty here and there but let us see whether you can be successful as the two other recommendations and to put the entire package to the success of having the consensus of everybody. Thank you.

Thomas Rickert: Thank you very much, Kavouss. Pedro is next.

Pedro da Silva: Yes hello. Can you hear me?

Thomas Rickert: Yes we can hear you all right.

Pedro da Silva: Okay thank you, Thomas. And thank you for your efforts during the past two dedicated calls for Recommendation 11. Also thank you to all other

colleagues who have been involved in this effort. However I - despite this effort I would like to express that we still have concerns with the proposal that has been put forth especially because I think it contradicts one of the grounding principles that have, let's say, guided our work so far, which is the principle of inclusiveness.

I think that proposal actually by excluding the GAC from specific subset of community decision I think it's like going the opposite direction of inclusiveness, is actually suggesting exclusion instead of inclusion. And I think that this proposal is even more exclusionary, if that's the word to use, because it does not treat the other SOs and ACs in the same way as it treats the GAC.

Even if, from a logical viewpoint, it does not make sense to have a constituency judging the implementation of its own recommendation advice, why should this restriction, if logic valid, why should this be applied just to one constituency and not to all of them? That is, let's say, one of the main concerns we have with this proposal.

Of course, every advice, and we understand that every advice and recommendation have their uniqueness in the ICANN system. And I think that has been one of the arguments from some of the colleagues the uniqueness of the GAC advice. But I don't think that the specificity of GAC advice are that unique so just to lead the conclusion that only the GAC should be prohibited from judging the implementation of its recommendation by the whatever you call it.

So I just wanted to express that they are (unintelligible) with this proposal. Also want to raise your attention that has been - that in the GAC list there has been many expressions of concerns from other countries as well about this

proposal and about this suggestion that has been put forth by the group. Thank you.

Thomas Rickert: Thank you very much, Pedro. And let me use this opportunity to remind the group of the question that's been asked by Mark Carvell during the last call and he has been - he has asked whether the GAC would be free to issue its advice during all phases of the process. And I can confirm that in the Recommendation 11 document in Paragraph 21 exactly that is stated. So I think it would be fair to say that while for certain circumstances where the carve out is applicable, the GAC cannot be an eligible decision making party. It is free to chime in and help the empowered community form its view by offering information and advice.

Next is Jordan, please.

Jordan Carter: Thanks, Thomas. Can you hear me?

Thomas Rickert: Yes, you can be heard all right.

Jordan Carter: Okay thanks. Hi, everyone. It's Jordan Carter, dotNZ here. I just want to thank the people who put in the time on the calls over the weekend to come up with this possible approach. To me there is no exclusion of any stakeholder group going on here. In the GAC's case the GAC has a choice to make with anything that it would like to do.

It can either offer advice and accept that that (unintelligible) process that's set out in the bylaws or it can be a decisional participant in any contest of that or it can just offer general comments and input to the various ICANN processes like other SOs and ACs and as such would have its full rights there. So the only exclusion is the exclusion of the ability to do the same thing twice.

And I think that that makes sense. I don't see how we get to a better consensus possibility than this. And so I don't object to it. Thanks.

Thomas Rickert: Thanks very much, Jordan. Olga.

Olga Cavalli: Thank you. Thomas. Can you hear me?

Thomas Rickert: Yes, you can be heard.

Olga Cavalli: Thank you. Thank you very much. First of all I want to commend the three cochairs for the real big effort in trying to ask to reach a consensus on this recommendation and to the fantastic work that you have been doing in all this process. I really commend you. I want to thank also Becky and Steve for their efforts in trying to shape the language that can be acceptable for all of us.

I know it has been evolving toward different things. I would like - I have to disagree with you, Thomas, in one thing. I don't think that the governments are - have equal footing in the ICANN environment. There are many, many ways that the GAC don't participate and governments don't participate in several parts of the process on different activities in the ICANN structure.

And this is not the issue for this call but GAC does not participate in the selection of leadership decisions in the NomComm. The GAC does not participate in the board. The GAC does not participate in many other things. But this is not the purpose of this call. But I just think that the equal footing does not apply for the participation of governments within ICANN but that's another discussion.

I won't repeat what Pedro said. This is the same what (unintelligible) think, is the same what Argentina thinks and many other countries represented in the GAC think about this Recommendation 11 and about Stress Test 18. We don't agree with saying that it diminishes the participation of the GAC in the whole process. And this is something that was not agreed from the beginning.

Our country decided to participate and to contribute in this IANA transition process in the light of the conditions that were established at the beginning. And this has changed. So in this sense this recommendation does not comply with our idea. I think I wanted to say something more but that's my comments for the moment. Thank you very much.

Thomas Rickert: Thanks very much, Olga. Brett.

Brett Schaefer: Thank you. As most of you know I've been very vocal on this issue. I agree with Jordan that I think that this is the best compromise that we're likely to have, that it's going to elicit the most support or broadest support from the community. I support the existing text. I'd like to comment one - on one matter that Tijani raised about the thresholds.

The reason why the thresholds were adjusted was because early on in the process we had reached agreement that it should not take unanimity in the community to exercise the community powers and so there needed to be an adjustment there to prevent if, you know, if GAC is excluded from voting on a particular exercise of powers that the threshold had to be lowered from some powers from 4 to 3 because otherwise it would require unanimous support from the community. And therefore I do support lowering the thresholds to prevent that.

Second issue, I want to raise and just get confirmation from is in the description on page - the second page in the second bullet after identifying GAC advice applicable to use the carve out. It says, "Board confirmation could only be - could only apply to board decisions where the board states it is - that its required rationale that its decision was mainly or solely based on GAC advice and that was approved by general agreement with the absence of formal objection."

I'm fine with the - with most of this but I question whether we should be including decision was mainly or solely based on GAC advice. Because it introduces, in my opinion, a level of subjectivity to this that could lead to challenges on whether it was or was not based solely or mainly on. I think it should just be based on GAC advice that was approved by the general agreement in the absence of formal objection. And hopefully that will be reflected in the final text.

And I do not that Holly and Rosemary's legal analysis did not include that language and I appreciate that. Thank you very much.

Thomas Rickert: Thanks very much, Brett. Let's get back to your suggestion - change of wording momentarily. Let's hear Greg and Robin and after Robin I'd like to close the queue.

Greg Shatan: Thank you. Greg Shatan for the record. First I think we have arrived at a compromise that should get the broadest possible support given the many different viewpoints expressed both here and in our constituent organizations. My concern is a more technical one in the sense we have certain language that we are calling in our report draft bylaws. And we have other things that are notes that are within the recommendation sections and then we have things

that are possibly not even within the actual recommendation section but are in the detailed descriptions of the recommendations.

And concerns have been raised in my constituency that the things that are not being expressed at this point as actual bylaw language will be left behind and not reflected in the ultimate bylaws and text that will remain relevant as these bylaws are interpreted. So just sounding a note of caution make sure that as we move forward we implement what is set forth in our work as recommendations and not only the draft bylaw language which, you know, is only conceptual at this time according to our own report.

And that's just a general note that we need to implement everything that is set forth in our recommendations and make sure that it's captured in our work going forward. Thank you.

Thomas Rickert: Thanks very much, Greg. Robin.

Robin Gross: Hi, this is Robin. Can you hear me?

Thomas Rickert: Yes, we can hear you all right.

Robin Gross: Okay. So I had - I continue to have problems with the underlying principle that we've got in this recommendation to significantly empower the governments, the GAC, over the current level that they enjoy in the existing bylaws. I think it is important to state once again that the GAC can't even say that it wants this. We are significantly increasing its power, we are significantly changing its role as well from advisory to decisional. And it can't even say that it wants this. So I'm really at a loss for understanding why we are doing this when the GAC can't even say that it wants this.

There's no requirements within GAC that they operate transparently. We have no idea how this debate is even going on over there. Which countries are for this, which countries are against this because there is no transparency that they operate without any such requirements.

And there's no requirements that its membership be comprised of democratic, bottom-up representation. Again, these are things that are in ICANN's Articles of Incorporation and they're - they're organization and their bylaws that the organization is required to act transparently, the organization is required to act in a bottom-up, democratic manner.

But now here we are shifting a lot of the authority over to some constituent part of the organization that doesn't have transparency requirements, that doesn't have democratic, bottom-up equitable requirements in its operation. So I think we're going to find ourselves creating more problems than we're solving. We think we're just going to quickly get this deal over with and, you know, sort of the throw the GAC a bone so we can have the transition. But I think we'll find down the line that we're actually creating significantly more problems for us and for the Internet in general as we go forward. Thank you.

Thomas Rickert: Thank you very much, Robin. We take good note of your concerns and the issues that you're taking with this approach. Now before we close this, I would like to invite (unintelligible) members representing other chartering organizations to speak to the level of support that this compromise might enjoy in their communities and whether or not they would be inclined to object to this. Greg, I think that's an old hand so let's move to Steve now.

Steve DelBianco: Thanks, Thomas. It's Steve DelBianco for the Commercial Stakeholder Group. We are one of the stakeholder group that are in the GNSO and we are prototypical of a group that had serious concerns about parts of Rec 11 and

was therefore divided and unable to indicate a preference in the calls that we had last week.

Last Thursday and Friday the CSG leadership was assembled in California and ICANN's intercessional meeting. And it was the same day of course that we surface the proposal to exercise this carve out. It doesn't carve out the GAC's participation, it simply says the GAC can't be the one to block the community's exercise of a power to challenge the board for the way in which it's implemented GAC advice. So it's plenty of opportunity for the GAC to participate and discuss, even to advise the empowered community but just not be the one AC and SO that would block the community's ability to challenge the board.

And that felt like a very reasonable compromise. It enjoyed interest and support from many members of the ITC and ISPs that had been divided. The BC had been in support of Rec 11. I think that the improvements and process that were made yesterday, which are on pages 2 and 3 in Adobe, go a long way to describing a rather common sense process for when and how the petitioning AC and SO could suggest to the ACs and SOs in the empowered community that a carve out was necessary in a given situation.

And I think with that I've received very promising signals from the Internet service providers and intellectual property community that this package would be acceptable. And I think that it would enjoy a much better chance, in fact I'm confident that the Council would be in a much better position, GNSO Council, to support this particular recommendation. Thank you.

Thomas Rickert: Thanks very much, Steve. We heard from NCSG, from CSG. Does anyone from ALAC wish to speak to this? James is putting in the chat that the Registrars will support the compromise. Keith is personally supporting it and

has indicated that the Registry Stakeholder Group will likely support it. Tijani's and Alan's hands are raised so Tijani first and then Alan.

Tijani Ben Jemaa: Thank you very much. As a member of this group expressed my support to the change in Recommendation 11 but I cannot accept under any circumstances that the board is removed by three - only three SOs or ACs. Thank you.

Thomas Rickert: Thanks very much, Tijani. Alan.

Alan Greenberg: Thank you. The support group for the At Large position did meet yesterday. And although as Tijani indicated, there are some concerns over some of the terms, both in terms of potentially impacting the GAC's overall position within ICANN or how people would perceive it more important, and the issue of board removal, we would - the ALAC would not likely refuse to ratify because of this. Now again that's...

Thomas Rickert: Thanks very much...

Alan Greenberg: That's a recommendation of the ALAC, not an ALAC decision.

Thomas Rickert: Yes, thanks. Understood, Alan. There are more expressions of support in the chat so Finn has indicated support. There's been a favorable intervention from Mark. And Izumi has indicated support for ASOs. James, your hand is raised, please.

James Bladel: Hi. Just quickly to read some of the exchanges going into the chat. My take on this discussion and the discussions that we've heard on this call and in previous calls is that those segments of the GNSO that oppose the third draft report have dropped - tentatively dropped their opposition. And those who supported the third draft report with conditions, that support remains.

So just stepping back and offering at least some perspective, it looks like this compromise would be, again, nothing is final but would be tentatively acceptable to the GNSO. Thanks.

Thomas Rickert: Thanks very much, James. We heard Jordan speak in favor of the compromise. Anyone else from the ccNSO that wishes to speak to this? Okay I think we have quite a good overview not only of the levels of objection but also, you know, since some have asked repetitively for support being needed to confirm consensus I think we've established that James's call in addition to what we previously stated during the last deliberations on this matter.

So with that I would like to confirm that we have a consensus proposal that goes into our supplemental and then into the final draft. And before formally concluding or closing this agenda item I would like to thank all of you for the constructive spirit in which we held these at times very difficult discussions and I would like to give Mathieu the opportunity to make some closing remarks on this very topic. Thank you.

Mathieu Weill: Thank you very much Thomas. And indeed I think as a co-chair we can recognize that this proposal, this compromise package is really the only way forward given the structure of our membership and the decision making rules of our respective chartering organization.

I think the proposal of this package made a tremendous job at trying to achieve that in a very short timeframe under very strong pressures from all sides and I want to thank and recognize Kavouss, (Aki), Malcolm and others for their tremendous efforts in providing us with this proposal.

We do recognize that we need on other topics the existence of descent on this topic. We do encourage the minority views to be put on the record. I think this is extremely important to make sure the diversity of views in our group is appropriately displayed in the future and at the same time it's certainly time to move on.

It's also probably a good time to take a stand back on what this discussion is actually about and how it is crucial for the future of ICANN. I think we've been witnessing the - what ICANN's plague is and has been for a long time now basically the GNSO GAC face off.

It's a story that repeats itself over and over and over again and as Thomas was saying earlier we reluctantly went into this. I fear we may have (scored) some thought in this one because not so much because of the content of the package but also because of the process that led us there.

Indeed there was an NTIA statement early in our process that establish addressing stress test 18 as a requirement. It was controversial for some of us and that was the initial step in that discussion.

It led to various episodes including the re-litigation of the Thanksgiving compromise. The road was bumpy, there were many scars and bruises that led to suspicion, lack of trust, some critical calculations as well.

And I fear we are fueling the future lengthy and costly battle that will accompany ICANN's history in the future starting with our own work stream two discussions to the future gTLD policy.

So I really call for everyone and especially the community leaders to include their leadership and especially in the GNSO and the GAC to step away from

this constant battling and come to a point where each group recognizes each other value to a relevance level.

I think that has been seen in our discussions and I really want us to spend some time expressing and I'm speaking on behalf of the co-chairs here our deepest thanks for some of our members and participants.

The ones who spend countless hours to promote dialogue and consensus building, who took the right of promoting the other party views in their respective groups and were often met in their groups as well as on our list with forms of disdain, pushback and I also deeply regret to say sometimes they were slighted in the conduct of the discussion.

I know that you are not rewarded with the most satisfactory outcome. I know it can be frustration for some but I think you are the ones who are the superstars, the ones who deserve the whatever (unintelligible) words or official recognition that exist within ICANN because you're building bridges and that's what ICANN needs.

So thank you Thomas I think now everything has been said about this and let's move on.

Thomas Rickert: Thanks very much and in fact next agenda item is on budget and that's going to be shared by you Mathieu.

Mathieu Weill: That's back to me. Can we - I suggest we go back for a minute to recommendation five where in the chat Malcolm and (Paul) raised a question they had not understood.

I was waiting for (Paul) and any concerns to be raised. And the question they raised was regarding the grandfathering and the ability to - whether the implementation phase would have to expand the mission to accommodate the need for the absence of grandfathering.

So Malcolm maybe you can raise your question for everyone on the record and then I'll try to answer with Becky to the best of my knowledge.

Malcolm Hutty: Yes thank you Mathieu. The - we've always agreed that we are not intending to change the mission. And people have raised the question of (pics) and some people have said that's fine that's completely within the scope and ICANN has never done anything wrong in that endorsing (pics).

And other people have said it might be considered to be outside the mission and we're concerned. And so the idea of grandfathering came up as a potential solution for that.

They're saying even if it were alleged that the (pics) were outside the mission nonetheless that would not upset what has been done already because we'll put this grandfathering clause and we'll make sure.

Now the current language that we've had before this is actually there as a note for the lawyers. And so my question was, what the lawyers are supposed to do with that.

Does that mean that if the lawyers decide that actually to be sure that the (pics) continue they need to do something but they are empowered to create a grandfathering clause if they feel that that's necessary they still ought to be fine with that.

If on the other hand they're not empowered to do that would they be then empowered to change the mission so as to bring - to avoid any possibility of an argument that (pics) are outside.

I'd like to get the clarification that that wasn't - that this note to the lawyers wasn't in any way empowering the lawyers to change the instructions that we've given on the wording of the mission so as to put the (pics) beyond that.

If there a need to put the (pics) beyond that the grandfathering clause is just a way forward. If we - if I can have that assurance or clarification then I'm be completely content.

Mathieu Weill: Thank you very much Malcolm and I see Becky's confirming in the chat that the mission description is not going to be expanded in any way by this drafting that tries to incorporate a previous agreement and that of a higher priority of - and if the only way forward for the drafter is through some form of grant that they enclose.

It is not this - it is not empowering the drafter to change the mission and I think that...

Malcolm Hutty: Thank you very much.

Mathieu Weill: ...that should put your...

((Crosstalk))

Malcolm Hutty: It does thank you.

Mathieu Weill: Thank you. I have Kavouss and Alan on this point. Kavouss.

Kavouss Arasteh: Yes we have finished recommendation five but we always fully respect Malcolm and (Paul). What they said could be a note on the - a note to the report and to the lawyers and delivered for the future how it will be done but the mission will not be changed. Thank you.

Mathieu Weill: Thank you Kavouss. Alan.

Alan Greenberg: Thank you. I and ALAC have been some of the more fervent people pushing forward to make sure that (pics) don't get invalidated by some accident of - accident or intention of the drafting.

The board has indicated their objection to the term grandfathering. The board also I believe has a very strong interest in making sure the contract that is currently written can stay in force.

So I presume the bylaw drafting thing will be an iterative thing involving ICANN legal and I have no real concern that they will not find some words that are suitable since the people who don't, aren't grandfathering also do want enforcement. So I'm presuming it will be worked out. Thank you.

Mathieu Weill: Thank you. Greg.

Greg Shatan: Thank you and Greg Shatan for the record. As I see it the grandfathering was in essence a compromise between those who believed the grandfathering wasn't needed because (pics) had other things in the contract were clearly within the mission.

And those who felt that grandfathering, you know, shouldn't be there because those things are clearly outside the mission and we should be able to challenge

past acts of ICANN based on the wording here but that of course might mean that we've changed the mission or it means that ICANN was acting outside of the mission when it acted on for instance certain (pics) among other things.

So what's unclear to me is kind of where we end up landing here. I think this to some extent this is a punt at this point and maybe it's the best punt we can come up with but, you know, it's not clear to me that if there is a grandfathering provision that it will be read as a - as an admission that without the grandfathering those things that are protected by it would be outside the mission.

And so we're kind of protecting things that are out of the current zoning if you will or that there is some acknowledgement that all these were in fact within the mission.

So I think we will - this I think is maybe the best that we can do for our current proposal. So I'm not going to upset the apple cart but I have a feeling that this is something that will end up being to some extent (re-opened) at the next level whether we like it or not. So we must move on. Thank you.

Mathieu Weill: Thank you Greg. Indeed we'll - we are providing more clarity to our lawyers about our expectations and we will rely on their strength and skill and expertise to come up with an appropriate implementation.

And with that I think we can consider recommendation five closed. I am now going back to our regular agenda on item number six and I'm turning over to myself for this update on recent exchanges regarding the budget of the IANA stewardship transition project.

As mentioned on the list we the co-chairs had been invited to a call by the board finance committee to discuss their concerns regarding the raising costs of the IANA stewardship transition project.

It was a very short call and honest and direct discussion about how we could actually more efficiently manage this aspect of the project going forward. I should say it was really focused on how we address and discuss this in the future and certainly not looking at everyone who was responsible in the past for any past decision or anything like this it's really looking forward.

And obviously for us the key, what's key here as a group is ensuring we have relevant support for work stream two and not (alleging) that the costs of work stream two is a relevant concern not only for the board but also for the community as a whole if it was not appropriately monitored.

So the board's expectations are for us to provide estimates on the one side and also to clarify the process and the responsibilities about how we obviously use our external support on one side, make decisions on our work plan that has consequences on the budget such as organizing face meetings for instance.

And I think it's really important that we find - we sort of find a way to exchange with the board finance committee, find a way to have the chartering organizations who after all are the ones we are all accountable to, to be involved into that process.

And that's an ongoing discussion because there is a follow-up call that is taking place in probably less than 10 hours now on that topic. And we have shared a few thoughts on the list and received some very thoughtful comments from some of you.

This agenda item is basically to enable anyone who has any further thoughts to share to provide us to the co-chairs so we can participate in this board finance committee later with a good view of the group's perspective on those questions.

And I'm seeing Greg in the line so please Greg. Greg was that an old hand maybe? I think it was.

Greg Shatan: Old hand sorry.

Mathieu Weill: So I think this is we're not looking to make this a lengthy item so I think in the absence of anyone - any interventions we'll integrate the comments we received on this and report to you after the call about what the next steps should be.

And with that I'm turning over to Leon for any other business.

Leon Sanchez: Thank you very much Mathieu, this is Leon Sanchez. And I see that Kavouss has raised his hand, so Kavouss would you like to comment on the last...

Kavouss Arasteh: Yes any other business. Just any other business thank you.

Leon Sanchez: All right good, thank you very much. So one thing that we wanted to confirm as part of any other business is the discussion of staff accountability. So far the only reference to staff accountability as far as I can remember and I might be mistaken of course is the reference to carrying out work to enhance the staff accountability as part of work stream two.

So what would be the confirming that in the rights of staff accountability work should be carried out as part of work stream two alongside SO and AC accountability as we have described in our third draft proposal.

So at this point I would like to hand over the floor to Kavouss for the all the business that he wants to raise or I see Greg Shatan's hand is up and unless Greg's intervention is directly related to have just said then I will turn to Kavouss. Greg is your intervention related to staff accountability?

Greg Shatan: Yes it is directly related to that.

Leon Sanchez: Okay please go ahead then.

Greg Shatan: Yes in our second draft report we had two or three paragraphs on staff accountability with mention of specific things such as code of conduct and a couple of other things.

                  We had a lack of comments on that only 9 out of the 94 comments addressed that. Some raised issues but all were generally in support of that language. So and somehow that language did not make it into our third draft report.

                  Our third draft report said that the comments revealed that staff accountability should not be pursued. So we can't go back to what's in our third draft report in order to put the staff accountability in work stream two.

                  We need to put staff - we really need to go back to our second draft report and put back what was there and if we make - if there are any tweaks that would be necessary by those few comments that were offered, you know, that could be brought in.

But it seems to me that somehow we inadvertently dropped what was in our second draft report and that should be our reference text for the supplemental and hopefully final draft that we are now finalizing. Thank you.

Leon Sanchez: Thank you very for this Greg and yes we will be making sure that we recreate this language so that it is properly referred and addressed in our final version of the document.

Next I have Kavouss. Kavouss could you please raise what you wanted to raise?

Kavouss Arasteh: Yes I just want to ask the culture, the next step up where we finish all these things. The form of the supplemented timing of the supplement and any other procedures or course of action related to the supplement as we are preparing ourselves for the ICANN 55, thank you.

Leon Sanchez: Thank you very much Kavouss. My line broke a little bit so could you kindly please repeat what you just said?

Kavouss Arasteh: Sorry, I was referring to the supplement, the form of the supplement and time of the supplement being issued and any procedural aspect or course of action associated with that supplement.

It would be appreciated if the co-chairs provide something for our next meeting due to the fact we are approaching the ICANN 55, thank you.

Leon Sanchez: Thank you very much Kavouss and Mathieu has put on the chat box the timeline would be to finalize these final reports of course by end of business on Friday.

Then we would have time to review over the weekend and we would be briefing the document on Monday so that charter organizations could have a look at this proposed version of the document so that they can carry out their deliberations in order to run their approval processes in their respective charter organization of constituency.

I see that Holly's hand is up. Holly could you please take the floor.

Holly Gregory: Yes and first of all I haven't been able to be on the chat so I wanted to congratulate everyone for the progress made and all of the hard work. On the final review for the lawyers will that - can you give us the timeframe for that? Is that also happening over the weekend?

Leon Sanchez: Thank you very much Holly. Yes this would also be happening over the weekend. Actually...

Holly Gregory: So can you give us an estimate of when we will get the document and how long we will have to review it?

Leon Sanchez: Yes you should be having the document at the latest on Friday I think but we can provide you with further details offline if you need to.

Holly Gregory: Okay thank you.

Leon Sanchez: And next in the queue I have Mathieu.

Mathieu Weill: Yes just to clarify that our intent after this call is to share on the list a more detailed timeline with this kind of clarification Holly so that everyone can get organized around this and also including as I was mentioning in the chat the

deadline for minority viewed submissions and all the extra things that we need to make clear for everyone as we try to wrap this up.

I also want to say a word about the tremendous staff support we're getting. It's an outstanding work that (Bernie), (Grace), (Alice), (Brenda), also (Hillary) are doing to actually finalize the work.

There's going to be - they're going to be working around the clock and I think in terms of their own accountability to making this happen they really set the bar very high in their duties of our great work thanks for that and it's a great team to work with. Thank you Leon.

Leon Sanchez: Thank you very much Mathieu and you have already said something that I wanted to say and that is of course our recognition for the work that staff has been carrying out.

I mean (unintelligible), you know, want to acknowledge that and say a (plus one) publicly and kudos to our staff of course. And - well, is there any other business at this point?

Okay so seeing no other business I would like to thank you all. I think we are already there. Sometimes it is an amazing job that has been carried out by all in this group and hopefully we will be sending you the finalized document as stated on Friday by the end of business.

And we will hopefully have some drinks in Marrakech and continue our work in Washington. So thank you very much all and this call is now adjourned.

END