

ICANN

**Moderator: Brenda Brewer
February 16, 2016
8:00 am CT**

Coordinator: The recordings are started.

Leon Sanchez: Thank you very much and welcome, everyone, to this CCWG on Enhancing ICANN's Accountability Meeting Number 84. Can you believe we've already done 84 meetings so far? And this is February 16, 6 UTC. And as usual we will be having the roll call based on those who are on the Adobe Connect room. And if there is anyone in the phone bridge that is not connected to the Adobe Connect room we would like to kindly ask for you to state your name so we can add you to the roll call.

Becky Burr: Becky Burr. I'm not in Adobe yet.

Cheryl Langdon-Orr: Leon, Cheryl. I'll be joining just not (lighted) yet.

Leon Sanchez: Okay...

Holly Gregory: This is Holly Gregory...

Leon Sanchez: Okay, Becky Burr, Cheryl Langdon-Orr, Holly Gregory.

Holly Gregory: Yes, Holly Gregory not joined yet.

Rosemary Fei: Rosemary Fei on the phone but not on the Adobe Connect room yet.

Leon Sanchez: Thank you, Rosemary.

Seun Ojedeji: Yeah, this is Seun as well on audio only.

Leon Sanchez: Okay, Seun Ojedeji. Anybody else that is in the phone bridge that is not in the Adobe Connect room? Okay, so as a reminder for filing your statement of interest please kindly update or file your statement of interest if you haven't done so by now. And of course staff would be happy to assist you if you have any problems on filing or updating your statement of interest please feel free to reach out to staff if you need any help.

And, well, today's call hopefully should be a short call. And we'll be commenting on the supplementary report that the - the comments received on the supplementary report. And I'd like to point out and stress out that this is not about of course opening or reopening the issues that we have in our report but rather to go through the different comments that we received in this review of the final draft. And for that I would like to turn to my co-chair, Thomas.

Thomas Rickert: Thanks very much, Leon. Good morning, good afternoon, good evening everyone. This is Thomas Rickert, the GNSO-appointed co-chair to the CCWG. And we brought up this timeline for you in the remote participation room for your review and just as a reminder of what we've circulated a few days back. So we need to be very cognizant of the dates that you find specified here so you saw the report that was sent out to you for your review

so that we did a - sort of an internal feedback loop with everyone in this group.

We're going to - or we have incorporated edits from the leadership team as well as from legal. All the comments that we received from our legal advisors have been sent to the group so if you're interested in details on what the lawyers identified as areas that need to be changed please take a look at those documents, you find all the markups published on the mailing list.

What I can say though is that - and Rosemary and Holly, please correct me if I'm wrong, the vast majority of comments and requests for changes that has been identified by our legal team was either cosmetic, linguistic or minor tweaks in order to ensure that we have consistency in terminology and otherwise throughout the report.

So you shouldn't expect anything major from the legal team so that has been included. And we will now continue to send the updated report after this discussion to our group so that we can publish it to the - or pass it on to the chartering organizations for their approval on February 18. And what's important in the meantime, between the 16th and 18th, and I'm just stressing this so that it is perfectly clear on the record, is that we expect the minority statements on the 17th so that we can include them in the final report.

So should you plan to issue a minority statement please do make sure that you send it to us to staff, to the list so that everyone knows what's going on and so that it can be included in the final report.

As you will recall from our discussions we will then hopefully have the chartering organizations approve our recommendations, our final report, by the 9th. Prior to that we hopefully get a sign-off letter which is not directly

related to us as a group but that's important to the chartering organizations. You will remember that the chartering organizations had made their approval of the CWG requirements conditional to us, the CCWG delivering on certain aspects of their proposal. So while we have no indication that we would not need CWG requirements we've asked the CWG to send a formal letter to us or to formally sign off that we have met all their requirements.

And then hopefully on March 10 during the Marrakesh meeting the ICANN board meeting will consider the final report and hand over the report, the full package, to NTIA. And that will conclude this part of our work. So we're going to get back to the timeline at the end of the call to refresh everyone's memory on what we have to do. But this is the timeline and we have to make sure that we play by it.

I see Brett's hand is up. Brett, please.

Brett Schaefer: Yes, thank you. Can you hear me?

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

Brett Schaefer: Okay thank you. This is just a clarifying question is - are all participants able to submit minority reports or is that just reserved for the members or for the SO/ACs after their evaluations of the proposal. Thank you.

Thomas Rickert: Thanks very much, Brett. I think we have published an excerpt of the charter a couple of days back on the list which specifies that minority statements for the purpose of this report can only be submitted by members i.e. by those five individuals each that have been appointed by the chartering organizations. Kavouss? Kavouss, the floor is yours.

Kavouss Arasteh: Do you hear me?

Thomas Rickert: Yes, we can hear you.

Kavouss Arasteh: Yes. I said good morning, good day to everybody. Yes, I fully agree with you; minority views is just and strictly limited to the members only. Thank you.

Thomas Rickert: Thanks very much, Kavouss. And let me just add for full transparency that certainly the chartering organizations if they have minority statements to file they can do so through their members. You know, the members are sort of acting as the linkage as the facilitator between the chartering organizations and our group.

So with that we would like to dive into the substance of the comments that we received. Again, the feedback that we received from our lawyers have been incorporated. Holly has kindly confirmed in the chat room that the changes that they have asked for were indeed very minor comments. And thanks for your - congratulations on the great job, which I gladly pass on to all of you including staff. And first and foremost to staff who's been working very hard to get this done.

Talking about staff, I would suggest that we go through the changes that were requested in the last couple of days one by one. And Bernie has kept an overview of what changes have been requested. And so I would like to ask you, Bernie, to introduce those requested changes from Andrew Sullivan and others and then let's quickly confirm with the group whether or not those changes should make their way into the final report.

Bernard Turcotte: Thank you, Thomas. Good morning, good day everyone. We'll start with Andrew Sullivan. The first comment was on protocol and parameters versus

protocol parameters. I believe that got (unintelligible) by the layers before we actually - before we had to make that change so I could not find when I searched that in the document. So I think we're good on that one.

On Annex 4, Andrew made a number of comments. I think most of them we were good with. The first one was about liaisons are treated by ICANN as non-voting members and are not subject to being removed per the rules. And so starting in Paragraph 40 it was adding a note similar to - Note, this power applies only to voting members of the ICANN board and not liaisons. The lawyers suggested we append some text to that to say that California law does not treat non-voting board members as directors. And so that's been done.

((Crosstalk))

Thomas Rickert: Sorry, Bernie just before - sorry for cutting across you. Before you proceed, should there be questions with respect to the changes that have been asked for? We can certainly dive into the niceties of the language but you will see the updated report shortly.

And I would suggest that we let Bernie go through the changes and open it up for questions from your side because, you know, the points discussed so far has been explanatory only so with respect to the board liaisons, you know, we would just clarify that under Californian corporate law we call them directors but they're not directors in the legal sense and therefore their status is somewhat different under law. But we do not change our recommendations in term of substance, which is why we think that this is a minor tweak that will help our target audience understand better what we're doing but it doesn't change the essence of our recommendations.

So, Bernie, sorry for cutting across you and back over to you.

Bernard Turcotte: No problem. Thank you. Yes, that was good clarification. Also, important to note on that point that we did discuss with the lawyers and arrive at a concept that this would be fine to include in the text. And good point, I should pause after each one. So are there any questions or comments on this change?
Sebastien.

Sebastien Bachollet: Yes, thank you very much. Sebastien Bachollet. My question is not so much what it sounds Californian possibility but it's what it's really done today. Are we sure that there is no problem with the real situation of the member of the board who are liaisons, who have exactly the same duty and the same treatments and the other board member except that they don't vote? We have the answer about the Californian law but I would like to have the same answer about (unintelligible). Thank you.

Thomas Rickert: Sebastien, this is Thomas. And I see there is a queue forming so let's please not reopen that entire discussion. Sebastien, to your point, the liaisons do not vote, that's one material difference from other directors that you've already mentioned. And they do not have a fiduciary duty under California law which other directors do have. So there is a distinction to be made between the two. Alan has pointed out in the chat already that in his view we have treated them differently, also in terms of terminology but that we've just incorrectly referred to them as directors. And so we're basically rectifying maybe a mistake that has been made previously.

So we're not changing the substance. We have had this discussion over the previous months. So should there be any need for further clarifications or questions, please go ahead. Otherwise I would suggest that we proceed.
Tijani, your hand is up. Tijani, we can't hear you.

Tijani Ben Jemaa: Do you hear me?

Thomas Rickert: Now we can hear you, yes.

Tijani Ben Jemaa: Okay thank you very much. Tijani speaking. I think that we don't have to change our language because the designator designates director has the right to designate directors and to remove them. And the liaisons are not designated by the designator. They are appointed by SO/ACs as a liaison. And they don't have the right to decide on anything. So why we are removing them if they don't decide. So they are not involved in the decision-making. And I don't think that we should remove them. So our language is very good and it is in accordance with the statutory rights of the designator. Thank you.

Thomas Rickert: Thanks very much, Tijani. That's a good point (unintelligible) wiki search of the lawyers to capture this adequately. So we want to be perfectly accurate (unintelligible) we will make sure that we don't change the substance of our recommendation. And I would suggest that with that we move on to the next point. And let me ask those not speaking to please mute their microphones because we have some nasty background noise. I see Izumi's hand is up. Izumi, please.

Izumi Okutani: Thank you. I hope you can hear me?

Thomas Rickert: Yes, you can be heard.

Izumi Okutani: I guess I'm having audio issues again.

Thomas Rickert: Izumi, you could be heard so please do speak.

Izumi Okutani: Okay great. So I think Matthew has already responded to my question. But I just had one clarification to make on our Recommendation 8, which is on reconsideration. So I think on the third version of the proposal we actually had a clause which says that (unintelligible) issues are out of scope of reconsideration which is consistent with the same equivalent sentence on the IRP. So I just want to double check that perhaps it was an overlooked for the final version that this sentence was somehow removed. So I just want to make sure that this -- there are no changes in the third version on this sentence.

Thomas Rickert: Thanks, Izumi. And actually the fact that you had audio issues which have delayed you in asking the question has given staff the opportunity to look into this already. So I can confirm that this needs to be fixed in the report and we'll take note of that and you can consider it done. Thanks for the question and thanks for (unintelligible) this.

So with that I think we can move on to the next requested change, back over to you Bernie.

Bernard Turcotte: Thank you, sir. On all questions of numbering of diagrams, everyone has gone through them, the lawyers have gone through them in great detail. And we will be fixing those. Partially why it's not done as of the moment of this call is that in some cases we are waiting on (Xplain) to make those modifications. So this is a blanket statement that all changes to diagrams will be updated. Any questions on those? All right, I'm not...

((Crosstalk))

Thomas Rickert: Izumi - Bernie, let's just pause for another second. Izumi has raised her hand again. Izumi. Apparently that was an old hand. Bernie, back over to you.

Bernard Turcotte: Thank you. Seeing no other comment we'll go to Andrew Sullivan's next point. Naming a replacement, it would be a good idea to call out whether there is an actual mechanism by which the replacement is named hasn't actually been established yet. That needs to be sorted out in Work Stream 2.

This was not -- this was from Paragraph 50. This is not included in work Stream two and I think Paragraph 50 states that the Nominating Committee, which is talking about Nominating Committee producing replacement nominations in case the director is removed, quite clearly states that the Nominating Committee will be reviewing its procedures to allow this. So I don't think there was a requirement to make this change as such. Questions, comments.

Thomas Rickert: So Andrew is on the call. Andrew, maybe you can give us an indication of whether...

Andrew Sullivan: Oh, sorry. I was doing so in the chat for the purposes of going fast. But, yeah, that's fine. I could be just wrong. I thought that, you know, I thought it had come up before but if not then not.

Thomas Rickert: Excellent. Thank you for that and back over to you, Bernie.

Bernard Turcotte: Thank you, sir. On the next point from Andrew, the same clarification about liaisons could be made in Paragraph 60 in the brackets, except for the CEO. I think that's the same answer we had on that previous point about liaisons. And we've agreed that the lawyers would be reviewing that language and making sure everything is correct. Any additional points or questions on this?

All right, and finally the right to reject ICANN board decisions relating to reviews of IANA functions (unintelligible) the right to reject ICANN board

decisions relating to reviews of IANA naming functions, in keeping with Para 75. This is the text in Para 77. It was agreed that this was correct and that change has been made. Any further questions or comments on that?

Doesn't look like it. All right, and that concludes the section on Annex 4 with respect to Andrew's changes. Annex 5 there was Para 11, the mission item says, (coordinates the) allocation assignment of the root zone of the domain name system, DNS, it appears to be missing after "of" labeled names or something like that. This was caught in the lawyers' edits of the document and they used the names solution to that. Are there any questions regarding that? I see Brett has his hand up.

Brett Schaefer: Yes. Sorry, this is actually in reference to an Annex 4 question. We went by it - I didn't know if there was an opportunity here to raise an issue that I raised to Bernie directly, which is that the Annex 1 and Annex 2 language regarding NTIA's requirement on government - or replacing its role with governments should be updated in Annex 4, the language should be updated in Annex 4 at the conclusion of that similar to what was adopted last week in Annex 1 and Annex 2.

And while I have this on the line it should also be updated in terms of Annex 14 as well. Just as a matter of consistency and accuracy of what we're actually proposing for the group. Thank you.

Thomas Rickert: Thanks, Brett.

((Crosstalk))

Thomas Rickert: ...some discussion on that so I think, Bernie, you will make sure that there is consistency throughout the report, right?

Bernard Turcotte: Yes, sir. I was just going to tell Brett, I'm coming up to Brett changes next and that would be one of them. So, yes, Brett, that change...

Brett Schaefer: Sorry, apologize.

Bernard Turcotte: ...we haven't made yet but we...

((Crosstalk))

Bernard Turcotte: Any other points or comments before we proceed? Seeing none, all right. Yes, the next changes will be from Brett on Annex 6 and Recommendation 6. The human rights - on Page 6 are inconsistent with bullets 2, 4 and 5, all include a caveat of "if any or if at all." And so we went through that and that was correct so the language has been updated to consider which specific human right conventions or instruments if any should be used by ICANN. That change has been made. I will be glad to take questions. Kavouss? I see Kavouss's hand has gone down. Are there any other questions? Brett?

Brett Schaefer: Yes, sorry. I don't want to disrupt your flow here. Are we going to have an opportunity to make additional clarification, suggestions at the end of this call or at the end of this particular section of the call? Or should we raise them as we are going throughout? I don't know whether we're going to be addressing this by annex by annex or just by the number of comments that you have received from individuals? Thanks.

Thomas Rickert: Brett, I would suggest that we let Bernie run through the changes that were noted and that can easily be dealt with and once we've gone through that list of requested changes that we know then we will open it up for any additional changes there are. So, Bernie.

Bernard Turcotte: Thank you, sir. The next comment was from Kavouss. And we've had a little trouble understanding what he was suggesting in his comment. I've written back to Kavouss from the leadership asking him for further clarification and suggested text for his point. I have not heard back yet so, Kavouss, we're waiting on your update. And it should come quickly if we're going to get an amendment in. I see Kavouss has his hand up.

Kavouss Arasteh: Hello, do you hear me?

Bernard Turcotte: Yes, we hear you, Kavouss.

((Crosstalk))

Kavouss Arasteh: Yes, I raised the question because the text is - appeared three part in our recommendations. The language in Recommendation 1 relating to the same issue is much more clearer with respect to the conditions or environment or circumstances under which any of these two options are taken. Because several times referred to except individual board director and recall of the entire board but is not clear that how they are treated in - what I suggested I didn't want to go to the exact text, I says that take what is in the Recommendation 1, which is more clear with respect to these two options.

So the issue is that the two options are open but it is not mentioned whether this is entirely free to take any of these two options or these two options relate to a particular circumstances. This is not clear for the reader. If you go to the Page 3 is mentioned that the enforcement process can proceed in one of the two ways. It is totally free to select any of these two ways or each of these ways is related to particular circumstances under which this option could be taken. So my question is whether the option is entirely free to take any of the

two or each option under particular circumstances. That is something that is not clear. Thank you.

Thomas Rickert: Thank you very much, Kavouss. Clarity is always in the eye of the beholder. It is my impression that the report seems to be fine for other parts of this group. I would really like to encourage you, Kavouss, to suggest an edit so that we can read it and then decide whether a requested changes - changed language needs to be incorporated into the report. So thank you very much for your suggestion.

Bernie, would you like to go on?

Bernard Turcotte: Thank you, sir. Yes.

((Crosstalk))

Bernard Turcotte: All right, one of the - we said that we've dealt with all the lawyer comments from Sidley and Adler, and thank you very much, they were very well done. And however, Annex 5, the mission and core values did take on quite a few amendments for clarification. The lawyers noted that we refer to a side by side comparison regarding the picket fence, which was not included. And so Becky did have that document and it is now included.

And the series of comments were around Section 4, changes from the third draft, where the lawyers didn't quite see the updates as clearly versus the final. And so the side by side comparisons on Section 4 of Annex 5 were completely redone by Becky today. So a big hand out to Becky. The new language has been provided to the lawyers who have made a few minor amendments and so we have a final on that addressing all the comments that

were brought up for Annex 5. And that would complete the lawyer comments that we got.

Some changes still need to be made as in the graphics is the same comment that I noted earlier. We will be dealing with updating the graphics in the proposal later today as we get the input from our friends who produce those graphics.

And finally, our last comment is from the board regarding the changes to threshold if applying the GAC carveout. And no change has been made with that as of the moment. And I think this was an item as we discussed on the list that would be discussed at the meeting today. And I would turn it back over to Thomas at this point unless there are questions for other things.

Thomas Rickert: Thank you very much...

((Crosstalk))

Thomas Rickert: Seun, we will get to you in a moment. So this next agenda item or this next topic to be discussed is on a change that was asked for by Bruce. And since it's related to Becky's subject area I would like to invite Becky to briefly introduce the topic and then we will move to the queue and hear comments. Becky.

Brett Schaefer: Is it possible...

Becky Burr: Thanks.

Brett Schaefer: ...to go through noncontroversial corrections or clarifications before we get to something that's going to involve probably some debate? I'm sorry, this is Brett.

Thomas Rickert: If you want to make a quick point now, Brett, by all means fire away.

Brett Schaefer: Thank you. In Recommendation 1 on Page 8 there is the section calling for process for identifying GAC consensus advice and applying to the GAC carveout. In the first bullet there it says that, "When GAC provides advice to the board the GAC wanted to indicate whether that advice is approved by consensus." I think there and throughout that section we need to specify what we mean by consensus which is consensus as defined as the absence of any objection.

And in Annex 2 on Page 12, in Paragraph 52, there is a statement there that says that, "Thresholds presented in this document were determined based on the assessment. If fewer than five ICANN's SOs and ACs agree to be decisional participants these thresholds for consensus support may be adjusted." The next sentence says, "Thresholds would also have to be adjusted if ICANN changes to have more SOs and ACs." I think we should be consistent either it should be may be adjusted or have to be adjusted. Either one is fine with me but I think we need to be consistent both ways in there.

And then as I mentioned earlier I think that the language at the end of Annex 4 and Annex 14 involving the NTIA requirement about being replaced with a government letter, intergovernmental organization solution, both need to be updated to reflect the language that was added to Annex 1 and Annex 2 last week and circulated on the list. Thank you. Those are the only comments that I have right now.

Thomas Rickert: Thanks very much, Brett. Let me just check with the group whether there is any objection to including those. To me it really sounds like clarifying and just providing for consistency throughout the report so thank you for that and thanks for being so attentive, Brett.

I suggest that we now hear Becky on the tweak to - or the request to change to the carveout. And we will then hear Seun. So Becky, over to you.

Becky Burr: Thanks. I'm just going to paraphrase this versus on the call and hear the person who conveyed this so I think we should make sure to give him a chance to correct anything that I'm going to say about this. There are some places where when the GAC carveout is in vote, we would change the level of - the level of support required just to reflect the fact that there would be one fewer decisional party at the table and in order to avoid a situation where the community must act unanimously to invoke a - one of its powers.

The suggestion I take it from the board was that would be acceptable assuming that where a situation arose that the empowered community have a choice between bringing a community IRP or simply spilling the board that - before spilling the board the community would pursue an independent review.

There has been some discussion on the list regarding situations where for example, the community might have the authority to spill the board but might not on the other hand, have met the requirements for standing for bringing an independent review, meaning that the board action or inaction that was being challenged violated the bylaws in some fashion.

My assumption, and those can correct me if I'm wrong, is that the board's suggestion not applying those situations, in other words, there would be no suggestion that the - that the community would be deprived of its ability to

exercise the spill the board option because the situation did not permit an independent review but that where the community essentially had the choice to act either by bringing an IRP or by spilling the board it would first, pursue the independent review option.

And I believe that's the suggestion on the table. And Bruce, please, correct me if I've misstated that in any way.

Thomas Rickert: Thanks, Becky. I would suggest that in fact we offer Bruce the opportunity to speak to that because he was suggesting the change. And then we move to Kavouss. So thanks, Kavouss, for your patience and, Bruce?

Bruce Tonkin: Thank you, Thomas. Can you hear me?

Thomas Rickert: Yes, we can hear you.

Bruce Tonkin: Thank you. Yes, look, I think the board's feedback on previous drafts of the report has been fairly clear that removal of the board is very much an extreme option and that we believe that it needs to have broad community support. And we believe the threshold should be at least four supporting organizations or advisory committees voting in favor as part of a community decision process to remove the board.

What we had said last week is that there was a lot of discussion about the special case of GAC advice and the CCWG had proposed that in the case of GAC advice if the board followed GAC advice that the GAC wouldn't be able to participate in that decision process to formally decide whether to remove the board. And so the threshold should reduce from four to three.

The board's view is that in the - certainly in most cases that we've been in recent history the complaint is really about was the board exceeding the mission of ICANN or was the board not following its bylaws with respect to following that GAC advice. And therefore we believe the most appropriate mechanism for actually giving an independent view of that would be to use the independent review panel process. You know, we think that's the appropriate process to use to independently determine whether we have followed our bylaws our not.

And to give a specific example we saw in the case of dotAfrica that the GAC had advised the board to (unintelligible) board dotAfrica from the application process. The board followed that advice. And the - in this case the applicant went through the IRP process and the IRP process found that the board didn't take all the steps it should and recommended it be placed back in the process. So we think that's an example of the mechanisms working.

So our view is that we would be prepared to accept dropping from four to three with respect to GAC advice provided that the independent review mechanism is used to make a decision of whether or not we have followed our bylaws and met our accepting of that advice is consistent with the mission of ICANN.

Thomas Rickert: Thank you very much, Bruce. Let's move to Kavouss now.

Kavouss Arasteh: Thank you, Thomas. I think the explanation given by Becky and by Bruce both were much, much complex than simple proposal by the board, Bruce. And I suggest just put the initial proposal by the board submitted by Bruce - by Bruce - on the screen and we can see that is quite simple because we need four in favor and three - and one against. And now because of the non-GAC participation that will be reduced to three. Three in the view of the board was

not sufficient, then they propose some compensation aspect and that is a simple proposal of Bruce.

If you put it on the screen it would be quite clear rather than explain it because much more complex than it was as was written. So could we put that on the screen to see the proposal? Is quite simple. And I have accepted that from the very beginning. Thank you.

Thomas Rickert: Thanks very much, Kavouss. Any further comments on this point? So the proposal on the table is to wait for an IRP to be decided upon in favor of the community before the board removal takes place. Brett, please.

Brett Schaefer: Yes, the board's proposal is that if this issue is related to a matter of whether ICANN's board's decision is within the scope or mission of ICANN, that the community should first try to go to an IRP before moving over to try and spill the board, then I think that is fine. What is troubling to me is that in Bruce's email he implied that if the IRP failed that the community would not then have an opportunity to spill the board if that results went that way.

And I'm trying to get clarification on whether that is indeed the board's proposal or if it is the more narrow thing which says that on the process towards spilling the board if the community decides to move in that direction that they must go to the IRP process first before moving to spill the board in matters where the question at hand is whether ICANN is moving beyond its scope and mission. Can someone clarify that for me please?

Thomas Rickert: Thanks for the question, Brett. And Bruce has conveniently not lowered his hand in the meantime. So, Bruce, the floor is yours again.

Bruce Tonkin: Yeah, I think, Brett, if you're saying that we've had an independent process and you're saying independent process finds that the board did not breach its mission or bylaws, in our view then the threshold of three shouldn't apply. That means the threshold of four would apply. If the IRP finds that the board did not follow its bylaws and process then the threshold of three would apply. So in other words the idea is that for having the threshold of three it should be both that the IRP has found the board was in breach and the threshold of three then decided to spill the board.

Thomas Rickert: Brett, does that answer the question?

Brett Schaefer: It does a little bit in that at least Bruce is clarifying (unintelligible). However, what that does do it is it introduces the - it undermines the impact of the carveout itself because then GAC would be potentially a participant - a decisional participant in the final decision to spill the board when it involves a decision based on GAC advice, which is exactly the scenario that we designed the carveout to address.

So I think that I don't think that this actually resolves the issue. I think if the IRP fails we should just hold to the GAC carveout involving board decisions based on GAC advice. I agree with Becky and I agree with Bruce that this is a very unusual and extreme situation that I think is very, very unlikely to happen. But we should allow the process that we developed to address board decisions based on consensus GAC advice to play itself out as we decided last week and not in essence create a carveout for the carveout. Thank you.

Thomas Rickert: Thanks, Brett. Tijani.

Tijani Ben Jemaa: Thank you very much, Thomas. Tijani speaking. As I said before, the removal of the whole board is a very serious decision that we don't have to make it

easy to be taken. We don't have to be - to make it easy to happen because it may have a very serious consequence on ICANN. That's why I was opposed to the removal of the board by three SOs and ACs only. Now the proposal of the GAC make it a little bit better but it is still not enough for me to make the board removed by only three.

Thomas Rickert: Tijani, this is Thomas. Have you finished? It sounded like you were cut off.

Tijani Ben Jemaa: Yes, I finished.

Thomas Rickert: Thank you. Bruce, is this an old hand or a new hand?

Bruce Tonkin: I lowered the hand. Although I will just quickly respond to Brett. We're not talking about changing the GAC carveout. What we're saying is that - if in the case of an IRP finding against the board that the threshold would be three SOs and ACs. In the case of an IRP finding in favor of the board the threshold would be four SOs and ACs. Four SOs and ACs does not require the GAC to participate.

It could be the GNSO, the ccNSO, the ASO and ALAC would give sufficient (unintelligible) which would be sufficient without requiring GAC. So I don't think it's a GAC carveout issue. We're merely saying that in order to lower the threshold from four to three there should also be an IRP finding against the board.

Thomas Rickert: Thanks, Bruce. And Brett.

Brett Schaefer: So what you're saying is that it does - that the GAC wouldn't necessarily participate but that the community would have to be unanimous in its decision to spill the board, which would go against the principle that I thought we had

adopted for months and months now that no exercise of the empowered community's powers should be decided based on unanimity in the community. So, okay, either you are talking about a carveout of the GAC carveout or you're talking about a carveout of the principle that the community should not have to act in unanimity to exercise its powers; one or the other. Thanks.

Thomas Rickert: Thanks, Brett. We see some discussion going on in the chat as well with Avri, for example, and Kavouss supporting Bruce's suggestion. And Bruce, you've raised your hand again so, please do speak.

Bruce Tonkin: Sorry - I raised my hand - yeah, probably just repeating myself that I think that we're talking about is that the community has asked for a lower threshold in the case of GAC advice. What the board has said is that in order for that lower threshold to apply, which is lowering the threshold to remove the board, we feel that the IRP process should be used. I'm really astounded that if the IRP process finds that the board is acting in accordance with its mission and by laws that we then see that there's some reason to overturn the board. That's a pretty serious decision and go through a pretty thorough process. We should be trusting that process.

And if the process basically finds in favor of the board and the community still wants to go ahead with removing the board we think it's reasonable that the threshold of four should apply. Whether it's unanimous or not - I mean, you're creating the special case by removing the GAC from the ability to participate, not us. We're just merely talking about the thresholds, whether it's four or three.

I mean, if we're saying the threshold is three in the case that the board has been found not to have followed its bylaws in the IRP. If the board has

followed its bylaws and the community still is that passionate about it then we think it's reasonable that should be four SOs and ACs making that decision.

Thomas Rickert: Thanks very much, Bruce. I see Kavouss's hand is raised and then since Brett seems to be the only person on the call having difficulties with this let's allow for Brett to make a final comment on this and after that the queue is closed and we're going to take stock and move on. So, Kavouss, please.

Kavouss Arasteh: Yes, Thomas. As it was mentioned in the previous call the occurrence of this situation is very, very rare and improbable. Therefore, we could allow that we maintain the four SOs to remove the entire board and the suggestions of the ICANN board seems to be some way which still maintain our proposal without going to too much exceptions. So I think that due to the very rare occurrence of this situation we accept the proposal of the board that in any case in that particular situation we need four SO/ACs means that unanimous situation because GAC is not allowed to participate in exercising that power. Thank you.

Thomas Rickert: Thanks very much, Kavouss. Brett.

Brett Schaefer: Thank you. I agree with Bruce that this is likely to be rare. I agree with Bruce that in this circumstance that I'm fine with going to an IRP process if the issue is one that is questioning whether the board's decision was within the scope and mission of ICANN.

However, I don't agree that this is unusual. In fact, if we look at the community powers, the community's decision to ratify or to support a fundamental bylaw change only requires three SO/ACs. That is a very fundamental, very serious matter yet it's going to be decided by three SO/ACs.

We also have the matter of we still don't know whether the GAC is going to be a decisional participant or not at all. And if that's the case we're going to have to address the decisional thresholds for exercising all of the community powers I would think, which could result in the spilling of the board being the result or support of three SO/ACs in that matter. So I don't think that this is out of bounds here.

I also don't think that it's unusual. I agree that if you go through an IRP process and that the IRP confirms that the board's decision is within the scope and mission of ICANN that the community's movement then to go spill the board would be extraordinary. But I also think that it would also cause some hesitation. And I think that we're all reasonable people here and we're not going to spill the board willy-nilly.

But there are also matters at hand here where a board decision based on GAC advice could be within the scope and mission of ICANN. Bruce mentioned dotAfrica, the IRP sided with the community on that one. But what if it hadn't? Would that have been sufficient for the community to move to spill the board under the future scenario here?

We have other matters on TLDs, where the GAC could intervene and force or at least lead them to a board decision, which would be based on GAC advice, that would be - obviously within the scope and mission of ICANN. But nonetheless would be very serious and could lead the community to want to spill the board. I think that that should be a reasonable option and I don't think it would be one requiring necessarily four SO/ACs. And I think that the current thresholds work and would be prudent moving forward to serve as a check on the board in this unusual circumstance. Thank you.

Thomas Rickert: Thanks very much, Brett. And now we have to close this item. Brett, I have deliberately let this discussion go on longer than anticipated (unintelligible) planned for. I just wanted to give everyone the opportunity to fully understand both the rationale for the - for the board's proposal as well as your concerns. Still, looking at the interventions in the chat room as well as summarizing what we've heard on the audio bridge, there's a lot of support for the board recommended change. And I do not see any objection beyond what you've raised.

So I would suggest that we move on, that we deem the board's suggestion as accepted by this group, again, it deals with exceptional circumstances where, number one, the board decision is based on GAC advice; and, number two, where an IRP decides in favor of the board, i.e. where the IRP has confirmed that the board did not act outside of its mission.

So let's close this point. Thanks very much for a very engaged and fruitful discussion on this. We have Seun patiently waiting. He's not in the AC room so I apologize for not getting back to him earlier. Seun, you wanted to make an additional point? Seun, are you still with us? I see Brenda has confirmed that Seun's line has been disconnected. So it's unfortunate Seun left before he had the opportunity to speak but let's please note on the record that, you know, my apology for not getting back to him earlier.

So, it looks like we can now move to the next agenda item. And for that I would like to hand over to Mathieu.

Mathieu Weill: Thank you, Thomas. And sorry for being long at unmuting my microphone. This is Mathieu Weill speaking, the ccNSO-appointed co-chair. And I have the pleasure to have a totally different type of agenda item which is related to actually the support we are going to get for the next phase of our work on

implementation and Work Stream 2. And as you're aware the ICANN board has extended the funding of the IANA stewardship transition project in order to support the work until Marrakesh. In light of significant expenses being incurred on the project they had to review the initial expectations.

And in Marrakesh there is planned to be a discussion about the next phase, obviously. We have received a request by Xavier Calvez, the CFO of ICANN, and the Board Finance Committee, to provide them with an estimate of the costs and the ongoing costs for the remainder of the fiscal year '16 which ends on June 30.

And the point of this agenda item is to hear your views about the expected support from ICANN to our work in the next few months under the assumption that the Work Stream 1 proposals would be approved in Marrakesh as indicated in the tentative timeline that was presented to you earlier in this call.

It is our assessment that the potential support would - could include of course legal counsel drafting of the Work Stream 1 implementation documents. We are - we have received input from the lawyers that would help us provide estimates on that. We could also consider legal counsel support for Work Stream 2 which will start as early as Marrakesh obviously the Work Stream 2 work.

And a question also about whether we should plan for a face to face meeting between Marrakesh and the next ICANN meeting, which is not going to take place in Panama after all. So ICANN 56, if I'm not mistaken, I'm confusing the numbers, but in June. And potentially a proposal could be to have a face to face the day before the beginning of the next - the ICANN meeting in June to update on the Work Stream 2 items.

And the goal of this discussion once again, is to clarify which are our group requirements before we can get back to Xavier and the Board Finance Committee for a more precise discussion to request some support for our group. And I would like to ask the room for any inputs and comments on this bearing in mind that of course this type of discussion is meant to provide visibility for everyone also on the planning point of view both for on our volunteers side as well as on the ICANN side as well.

And I see Kavouss hand is up so please, Kavouss.

Kavouss Arasteh: Thank you, Mathieu. I think with the first question do we need the support of ICANN or not for our next phase of the report, I think the answer is yes and yes. How we could do that? The amount - considerable amount of the support that ICANN has provided during - from January 2014 to '15 up to now, has been so much that we have been able to do that because of the hard work and so on so forth. So the answer is clear, we need the support of ICANN. So many people, so hardly working tirelessly beyond call for duty and so on so forth. So the answer would be yes.

Now coming to your second question, do we need legal counsel? The clear example was about two weeks ago that we stuck on a point and we wanted to have the views of the legal advisor on the issue that some of us have different point of view and we wanted an independent legal advice and that advice was given. Look at all of those memo which has been published from the very beginning up to now which clears out the situation.

So we need also the legal advice. Nevertheless, in order to review supplies, the certification or allowance to GAC advice be given need to be more carefully checked by the co-chairs and try to optimize that and do it in the way

that review supplies to the extent possible. And the third question, the need for having a face to face meeting at this stage should be something provisional for consideration. We cannot decide yet. We will decide in ICANN 55 to see whether or not we really need a one-day meeting at the beginning of ICANN 56. That is my summary of the views. Thank you.

Mathieu Weill: Thank you very much, Kavouss. And very thoughtful input which I'm taking good note of. Next is Sebastien.

Sebastien Bachollet: Thank you, Mathieu. Sebastien Bachollet speaking. I have a different view about the face to face meeting. I think where we will be in June with a bylaw review will be an important time to have some discussions face to face meeting. I can't understand that we can't plan anything in between the two ICANN meetings but for the ex-Panama meeting will be useful. And I would like to suggest that we schedule not just one day but two day. One, the end - the follow up of the Work Stream 1 and another one about Work Stream 2. I don't think that we will have enough time to discuss those issues and where we are if we put all that in just one day.

And as a reminder, the ICANN meeting if staff involved in change that meeting actually will start on Monday then we could have the weekend to work together on those issues, it would be important. Thank you very much.

Mathieu Weill: Thank you, Sebastien. I note that you're extending to two days in your proposal. And next is Greg.

Greg Shatan: Thank you. Greg Shatan for the record. On the point of needing continuing legal advice, I'll note that experience that started in the CWG - we initially tried to proceed without any retained counsel and tried to rely on the - of

opinions and knowledge of lawyers in the group such as myself. I think we learned two things through that.

One is that even if one is a qualified lawyer in a jurisdiction generally the type of legal matters that we've been dealing with in this group and as well in the CWG, but frankly even more in this group, are sub-specials. And unless this is your sub-specialty at best you'll be a good client and a student and a guide but not an authoritative resource or person who can, you know, really provide a final opinion.

Second thing, we learned is that when you're a participant and especially one, you know, who's, as we most are, seen as, you know, representing stakeholders or being a stakeholder, you cannot even if you in your heart of hearts believe that you are giving objective legal advice, you're not going to be seen as an objective neutral resource.

You know, maybe from time to time it will work out that way but it's a big negative to try to overcome. And frankly, you know, I don't blame people for thinking that legal interpretation could be based on self interest, not on neutrality, especially if you can't make that judgment yourself because you yourself are not a lawyer and not qualified in the jurisdiction so you can't tell whether someone is being a straight shooter or not.

For both of those reasons we really need outside counsel. I think they've proven their worth time and time again. Yes, we need to work on cost effectiveness, cost control, management issues. One of the things I've pointed out repeatedly is that an essential part of managing lawyers is a timely review of their actual legal bill detail. I don't think that's anything you've actually be afforded or if not I haven't seen them which maybe I'm thankful for that. But there are a number of things we can do to be cost effective.

But I certainly would not suggest that you need outside counsel for every working group, that would be absurd. But the issues that we are dealing with here and certain of the issues in Work Stream 2 are absolutely legal issues, they're not policy issues, they are issues - or they're not merely policy issues but they are issues that are grounded in specific laws and specific jurisdictions and we need that advice and counsel no matter - without it we'll be back - ultimately we'll end up running up against a brick wall where we don't - we either don't have the resources or the resources are seen as interested and therefore can't ultimately be seen as neutral. Thank you.

Mathieu Weill: Thank you very much, Greg. So I think indeed the provision of neutral and independent legal advice is absolutely a necessity in the next phase. Alan, and then I will close the item.

Alan Greenberg: Thank you very much. I guess I'm going to make a plea for doing something reasonable. And I'll talk a little bit about legal and a little bit more about travel. We had essentially an unlimited budget for legal. And what happened was probably quite predictable.

I think we need to set a - to estimate what a reasonable budget is for the work that we have going forward given that we will be drafting a few bylaws in phase - in Work Stream 2, there will be changes made. But it won't be at the same level as we've been working until now. So I think we need to work with the lawyers and with legal counsel and whoever knows how to budget for lawyers. I'm certainly not an expert on that. And come up with a reasonable estimate and then figure out a way to stick to it.

Should we end up somewhere partway through the fiscal year in some crisis situation that no one could have reasonably predicted then maybe we'll need

an extra, you know, quantum of money at that point. We deal with it just as we do any budget situation where emergencies arise.

I think the same should be for travel. I think we need to exercise some reasonable care but - and I don't think we can predict now when - which month and which meeting we're going to need travel budget for in the coming year to say we will definitely be at a stage in June where we need it or October and we'll need a meeting or we'll need an emergency meeting in December. I don't think we can say that.

But I think we should have a reasonable travel budget allocated and not simply spend it because it's there but make reasonable decisions. And I think the co-chairs should be empowered to make decisions on behalf of the group. I don't think this should be a popular vote for who wants to go on a trip tomorrow. But I think we need a budget and then we need to both stick to it and only use it if necessary. Thank you.

Mathieu Weill: Thank you very much, Alan. And I think that's a very reasonable - and the elements that we collect during this discussion are already very useful to provide some inputs to ICANN Finance on the remainder of the fiscal year and at the same time clearly we need to make that discussion - have this discussion, again, in the next few weeks and especially in Marrakesh in order to clarify our work plan which is a condition to providing predictability on the budget.

And so we'll come back to this discussion but I think as co-chairs we have sufficient inputs at this point to engage with ICANN Finance for fiscal year '16 at least. And we'll also have a follow up discussion with the - with our lawyers prior to Marrakesh to discuss the way forward and get some inputs that we can rely on about how we can optimize things in the future.

So that's - thank you for contributors on this item. And I'm moving back to Leon for the last agenda item of this meeting. Leon.

Leon Sanchez: Thank you very much, Mathieu. This is Leon Sanchez. And we have reached the end of our call. And I'd like to call for any other business at this point. I see Alan Greenberg's hand is up. Alan.

Alan Greenberg: Thank you. There was a mention saying we're going to briefly review the timeline at the end. And I was holding off until then to ask this question but I'll ask it under any other business. We spent a fair amount of time today talking about the changes that have been identified to date, some of them trivial, some of them not. But even on the relatively trivial ones we spent a fair amount of time.

We're now going into, if I understood the timeline that was presented at the beginning of the meeting, and I was a few minutes late so I may have missed something, we are going into a two-day review by CCWG members and then the final report will be published, period. At what point are we going to be able to vet or at least see in a summarized way what the changes are that are going to be drifting in over the next two days from the CCWG members?

Leon Sanchez: I guess that's a question that someone in staff could help us to answer. And - but, yes, we definitely are running into a 48-hour review period. And this of course encompasses the incorporation of minority statements so that we can publish the final report on February the 18th. As to when we are going to be able to see, if I'm understanding well, a comparison between documents as to easily identify which were the changes between our third document and this final document, I am not sure - I'm getting confirmation that all changes will

be published. So I guess that on 18 February we would be publishing the list of changes that we have between the third proposal and this final report.

Alan Greenberg: Okay just...

((Crosstalk))

Alan Greenberg: May I have a follow up?

Leon Sanchez: Yes of course.

Alan Greenberg: Yeah, so in that case what we're going to see is a combination of staff and co-chairs making decisions as to whether the suggested change is purely correction, you know, spelling mistake, whatever or a clarification because something is less than clear where there were inconsistencies. And presumably not substance.

I presume if something is identified along the way that where there are two different versions in two different parts of the report, which actually differ, then somehow it at least should be published to the mailing list to alert the group as we - as you go along as to what these changes are. You really don't want to publish a final report and have someone say, hey, you made a mistake. So somewhere we need to be a middle path. Thank you.

Leon Sanchez: Yes, we will go back to staff and ask for them to produce this kind of note highlighting of course the changes. So this would all be available for everyone to review before we publish the final report.

Alan Greenberg: I'm pointing out there may be some things that come up which are not completely clear. And you may want to come up with a process by which you can get those clarified quickly anyway. Thank you.

Leon Sanchez: Good. Thanks, Alan. Next in the queue I have Brett Schaefer.

Brett Schaefer: Thank you. This actually complements Alan's remarks earlier. Will we be seeing a formal layout of Bruce's proposal on the changes for the threshold? Will we be seeing a line-in edit of that substantive change to the draft before the final report is published? And will that be circulated to the list? And finally, just following procedural points here, will we be having a second call to discuss that substantive change that was added at the last minute so that people that are not on this call would have an opportunity to weigh in if they choose to do so. Thank you.

Leon Sanchez: Yes, we will ask for this redline as soon as possible for staff to circulate to the list. And I think that we will be able to have that redline circulated today. Next in the queue I have Kavouss.

Kavouss Arasteh: I think the entire community expect to have one report as the final report of CCWG self contained, self sufficient, without a need to confer with any previous things. It would be difficult to have that. But would we have a final revised full report of the CCWG which goes to the ICANN - to NTIA or to ICANN without any need to have another document side by side and compare the addition. So you are talking of supplement, you are talking of revised but I am thinking of one full self sufficient, self contained document. Do we have that or not before ICANN 55? Thank you.

Leon Sanchez: That is definitely the idea, Kavouss. Yes. That is the idea. Okay so I see no other hands raised. I do see an acknowledgement from Andrew Sullivan for

staff. It's in the chat box and he's saying that as an AOB I would like to move thanks to the staff for their heroic efforts in getting things out. And I think that we all agree on that and we all support that acknowledgement and recognition to staff.

Kavouss, I see your hand up again.

((Crosstalk))

Kavouss Arasteh: If this is our last meeting or we want to refer to the staff, I think it is not sufficient we just talk in the call. I request the co-chairs three together to draft an appreciation text of several paragraphs with respect to the tremendous hard work, tireless work, of the staff and put part of the report because acknowledgement also should go to the staff and they have been doing so much work that we never expected so quickly.

Sometimes we are bombarded by the documents in less than hour and so on so forth. So I don't think it is sufficient that we just say, "We thank you very much." Is much more than thank you. And I request you kindly - if you and two other co-chairs agree to provide a written formal appreciation for the ICANN staff and if you could name some people it would better. It is not singling out the people with us but I really sincerely perhaps urge you to do that. Thank you.

Leon Sanchez: Thank you very much, Kavouss. And you just blew our surprise from the co-chairs to the staff. But, yes, we will definitely consider what you are kindly requesting. Thank you very much.

So at this point are there any other business? If not we can end this call. And I think we can say that this call is adjourned. Thank you very much, everyone, for attending.

Cheryl Langdon-Orr: Thank you.

END