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ALAN GREENBERG: ...to this briefing. This is one in a series of two. The second will be held tomorrow at roughly the same time, two hours earlier, in fact. And the... Well, let's go on to the next slide please.

The overall plan is, the overall intent of these seminars is to be the first major step in the potential ratification of the CCWG plan proposal that was finally issued yesterday. As many of you know, this has been an arduous process that has been delayed numerous times.

And although we had originally hoped to ratify this proposal early in the year, which was then put off to before Marrakesh, and then put off to Marrakesh, we only actually have a final proposal that the CCWG has largely agreed to. There are still people who are arguing.

And so we're about to enter into the meeting in Marrakesh, where the ALAC, as all of the other chartering organizations, will have to make a decision on how do we go forward. The intent is to try to make sure that everyone who is part of the decision process, and specifically the ALAC members, plus whoever they want to use as their consultants, as it were, understand what the transition means, what the accountability transition means, not IANA, and how it will effect ICANN.

There will be some very significant effects to ICANN. And we really need to make sure that everyone is going to participate in the decision, understands what they're doing. This is not a time to just say it, if my neighbor says it's okay, it probably is okay. So these briefings are going to go over in some detail, what the proposal does to ICANN, how it will

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work. There have been extensive discussions within the IANA issues group, which is the consultative group, that has been working with the five members of the CCWG in terms of presenting our positions and deciding what is acceptable, what is not acceptable.

There still are some concerns that have been raised with some parts of the proposal. It's not clear right now if they are sufficient to do anything in terms of impact whether we will ratify or not, but that's why we're here. And there is a lot of discussion to be had, and hopefully we'll understand how we go forward.

There had been a plan that each of the 12 recommendations in the proposal would be documented essentially in one page documents, that would explain each recommendation, look at what the ALAC concerns had been in the past, identify they have gone forward and any current things. Unfortunately, we didn't have very many volunteers for that. And it looks like there just won't be enough time to get that done.

So these presentations, these slides, will form that document. As a result, these slides have a lot more words on them than probably good standards, say, a PowerPoint presentation should. But it's the vehicle we're using to try to make sure that we're documenting what the impact is, or what each recommendation does, and to the extent possible, identify what the current, are current understandings of people's concerns are.

However, the comment, the time we have for questions in these briefings, and the time we have set aside in Marrakesh, is exactly, you

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know, that's what those times are for, to make sure that everyone understands things. To make sure that we are exposing all of the potential problems to people, and if we ratify doing it with clear understanding of what we're doing to ICANN.

Next slide please.

Now, each chartering organization has to decide, and there are six chartering organizations I believe, if I remember correctly. All of the ACs and SOs with the exception of RSAC. And each of them has to consider the proposal. We consider them one by one. So in theory, we can issue a statement saying we support everything but recommendation three, or whatever.

Clearly, the hope of the CCWG is that these recommendations will be accepted by all chartering organizations, and go ahead and be forward by the Board to the NTIA at the end of the Marrakesh meeting. The charter of the CCWG was rumored to say that if more than one organization did not ratify, it cannot be forwarded. It doesn't say that.

It does say, however, that if we choose not to ratify something, we must explain why, and preferably identify what it is we want to see fixed. But to be clear, if we do not ratify something, and the CCWG decides to not forward it because of it, we are delaying the whole process again. So we're going to have to do it with a clear understanding of the impact of what we're doing.

We are, we have been requested to make our decision, whatever that decision is, no later than Wednesday of the Marrakesh meeting. The

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intention is, if it is going to be forwarded to the NTIA, that that will be done on Thursday, and we need to give the Board just a little bit of time to get that prepared.

If we ratify, we also could include a statement saying whatever we want. That would not alter the fact that we are ratifying, but could be used by the Board or by the NTIA, as part of their decision process of how to proceed. So I think if we are going to issue a statement, we're going to have to decide why we're issuing it, and clearly decide what it is we want to say.

Olivier, I see your hand up.

OLIVIER CRÉPIN-LEBLOND: Thanks Alan. It's Olivier Crépin-Leblond speaking. And I know that I've asked during the ALAC call, if we do include a statement, and let's say we ratify the proposal, or the ALAC ratifies the proposal, includes a statement that then goes to the Board. Does the Board have to forward that to NTIA as well?

ALAN GREENBERG: There is nothing formal in the process that mentions an accompanying statement. So I think we're on new territory. I don't know the answer, but I think that's part of the question is, what, why...? If we are going to ratify, what is it we, why is it that we're making a statement? So that's part of the discussion we're going to have to have in Marrakesh, to exactly understand what it is we're doing.

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Is it just to, when things blow up two years from now, we can say, “We told you so?” Maybe. Is it to make a statement about a level of discomfort, which says we’re ratifying to be nice guys, but we really don’t like it?

I really don’t know the answer to that, and that’s one of the things that we are going to have to decide. Tijani, go ahead.

TIJANI BEN JEMAA:

Thank you very much Alan. I think that we have to know to whom we want to make this statement. It is onto the Board, this is one thing. But if you want it to go to the NTIA, I don’t think there is something in the process that make one statement [inaudible] the proposal. If you want it to go to the NTIA, we should do it as a minority statement to be in the report [inaudible].

Now that we didn’t do, I don’t think that anything we would like will go to the NTIA. Thank you.

ALAN GREENBERG:

Thank you Tijani, and you may well be right. On the other hand, the Board will do a cover statement, and the Board could include it, or include aspects of it. So all I’m saying is, people have talked about issuing a statement along with a possible ratification, all I’m point out is if we do it, we’re going to have to do it consciously and understand why it is we’re doing it. That’s all.

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And that decision is not going to be made today. All right, next slide please.

There are two sets of documentation. As I said, we had planned to have a set of one or two pagers for each recommendation. That doesn't look like that's going to happen at this point. So we have this presentation, and it will be refined as we go forward. So going into Marrakesh, there will be an updated version correcting any problems we have and fleshing out issues that come up during these briefings.

And then there is the main report itself, the main report in all of the annexes. The URL is on the screen. We'll be sending out an email, and it's also on the agenda for this briefing. The main report and all of its annexes is big. It's 345 pages. There is a fair amount of repetition, some of that is old documents and it's history of how we got here.

So not all of it is relevant to the final result other than to understand how we got to it. But pretty much everything is documented in extreme detail. So there is no lack of information, should you choose to immerse yourself in it. Next slide please.

Okay. Let's start from basics, why are we here? Currently the ICANN Board is supreme, and I use an extreme word. We select the ICANN Board through various mechanisms. In our case, we select an individual Board member, Rinalia currently occupies that seat, and the other seats are occupied largely, or roughly half the seats by, are selected by ACs and SOs, including ours.

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Slightly over half the seats are selected by the nominating committee. And we, of course, have delegates on the nominating committee. So the community selects the vast majority of the Board. The only exception is the CEO, who is selected by the Board itself. But once they're there, they're there, and whatever decisions are made, the community has no control, other than when the people are up for renewal, they can be renewed or not.

But there is no real linkage to what the decisions they make and the community itself. When the NTIA announced that they were prepared to transfer control of IANA away from the US government, one of their conditions was that whoever they transfer it to, has to be accountable to the community. And that implies, because a single decision regarding IANA, could have significant impact, it doesn't say you have to be accountable over a 10 year period, it says you have to be accountable.

And therefore, we started this long process of how to figure out who the Board should be accountable to, and the process for effecting that accountability. The threat is, and it's sort of one of these vague threats, but it does constitute the problem, what if the Board does something really, really stupid?

For whatever reason, they're not paying attention, they are malicious, the Board has suddenly been controlled by the evil overlord, what do we do about it? And this whole process is to look at that and try to effect it. Olivier, you have your hand up.

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OLIVIER CRÉPIN-LEBLOND: Thanks very much Alan. It's Olivier speaking. And I wanted just to add one more thing to what you said here, which is that if the Board takes a decision, there is no way that the community can challenge that, except if the Board doesn't follow proper procedures. So if it breaks the bylaws or something like this.

The consideration process only looks at the process by which a decision has been made. So indeed, as you say, if the Board goes rogue and decides to do something, and it follows the rules to do that, there is no way to challenge it.

ALAN GREENBERG: Thanks, thank you very much. The Board can be challenged by the independent review process, which essentially says, if you are successful at using independent review process, that implies the Board did not follow its own bylaws, and therefore has to take remedial action. Now, there is nothing to force the Board to take remedial action, presumably if they act in good faith, they will.

There has been a recent case regarding dot Africa about that, but that number one, is a long process. And the whole independent review process, the IRP, is known to have a number of, if not flaws, than weaknesses in it. And part of what we're doing here is in fact strengthening the independent review process.

But it is currently the only course, but should the Board decide not to fix the problem, then there is little recourse on the part of the community. I notice Rinalia doesn't like being called the evil overlord, or being



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controlled by it. And that's part of what you get when you become a director, you become evil. Sorry, that's a joke. That has been used on occasion.

The question was asked, we'll add a little bit of levity into it, why is it that the people that you trust enough to put them on the Board are presumed to become evil as soon as they become there, as soon as they're put on the Board? So, it's a good question, and yet, in many cases, the discussions that the community has been having, presumes that the Board does become a set of evil people with other ulterior motives as soon as we put them on the Board.

And then we renew them, of course, which makes it even more interesting. Next slide please.

Okay. So as I said, the answer is that the community has to be the new entity instead of the US government that oversees whether ICANN is doing a good job or not. Okay, currently the NTIA could take IANA away from ICANN, should ICANN start doing really dumb things. In the new version, that cannot happen, at least regarding the names function of IANA.

And therefore, how do we put some control back into the community? And what we have ended up deciding on, is that it is the supporting organizations and advisory committees that advise ICANN, that will have this power over the Board, if they act in relative unison. That is, single AC or SO cannot simply override the Board, but together, they might be able to do it.

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We have investigated, in the last 15 months, many different options and many flavors of different options. Many of them were rejected because they were too complex, they gave too much power to the community, it was too large a change for ICANN, and the fear, and a very realistic fear of unexpected outcomes.

If you change enough things at once, and they're interrelated, it is very difficult, or perhaps impossible, to predict exactly what the outcomes will be. And so, we have ultimately moved to something which has a relative, on a relative level, less change than some of the other options along the way were. Next slide please.

You have heard references to work stream one and work stream two. Work stream one, which is what we're talking about right now, and what we're looking at ratifying, is the powers that ensure that the IANA transition is accountable, and we remain accountable, and to give the community the authority to enact a lot of other things, which in some cases, are refinements in details.

In some cases, they are not connected directly to the transition, but are felt to be important to ICANN's transparency and accountability. And that will be work stream two. It is referenced in recommendation 12 and it's the work to come. Next slide please.

Now we go on to the actual, into the meat of the proposal, and I call upon Olivier to do the presentation on recommendation one.

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OLIVIER CRÉPIN-LEBLOND: Thank you very much Alan. Olivier Crépin-Leblond speaking. First question is, can you hear me well? Because apparently my line was very faint previously.

ALAN GREENBERG: You're not as loud as I would like. I don't know how you are for the interpreters, so I guess I'll ask staff to check.

OLIVIER CRÉPIN-LEBLOND: Testing, one, two three. Can you hear me well in the interpretation?

TERRI AGNEW: Olivier, this is Terri. It's a little bit better. We've had better volume from you on past calls.

OLIVIER CRÉPIN-LEBLOND: Okay. Maybe it's me. Maybe I'm mindful of my neighbors so they can actually get a peaceful day rather than hearing my conference call.

Okay, let's get going. The first recommendation of the cross community working group is to establish an empowered community for enforcing community powers. Alan mentioned the solution to accountability, the proposal [inaudible] to accountability, enhanced accountability would be this empowered, these community powers.

And therefore the empowered community would be made up of the different component parts of ICANN. The ones that have so far been

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saying that they would formally take part would be the GNSO, the ccNSO, the ASO, and the ALAC. The GAC hasn't formally said whether they would or would not participate, but at the moment, we presume that they would want to participate.

The SSAC and the RSAC, which are two advisory committees that deal primarily with security and stability of technical operations, have opted to maintain their advisory roles, and therefore have said that they would not participate in the community powers.

Of course, the door is always open for them to participate in the future, but for the time being, we shouldn't count on them. So the empowered community would be made up of five different supporting organizations and advisory committees. And the bylaws that will be then changed, the ICANN bylaws will be modified to give this empowered community the specific powers that will be given to them.

And the bylaws will describe, in detail, how these may be exercised. And we're going to go into this in a moment with the other recommendations. Next slide please.

Now, technically, there were many different ways that you could build an empowered community. Some of the ideas which the working group worked on before was to create a completely different entity of some sort, a separate company, separate organization. And many of these were rejected, and the one which was finally focused on, is what's called an unincorporated association, which is used as a grouping of the five supporting organizations and advisory committees, which are likely

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to probably use their respective shares to formally exercise their powers.

This is something that will be worked out exactly at implementation, but that's the concept by which we're working on. The empowered community is therefore a legal person, as such, through this unincorporated association, and it can therefore take hard action should it ever be necessary. And that was something that was important for many of the participants in the working group, because of the fact that if you cannot take hard action, and you tell the Board to do something, the Board could always say, "Well, sue us. Oh sorry, you can't. Well then, we're not going to follow your directives."

Well that's the thinking behind it. The supporting organizations and the At-Large community would also appoint the directors that they put on the ICANN Board via that empowered community, using a constructive called the designator. And because there is one designator, this would be called the sole designator as such.

And that sole designator would be making all of the appointments. So appointments from the ALAC, the supporting organizations, but also the appointments for the nominating committee. And therefore the [inaudible] that the sole designator would be making appointments on the Board, it would also be able to remove directors or do other, well do other things basically, as instructed by the empowered communities.

And the designator is effectively the pivot of the whole accountability mechanism here. Next slide please.

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So, there is a question, of course, which has come up quite extensively on the working group, which is effectively, who looks after the public interest? The Board members, as they are at the moment, are required to set aside their personal interests, or set aside the interests of their appointing supporting organization or advisory committee, and actually consider the corporation's interest and the global public interest.

And what's interesting is that both the corporation's interest and the global public interest are not defined at the moment, which does leave much to interpretation. But the advisory committees and supporting organizations do not have such a requirement, and they can all very strongly fight for what they feel is best for their own constituencies, and this is what the ALAC is doing.

We fought very much for the ALAC, but this is the same with the other supporting organizations and advisory committees. And the hope is that the empowered community model will require sufficient collaboration between the different supporting organizations and advisory committees, that the overall AC/SO individual interests would be balanced out, rather than the Board's balancing these out on the Board, the empowered community would be able to balance it out as well, among itself. That's the plan on one side. Next slide please.

The ALAC has several concerns, and I am going to go through the concerns and then hand the floor back to Alan, and I don't know, Alan, whether you want to take, start a discussion directly on this now. But the concerns of the ALAC were as described where well discussed, and

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in earlier discussions, we weren't quite sure whether those recommendations were acceptable or not.

All in all the whole thing of recommendation one is something which we have felt was okay. As there were certainly some worse options in this, but obviously, the overall discussion will really be down to the ALAC to decide on whether they want to move forward on this. I think that's the last slide I have to look at for my section. So Alan, please, back to you.

ALAN GREENBERG:

Yeah. Thank you very much. The slide that's on right now, that says ALAC concerns general, is the gist of why we are here. There have been three draft proposals, the ALAC has commented on each of them, and we have either agreed or disagreed, sometimes very violently disagreed, with some of the contents of those proposals.

The third draft proposal is quite similar to the one we're looking at right now. There is a lot, a large number of changes have been made, but most of them have not been on areas of, that have been previously of great concern. There are a few changes that we'll be talking about, where the ALAC does have concerns.

However, we not only have to look at the recommendations one by one, we need to look at them as a whole, and is this something, is this an ICANN that we want to live in? One of the questions that is periodically asked is, why does the ALAC care? What is the impact on users of these particular issues?

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And the impact is not direct, but the ALAC and At-Large can only function in an ICANN which has the credibility to do its work, which has the confidence of the rest of the world, and accountability is part of that. So we do care that ICANN is going to have a function that will meet the expectations of all parts of the community.

And that is one of the reasons we have put so much effort into this process. So we're going to identify here, on the slide, what issues have been raised people will have an opportunity to talk. But the real crux of the matter, and that's why we have these two briefings, and then we've allocated close to eight hours in Marrakesh to have these discussions, is to make sure that we understand the concerns of people, and if indeed we ratify, that the concerns are not something which are believed to be showstoppers by the group.

We may or may not everyone happy, but the question is, how do we go forward at this point? And can we have the next slide please?

And the main issue that has been brought up, and I'm sure other people may raise other ones, with recommendation one is, is it possible that although we have tried to create mechanisms which require the community to act in unison, and various parts of the community get together, that no single part of the community can simply get rid of the Board if they want to, or override bylaw changes or things like that.

Have we built something that because of how the world will unfold, are we going to give control to the...? For instance, the GNSO and ccNSO together comprise all of the registries, or almost all of the registries of



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the world. Some ccTLDs are not members of the ccNSO. But certainly, they represent the largest group of registries that effectively control the Internet.

Are we giving too much control to those entities, many of which are commercial, many of which have specific vested interest, and shareholders. Are we giving too much control to government? And there is a lot of concern among many people that we, if we're not careful, we could.

So the real issue of turning control, some level of control over to the community is, do we trust the community? And I see we have a question from, or a hand up from Sébastien, so we'll go to Sébastien next.

SÉBASTIEN BACHOLLET:

Yes, thank you. I raised my hand during the presentation of Olivier. If you take, to go back to page eight, I guess it's still page eight, we are talking about advisory role. And I would like to be very caution on how we use those words, because GAC and ALAC in participating to the empowered community, will not stop and not maintain the advisory role.

The question is that, all of those organizations are, as they say, the Board. And we will keep our role as advisor of the Board. What they have decided not to do is to participate to the empowered community. And that's important that we understand the difference.

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If the GAC is not participating to some this is another empowered community, it's not because they want to keep their advisory role, it's because they decide not to be empowered community member participant, but they will keep their role of advising the Board. Thank you.

ALAN GREENBERG:

Thank you Sébastien. Yes, that's a good point. And slide 11 or eight should probably be updated. There has been a lot of discussion within the CCWG on whether groups should maintain their existing role or not. Certainly there have been people, particularly from the GNSO, who have said the GAC, and to a lesser degree the ALAC, but the focus has often been on the GAC, should maintain their advisory role.

And by allowing them and us to participate in these community powers, we are going outside of our current bylaw role. And that is true. But the SOs are also going outside of their role. Currently the SOs make recommendations to the Board on policy related to their particular niche. Addressing, cc, gTLDs.

This whole process is taking everyone out of their current role, and adding a new role in parallel, which is not necessary indicated by their name. The SSAC and the RSAC have decided to retain solely their advisory role. They can act as advisors to the empowered community, in addition to acting as advisors to the Board, but they have decided to not attempt to exercise any new powers associated with this new thing.

So yes Sébastien, thank you for pointing that out. That is a difference.

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And I'll open the floor to any comments, questions. Is it clear what we mean by the empowered community? And would anyone like to raise any concerns over what has presented? Or questions on what has been presented and possible concerns?

Seeing no hands, hearing no voices, we will go onto the next slide.

And okay. Now, just a warning. The recommendations are not being presented in order. The recommendations are sort of circularly linked. Because you almost need to know, what recommendations are coming next to understand the prior ones. I have flipped the order a little bit, because it makes it a little bit clearer, and there is a little bit less looking forward as we do them.

So it's not a mistake. We did recommendation one, the next one we're going to do is recommendation three. Next slide please.

Now, this is a recommendation on bylaws and the articles of incorporation. Currently, there is [inaudible] type of bylaw, there are bylaws. The articles of incorporation are, for those who are not familiar with the term, are essentially the charter of ICANN, of any cooperation, that it is what is presented to the authorities within the jurisdiction where you are incorporated, to create the organization.

The bylaws come later, but first you have to essentially say in a short form, how it is, what it is you're going to be doing, and to some extent, how it is you're going to be governing it. These bylaws, and the articles of incorporation, can be changed by the Board. Both of them incorporate rules that says how they can be changed.

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And they require certain thresholds and whether they are thresholds of the entire Board, or those who happen to be voting. That is whatever quorum is there, are all specified. But essentially, the Board has control over the bylaws and articles of incorporation. Next slide please.

Now, there is a problem with this. Since the bylaws will define community powers, we do not want the Board to unilaterally be able to change bylaws, certainly not those bylaws, because we have spent 15 months debating how to give the community powers. And we have someone whose microphone is turned on.

So we don't want the Board to immediately, once all of these bylaws are put in place, have another meeting and decide to take them all out again. On the other hand, bylaws change on a regular basis for all sorts of reasons. And you don't want the process to change bylaws when they are somewhat innocuous, to be really difficult because the nature of a bylaw, certainly in an organization like ICANN, if there is a continual series of changes based on decisions the community makes as it goes forward. Next slide please.

So, what we have come up with is a concept of fundamental bylaws, and those are as opposed to the others, which are just the standard bylaws. A fundamental bylaw will be used, rather the bylaws that describe the empowered community, that describe some of the core IANA functions, that describe ICANN's mission, will be deemed to be fundamental bylaws.

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To change a fundamental bylaw, number one, it's going to require a larger majority of the Board than today. Right now, to change a bylaw requires a super majority, that is two-thirds of the Board. It's now three-quarters. But in addition to that, the fundamental bylaws cannot be changed without the agreement of the empowered community, and that's a critical issue.

And lastly, although today, if the Board is going to change bylaws, the practice is that the community is consulted on this, that would be put into the bylaws to require it. So it's no longer a voluntary thing, but a requirement that the community must be consulted. But the key thing for fundamental bylaws is that it can only be changed if the community agrees. Next slide please.

Now, the concept that the community has to agree is what safeguards those fundamental bylaws and makes sure that the Board cannot take unilateral action to disenfranchise the community. On the other hand, it also means that the community must take action to change these bylaws.

And the question that we have, that some people have raised is, are parts of the community going to fight certain changes? Because although the Board believes these are in the interests of the overall corporation and the Internet world, the global public interest to change, the particular parts of the organization may not believe that they want these changes to be made?

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So is it possible that important changes, changes that have to be made to reflect how the Internet world is changing, will may be blocked by parts of the community? And that's a concern. The other one is simply inaction. We know how difficult it is sometimes for parts of the community to come to decisions. Is it going to be possible for the community to come to decisions quickly enough so that we can actually make changes to the fundamental bylaws?

And lastly, there is no escape clause. If the community decides to be obstinate, or if the community is so dysfunctional that it can't, parts of the community, that it cannot even take a decision, then we have a particular problem, because the bylaws are locked in and they simply cannot be changed. So that is the major concern that has been raised with regard to this process.

And as I said before in the general case, at this point we believe that this is not a perfect world, but this is a reasonable position that we're in right now. And it's something that is acceptable. But again, that's why we're here to have this discussion. And I'll open the floor on recommendation three.

Olivier, go ahead.

OLIVIER CRÉPIN-LEBLOND: Thanks very much Alan. It's Olivier Crépin-Leblond speaking. And I have a question which has bugged me for awhile, which I have asked in the past but I'm not sure we got an answer, and I wondered whether you or [inaudible] have an answer.

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I understand that there is this ability then for the blocking of bylaw changes. A simple action, or slow action, by sufficient [inaudible] could block change. If bylaw changes are to be effected because of a review, let's say the At-Large review, does this mean that the change of these bylaws could be also blocked by the empowered community powers? Or not?

ALAN GREENBERG:

We'll go on to what the powers are later. In addition to being, the community must essentially ratify and support changes to fundamental bylaws. There is no such requirement for regular bylaws. And the bylaws governing the ALAC are regular bylaws. So the community does not need to approve them. There is a mechanism by which the community can reject them, the changes after the fact, and we will be talking about that on community powers.

The real question is, is there a chance, is it likely that there will be sufficient intent throughout the rest of the community to gang together, and I use the term carefully, to oppose a particular change? You know, for instance, when a year or so, a year and a half ago, there was a proposal to change the threshold which was required to reject GAC advice, and that's come back up in these accountability discussions, but let's look at what happened a year and a half ago.

There was a strong outcry, including some people within At-Large, that we should not do that. That it should be easier not harder for the Board to reject GAC advice. Now, even though that change was essentially

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optics, it was how it was viewed, because in general, if the Board is going to reject GAC advice, they're likely to do it with almost near unanimity.

So the change in the percentages from 50 to 66 was not likely to impact any real world decisions, but it was symbolic. And there was a huge outcry, and the Board backed down and didn't implement it. If the Board had gone forward and implemented it, under the powers we're describing, the community, if it chose to take enough action, and enough of the ACs and SOs felt that way, they could cause that bylaw to be backed out.

So the answer is, can the community block a change to At-Large? Yes. But it would require an overwhelming desire in the community, and when you look at the diverse interests in groups like the ASO, the ccNSO, and the GAC, it's not clear that they would take that kind of action. But we'll be talking about that in much more detail when we look at the individual powers.

Go ahead Olivier.

OLIVIER CRÉPIN-LEBLOND: So second question, thank you Alan. It's Olivier speaking. Second question, just to be sure, the golden bylaw could be changeable in the future if everyone agreed to change it.



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ALAN GREENBERG: Okay. You're using the term golden bylaw, which was a term that has been used for fundamental bylaws. So I presume that you're talking about the same thing.

OLIVIER CRÉPIN-LEBLOND: Yeah. If everyone agrees to it, you could change it. It's not like you're creating a bylaw that will never, ever be changed until the end of time.

ALAN GREENBERG: Oh no. They could be changed, but they require both the Board and a significant majority of the empowered community to agree that it's a change that we want.

Not unlike the current discussions we've been having in the CCWG. All of these bylaw changes that will come about if and when we implement these accountability changes, have required the CCWG to come to agreement. It is now going to require the ratification of the chartering organizations, and then requires the Board to actually do it.

Ultimately, right now, today the Board still has complete power, no matter what the CCWG would say and be ratified by the chartering organizations. If the Board actually felt that it was not in the interests of ICANN to do that, they would be required, based on their fiduciary duty to the corporation and to the public interest to not implement them.

So although we talk about a bottom up organization, the Board does have a duty to look at whether this is good or not. Now, when we select Board members, either through the ACs or SOs, or through the

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NomCom, we pick people who we are implicitly saying, we trust to make that decision. That's the whole message that we send when we appoint a Board members. We are trusting them to make decisions on our behalf.

Now we can second guess them with these powers, but it still is a huge amount of trust that we're putting in those people.

Anyone else?

Sébastien, go ahead.

SÉBASTIEN BACHOLLET:

Yes, thank you very much Alan. First I would like very much to encourage ALAC members and other members who are not participating in this discussion to now participate. It's time and even if people like Olivier and myself take the floor, it's not, it's really important that you understand.

We are participating in these discussions, and we have a little bit more knowledge than you today, but at the end, I hope that you will have the same level of knowledge, and we need you to participate please. Now to come to the recommendation three.

I have just one question, not to be answered now but, under this, can we imagine that the GNSO would have become the GNSO plus the ccNSO? I am not sure. And that puts the question on the evolution of this organization in the future. There are many places where this organization needs to be reorganized, and we are putting all of our

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dollars in one, and it's a sole designator. That means a full organizational... Our community needs to agree on something. And it shows that it's not a very often, or it's already sometimes very difficult.

And I am concerned about flexibility of this organization in the future. Thank you.

ALAN GREENBERG:

Thank you. I guess that, part of that is, do we believe that the different ACs and SOs have enough differences in what they, in what they believe, that they will ever act in concert? Now, the answer has two implications. If they are so different that they will always have different positions, we will never be able to act in concert.

And for instance, that means we may be locking in our fundamental bylaws and never change them. On the other hand, if they think too much alike, then they can act as a subpart of the community and try to control the rest of us. So it's a very fine balance. I don't know the answer. Tijani.

TIJANI BEN JEMAA:

Thank you. Tijani speaking. I didn't want to speak, but Sébastien made me speak. I think that the most evident question is, shall we have a second Board member as ALAC in the future, under this accountability system? This is the question that I really doubt that the answer will be. Thank you.

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ALAN GREENBERG: Tijani, may I ask a question? Are you saying because of these changes, we are decreasing the chance that we will ever have a second Board member.

TIJANI BEN JEMAA: Yes Alan. I think so.

ALAN GREENBERG: All right. Now, do note that the number of Board members for the ALAC is not a fundamental bylaw. So you're saying that you fear that if there is an attempt to get a second Board member, that a significant part of the community that requires three of the ACs and SOs to essentially reject that bylaw, and we would obviously try to fight that, I would think.

And we're getting ahead of ourselves in community powers, but if for instance, the GAC also said, "No, you shouldn't do it," that would override it. So the real question is, will the community act in unison to fight that extra Board member? Certainly parts of the community would. There is no question about that. But do they have...?

Can they get enough friends to agree with them, and can we get enough friends to agree with us to override them? Is the real question, and the hope is, that we've created a balance so that would not be a danger. But it certainly... I can't tell the future. Olivier.

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OLIVIER CRÉPIN-LEBLOND: Yeah, thanks Alan. It's Olivier speaking. And if I could just add, one of the important things would be the thresholds, by which the powers would be exercised, because as you said, if we just have too low a threshold, then it's highly likely that some will say, "Well we don't want ALAC to have another Board member."

If we have a higher threshold, then it will require a significant part of the community to say, we don't want the ALAC to have another Board member. So the devil will be in the details of the threshold, and I think we'll talk about this later.

ALAN GREENBERG: Yeah. As I said, these things are a circular references that each of them point to the other, and maybe we should defer the discussion to we've at least looked at the thresholds. You may know what the thresholds are, and Sébastien does, but other people on this call may not.

Any other questions on this fundamental, on recommendation three, which creates a new concept of fundamental bylaws?

I see Loris Taylor has a question in the chat. Can I ask staff, when someone has a question in the chat to raise their hand and call it out? So the person who is running the particular session is not trying to track these questions.

And can I ask someone to do that on behalf of Loris now?

Go ahead Ariel.

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ARIEL LIANG:

Thanks Alan. This is Ariel Liang for the record. The question from Loris Taylor, “Is there a possibility to have an ad-hoc Board member on the Board representing the empowered community? This will take the focus off thresholds, but instead focus on the interests of the [inaudible].”

ALAN GREENBERG:

Interesting question. Certainly nothing that was ever discussed. The empowered community is comprised of the ACs and SOs, some of whom have Board members, and some of whom have liaisons, or at least one of which has liaisons. So I don’t think there was ever a discussion of the community itself having a Board member, which would somehow straddle the various ACs and SOs.

The community implicitly has power to effectively override the Board, as opposed to just be another Board member. So I don’t think there is any, has been any discussion, nor from my point of view, I’m not sure there should be, on the community itself having Board members, because it’s almost as if the community is the balancing entity to the Board.

And I’m not, I guess I would need some convincing that there is some merit in having them, you know... If they sit on the Board, that’s almost as if you gave... The corollary to that would be you give the Board a vote, as it were, in the empowered community, to oppose the Board.

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So I'm not quite sure, but anyone else have any comments?

CHERYL LANGDON-ORR: Alan, Cheryl here.

ALAN GREENBERG: Go ahead Cheryl.

CHERYL LANGDON-ORR: I just put in the chat that of course, we must remember that the ICANN Board also has eight, which is in fact the majority of voting members of the Board appointments by the nominating committee, which of course, the nominating committee is comprised of all of the component parts of the people from [inaudible] component parts of ICANN.

And so I guess I would agree, [inaudible] independent directors because all directors, once they are appointed to the ICANN Board need to act in the best interest of ICANN, and no longer specifically in a representational role, on the parts of ICANN appointed them. So like all of [the actors?], they're acting in the best of interests of ICANN in a bunch of ways, etc. And that's [inaudible] of course.

But that independent sort of directors, I guess accurately, are doing exactly that. Acting on that generic lowercase best interests of, lowercase, of At-Large. We kind of almost have, I think, what you're getting at. Thanks.

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ALAN GREENBERG: Thank you very much Cheryl. You're right. All right, we have done the intro and two of the recommendations. We're an hour and a quarter into the two hour briefing, and we have 45 minutes left, and I think we're pretty much on time. And I'll turn the floor over to Cheryl to do recommendation number four, which is the next one we're doing.

CHERYL LANGDON-ORR: Okay. I'll come back off mute again. It's Cheryl again for the record. So recommendation number four is ensuring the community engagement in ICANN decision making, and they're looking at several new community powers. And Alan has mentioned this [inaudible] talking in greater detail of these community powers, and this is an overview of the new and specific empowerment.

The first one is the ability to reject ICANN's budget, all strategic and operational plans, or the IANA budget. And it is important that we keep somewhat separate that IANA budget in our minds. So we'll come back to that in some detail a little later. The IANA budget, at the moment of course, is an integrated part of ICANN budget, and operational planning is generically inclusive of ICANN's management of IANA functions, but in a post-transition world, the other cross community working group, the CWG, has put together a very particular and specific criteria including the requirement for a great deal of separate-ability.

So in the future, in a post-transition point in time, we need to think of IANA budgets as a entity in its own right. So just keep that in mind if you're wondering that's carved out is important to realize, and it's a



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change from current state as well. We, as an empowered community, still have the ability to reject that if it is seen as wholly inappropriate.

The next one is to reject changes to the, what we're calling the [sand?] bylaws, as was recently outlined, the fundamental bylaws, or as some called it, as Olivier mentioned, the term golden bylaw was sometimes used. A higher benchmark to change. We still have the ability to reject changes to ICANN and its bylaws, enshrined as a particular empowerment of the community in this proposed accountability model.

The third one is the ability to remove individual ICANN Board directors, along with the ability to recall the entire ICANN Board. Two situations, the removal of individual ICANN Board directors, and this includes the nominating committee appointed Board members. The specifics are highly detailed and they are particular barriers to getting these processes to have something taken lightly, extreme circumstances, and the situation of recalling [inaudible] the term spilling the entire ICANN Board is a situation viewed as almost beyond critical.

If we get to the point where we are actually [triggering] that empowerment, we have an entity in ICANN that is in extraordinarily bad condition, and they are extreme circumstances indeed. And whilst it is not envisioned that it is not likely to ever actually utilize this power, it is the ability to utilize this power that is seen as a particularly important empowerment in this model.

And in indeed, a particularly important empowerment in all of the different types of models for a more empowered ICANN community

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that we looked at throughout the process. The next one is the, to approve changes to the fundamental bylaws and articles of incorporation, and also went into some detail a bit earlier, this is an ability to even though the benchmarks of doing so is quite high, we are still able to, should we concerned sufficiently, to change one of these almost sacred bylaws, be able to do that.

So that is an enshrined power the community that is particularly important to articulate, and again, whilst this may not be a very common occurrence that one can have changed, means that one can have an involving and developing entity, and one that can function in some future setting, in a way that we have not currently predicted by the bylaws as they are currently or in the near future written.

Last and second last of this set is to initiate [inaudible] independent review process. Something called an IRP, or a request for reconsideration. Now, at the moment, we do have a situation where independent review processes and requests for consideration onboard actions are possible, but there are quite specific legal limitations on how such actions can be brought, and who can bring these actions.

In the proposed model, the empowered community will have standing and more to do the startup and function and initiate the activities of an independent review process, which is a process whereby an analysis and a legally binding ruling is sought out of a panel of several deemed experts in a particular field. And there is usually a merit individual, and they are sit literally in judgment as to whether or not the ICANN Board's action are in fact valid, and do or do not need to be overturned.

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The basis for having an independent review process, however [inaudible] you're all very clear on this, is always whether or not the ICANN Board has acted within its mandate for its bylaws, missions, and core values. And the mission and core values are an integral part of the ICANN bylaws.

So one can [inaudible]... no other particular reason, you just crank it out [inaudible] something didn't go your way in the community, it has to be that the independent review panel can state that the ICANN Board did not act within its bylaws. Then that is a binding outcome.

The fact that the empowered community [inaudible] is one of the most crucial powers in this set of powers, in the view of many within the CCWG and the ICANN community, that's a terrible important one. And finally on our list here on the slide, is to reject ICANN Board decisions relating to reviews of IANA functions, including triggering of what's called post-transition IANA separation.

And this was alluded to earlier when we mentioned about in the future IANA budget being far more independent, sort of entity [inaudible] in terms of financial aspects, but still within an ICANN budget as a whole. This particular one is extremely important from that cross community working group on the IANA transition point of view.

There are a number of essential powers, including the recall of Board members, in fact, that the CWG for transition of IANA functions away from stewardship NTIA to an independent, required accountability that included several particular things, including stability for decisions

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relating to reviews of IANA functions, and triggering a total or more complete takeaway for IANA functions [inaudible] more [inaudible] segregated from ICANN.

And this is one of those particular powers which is kind of non-negotiable, [inaudible] transition. Next slide please.

Now, as you can see here, the majority of these powers, six of the seven powers, are all about overriding or questioning Board actions. And the one of them [inaudible], five, six, seven, is about the approval of fundamental bylaws, and that's the only one which, as Alan also mentioned, requires the empowered community to approve, the only, inverted commas, positive action of the empowered community power.

The majority of these powers are, inverted commas, negative or powers which require a rejection or action that is to some extent a challenge, and all of that is due to Board action or inaction. I'm sorry [inaudible] just my mic, hopefully it's not too bad for the interpreters [inaudible] understand in the chat now. Next slide please.

I think, if memory serves, that takes us back to the specifics of ICANN budget and the strategic plan rejection. Alan, did you want me to continue with this? Or do I hand this back over to you now for the introduction of recommendation four?

ALAN GREENBERG:

No, this is still all yours. I think in fact, you've covered a lot of the details when you were doing the overview slide. So you may want to

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gloss over some of these and just make sure there is nothing you missed or that you want to be said explicitly. I think you've covered an awful lot of what is on the detail slide, but yes, please continue for the rest of the recommendation.

CHERYL LANGDON-ORR:

Okay. Thank you Alan. Cheryl still for the record. And there is nothing I like better than doing a quick [inaudible]. Greater details, the ICANN budget and the strategic plan rejection, just to remind everybody, ICANN has a five year strategic plan, and a five year operating plan, and it creates and works within annual operating plans and budget.

Here, we've got the details about how the particular veto can in fact come up, remembering that this is a negative action of the empowered community. If the empowered community believes that there is inconsistency with the purpose and mission and the role of ICANN, as is set out in its articles and bylaws, or that, and/or that the global public interest in begin jeopardized by perhaps insufficient budget being planned for, or a particular important feature being ignored or not focused on within an operating plan, in some way.

In other words, not meeting the needs of the ICANN stakeholders, or of course, this is one that sort of almost goes without saying, in the view of the empowered community is likely to put into critical imbalance, the financial stability of ICANN. These are the possible triggers where we would see the empowered community being able to agree and bring

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action, to say to the ICANN Board that they wish to reject the strategic and operational planning.

Remember of course that the way that the strategic and operational planning is done, and this includes the annual operational plan and budget review, is highly iterative and highly interactive with the component parts of the ICANN community, as it is done today. But, that is in fact, a courtesy not a requirement. So this particular rule is sort of bolted up and made particularly strong, not so much out of a concern that what is happening and the way we are engaged and involved is not particularly transparent and accountable, but rather because it is a courtesy not a requirement, that in some future point of time, some hypothetical other Board, should the decision be made that we are, as a community and component parts of the community, less involved and less agreement, that this power is a fairly important balance, as Alan mentioned about balance of power here.

It's very important to note here that the veto can only concern issues that have been raised during those public consultations and interactions that I just referred to. So it is not a matter of waiting until everything is at the eleventh and a half hour, and everybody is about to finalize a budget and operating plan, and some part of the community can get sufficiently stirred up to try and petition to say, no, no, no. It's all gone to hell in a hand basket and we must veto.

Now what is particularly important here is, if and let's hope it never happens, this negative action is brought, and the empowered community is going to the ICANN Board, no, no we disagree. Go back

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and try again. Make a change on your budget and strategic planning. What it does is not allow, sometimes happen in some countries, for an inability to function.

It is not shutting down the day to day activities and the essential activities of the organization. There is what's called a caretaker budget, in other words the basic requirements of function: paying staff, paying bills, etc. continue on. So this is not a power to shut down the shop. It is a power to say, "Hang on, hang on. We don't like the way this particular budgetary and strategic planning focus is on additional, beyond the basics functions of ICANN."

So it is not a mechanism for malicious and vindictive behavior by our community. Next slide.

Not that the community would be vindictive and malicious. If we are, I think ICANN itself is in a bad way by that stage. And it's particularly important, and particularly important for the work of the community, cross community working group on IANA transition, any rejection of vetoing the budget will result in a specific caretaker budget being enacted to make sure that the vital, and they are absolutely vital to us all, IANA operations continue on.

And there is still significant work on the specifics of implementation as to how this particular aspect of the caretaker budget can be even better protected. We're talking about whether or not certain number of years, operational planning for normal operational costs for IANA will need to be escrowed, or how we will make sure that even current time of

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turmoil, with the empowered community and an ICAN Board in the future, that the essential functions of IANA are still maintained at least at maintenance level. Next slide.

ALAN GREENBERG: Cheryl, we need to speed up just a little bit or we're going to run out of time.

CHERYL LANGDON-ORR: Okay. We can [inaudible] standard bylaws, and in fact, this is one of those that I think I did cover in fairly great detail, and of course, Alan, you covered it in your more general recommendation three discussion. But we do need to recognize that all of these processes take a particular part of mechanism, and require a certain amount of delay.

So here you're looking at a 30 day delay for bylaw changes. There will be a further delay in community power, if the community power is initiated, and we also have a particularly special case if a bylaw is mandated by a supporting organization policy development process.

The rejection of that particular bylaw would also require that particular support organization to support that rejection. So it's not a matter of an empowered community being able to cripple the activities of the bottom up consensus based policy development process without the [inaudible] it comes from being in agreement. Next slide.



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The approval of fundamental bylaws requires, is the one that I said earlier, requires positive action by the empowered community, and I think, it says what it says. Let's go on to our next slide.

The removal of individual advisory committee [inaudible] the ALAC or support organization, just [inaudible] the country code supporting organization, or the generic supporting organization, is outlined in this slide. And we have, I believe, also a very interesting set of diagrams in the document that you can pour over later.

Suffice it to say this is a significant action, it is however an action that can only start, continue beyond a suggestion with wider community discussion than just the appointing AC and SO. It does require a rationale that's outlined there. If we don't have a particular restriction on reason, but the reasoning for the proposed removal must be clearly articulated, and the community, of course, [inaudible] to discuss it.

It's ripe for that individual director who is being proposed to being recalled, has the right to defend and explanation. And that most importantly, for many of us, the people who are representing the advisory committee or support organization are indemnified within common decency of acting in good faith, etc. against claims statements that are made during that process.

And of course, most importantly, and again, this is [inaudible] or malicious activities crippling the organization, it's one of those [inaudible] if it proceeds to an actual decision. We can talk about this further in questions if we need, but suffice it to say, this is a particular

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topic that has been poured over in great detail, and I think how it is designed is about as good as it's going to get. Next slide please.

[Inaudible]. Is it just my Adobe Connect? Is everybody's Adobe Connect not switching to the next slide?

ALAN GREENBERG:

No, it did switch. It says removal of NomCom director, similar to removal of AC SO director, but requires action of the empowered community. If you're not seeing it, you're just frozen. I'll take over if [CROSSTALK]...

CHERYL LANGDON-ORR:

It's actually turned up now, thank you. [Inaudible] turned up now. It takes the Internet a long time to work all the way to Australia. And it says what it says here, so it's similar to the action of the removal of an individual director who has been appointed by an AC or a SO.

But in this case, it requires the action of the full empowered community, which is obviously, any particular nominating committee is a construct of the component parts of what is the empowered community. Next slide please, and hopefully I'll see it. If not, I'll toss back to you Alan.

Look at that. Recall the entire Board. Here the empowered community action has, this requires a very much, not a very much, but a threshold with one particular exception. It's, as I said earlier, one of those situations which will be highly [inaudible] devastating would be an

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appropriate term here. It effects all of the voting Board members, accepting the CEO. So you would still have liaisons, unaffected parties, proposed ability to recall the entire Board.

At the time of the power, and this is essential, at the time the power is exercised, every appointee AC and SO also would have the name, the replacement or the interim Board member, members, because most actually appoint two not one, that would be stepping up to maintain corporate governance management of the organization, if the case for the entire Board for voting members to be recalled is finalized and does go through.

And it's important to note here that the interim Board has exactly the same powers as the regular Board, but there is a requirement for them to work far more closely and [inaudible] community whereas the practical, obviously, they're not going to go however, be required to go into protect protracted community interaction with something that is [inaudible], such as the requirements for action to preserve security, and stability, and resiliency of the DNS.

Oh dear, it's not changing. It is changing. And the final part that each of the appointing entities, advisory committees, support organizations, nominating committee, has put in place a set of rules to allow a selection of the replacement of the [inaudible] they normally appoint within 120 days [inaudible]. Next slide.

Yes, it is changing. I did, I think, go into the independent review process in particular earlier on, but it is a power that is exercised by the

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empowered community. And that's all I see on that slide. Hopefully, that's all there is on that slide because I'm going to call for the next slide now.

ALAN GREENBERG:

There is not much here. We will be talking about [CROSSTALK]...

CHERYL LANGDON-ORR:

...just reiterating there. Let's move to the next slide here, basically saying, and I did go into some detail about that earlier. And now we've got the meaty bit. The concerns which have been articulated throughout our process regarding recommendation four, the powers of the empowered community. It's pretty much as we discussed earlier on. Not so much the inability to change a fundamental bylaw, but the particularly high barriers to changing fundamental bylaws.

You have to get positive support by the empowered community to do so. The [inaudible] organization for the [inaudible]. I would suggest a [inaudible] in that suggestion, [inaudible] pretty destabilized anyway, but there is a power and it is an important one to have as one of the six, and some people like to refer to, and of course, the very edge issue, not edge, but still of concern as DNS and potential abuse of removal.

And that, again, if we object to a point where parts of the empowered community are acting in an abusive way to [inaudible], we're in a pretty disastrous and destabilized situation anyway. Next slide, I believe that's it for four. I'm assuming I hand it back to you Alan.

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ALAN GREENBERG:

Thank you very much. Just one point I wanted to make that one of the slides noted that the, all bodies who appointed directors are required to put in place rules so that they can replace the interim Board with permanent Boards for the rest of their terms within 120 days. I'll point out that that will probably be moderately easy for some of the groups.

The process, the ALAC and At-Large uses to select a director, cannot be done in 120 days. So we would, assuming this goes forward, have to come up with some modified rules that allow us to shortcut the process. And I suspect that that's going to be true for the NomCom.

I'm not sure the NomCom will ever be able to replace eight full directors in 120 days, but they are obliged to try, I guess.

CHERYL LANGDON-ORR:

Alan, Cheryl here. [Inaudible] likelihood where NomCom, for example, always has a backup for everybody they appoint, so it may very well be that the interim directors are [inaudible] as following on. If you have an interim director who has been endorsed to continue. So there may be ways around it. Thanks.

ALAN GREENBERG:

Yes, I understand. By the way, there is no rule regarding who the NomCom or the ACs and SOs can appoint as the permanent replacement. They can put back the person who was removed, or they

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can keep the interim person, subject to a number of provisions of regional balance and things like that.

Cheryl, the only comment I have is, the NomCom always has a few people in their back pocket who can fill slots moderately quickly. Whether you have eight is a different issue, and that is what I was questioning. But you know, that's not our problem right now, and I'm presuming that the ALAC can come up with rules that will meet the target within eight days.

All right. We're getting a little bit short of time, so I'm going to go perhaps a little quicker than I should on this recommendation. This is recommendation number two, we're back to the beginning again because this is the recommendation that talks about exactly how these powers are exercised.

And I thought it was important to talk about what the powers were before we talked about how they were exercised. The overall process is summarized on slide 31. Any of the exercising... The exercising of most of the powers, is started by a petition. Any one, and this is not a member, but anybody in the world can go to an AC or SO, and say, "I would like to initiate a petition to do something. To remove your director. To veto a bylaw change."

To whatever. To reject the strategic plan or budget. The fact that it is anyone to put there to say this is not a completely closed community. If someone has an issue, they can raise it. That doesn't mean the SO or AC has to listen to it, but they have to consider it. There is potential for

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abuse there, and one of my personal concerns is, someone who is really annoying can continually do this and there is no rule that says they can't, unless we put in a specific rule ourselves.

The AC and SO has 21 days in which to decide they are going to initiate this power, or not. In parallel with this, they should be talking to other ACs and SOs, because for most of the powers, you need the support of other ACs and SOs to go ahead. And we'll talk about how many you need in a moment, but you need some support.

Once the formal decision is taken, then there are seven days in which other ACs or SOs have to decide to go along with it. Now, it's really difficult for an AC or SO to take any decision in seven days. So clearly, you have to start laying down the groundwork ahead of time. If you get enough support, then there is something called a community forum, which will be held. Conceivably this could be a face to face meeting, or maybe scheduled to be at a face to face meeting, but more likely would be a conference call or a set of conference calls.

The conference calls would be to convenience the community that indeed there is something they should take action on. It is also an opportunity to potentially negotiate with the Board, and to resolve the issue through something else other than the community power being initiated.

One of the reasons why it's likely to be a multi-day event, is the Board is not going to be in a position to change its mind on the fly in the middle of a meeting. They would have to go away, consult, and perhaps come

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back and say, “Yes, we are changing something.” And then after the community forum, there are, there is a 21 day period in which case the ACs and SOs can decide, are we exercising power or not? Next slide please.

Now this is a graphic which says the same thing. Essentially, we start off in the bottom left with a petition. There are various decision points along the way, which involve either the AC or SO that was talked about, that initiated it, or other ACs and SOs together, and as we progress up to the upper right, we have, going farther and farther along the process, at which point, at the very end, or almost at the end, we decide whether we have, in fact, enough support to exercise the power of not.

And of course, if the power is exercised, we then tell the Board that we’re exercising it. Should the Board choose to ignore it, then there is an enforcement process that we can look at, and we’ll talk about that in a moment too. Next slide please.

Now, the processes vary a little bit. For instance, if the, certainly the thresholds vary, and we’ll talk about that in a moment. We don’t need the support of any other ACs and SOs if we’re talking about removal of an AC SO director. The organization who appointed the director has the sole discretion to remove them.

If we’re talking about a fundamental bylaw, then there is no petition process. The whole process is triggered by the Board saying, “We want to change a fundamental bylaw.” And that immediately goes into a



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discussion process involving the community, and the community deciding to agree or disagree. Next slide.

Now, if the community takes some action and the Board chooses to ignore it, there is a multi-step process that we'll look at in the next slide, which they, which ultimately ends with recalling the whole Board, or select the directors on the Board, if they're the reminiscent ones who are causing the problem.

Or the community could, in theory, say, we just have no patience with this Board, we're going to remove them period. So, one or the other. Next slide. And that next slide shows the detailed process. First we can go through a mediation process, try to discuss with the Board, is there a way to resolve it? The community can initiate an independent review process.

The independent review process may find in favor of the Board, that is, no bylaws have been violated, or it could object. Or it can decide the Board did violate its bylaws. If the Board complies, fine. If the Board doesn't comply, in theory the empowered community can go to court to force the Board to take some action or stop taking some action as necessary.

Clearly, that's not a process we would ever want to go all the way through, and hopefully we will have Boards which indeed, will listen and talk with the community before getting that far. Next slide.

Here are the thresholds. So for each of the powers, first of all, how many ACs and SOs do you need to convene the community forum,

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which is the lead up process to exercising the power? And you can see it varies depending from either only the AC or SO that initiated the request for the removal of their own director, up until three.

It needs a substantial number of the ACs and SOs who want to go ahead with the process of potentially removing the Board. That doesn't mean that they're supporting it, it just means that we want to talk about it. Following the community forum, the number support says, how many ACs and SOs do you need of the five, who want to exercise this power?

And then any power can be overwritten if at least two, that is more than one AC or SO says, "No, do not exercise it." And the one exception is the removal of the entire Board, if the removal of the entire Board having carried out, or attempted to be carried out, because of some action the Board took or inaction associated with GAC advice.

In that case, the GAC is not allowed to participate in the process. So, therefore there are only four ACs and SOs left. If the action is because of GAC advice, and there was an IRP, and the IRP found that the Board had violated the bylaws, clearly at that point, the Board can say, "Oops, we made a mistake. We're fixing it."

But should the community decide that they're not going to fix it or they don't believe the Board, the community can opt to remove the Board at that point, and it only requires three instead of the four to do the removal, but that only happens at the end of that long process, when an IRP has already indicated the Board is violating its own, has violated the bylaws. And Cheryl, I see your hand up.

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CHERYL LANGDON-ORR: Yes, Alan. Thank you. Cheryl for the record again. Just to make it very clear to everybody, when Alan says in this very unlikely situation, where the [inaudible] about the government advisory committee being limited in its role within the empowered community, whereas it has got to do with this GAC advice and the Board.

It's not to say, it's kind of shorthand to say the GAC isn't involved. The GAC is not able to have a particular upholding ability or influence of vote-ability. It is, of course, still acting in an advisory capacity, select [inaudible] circumstances to a part of the [inaudible] processes. But it is not, for all intense purposes, in the threshold, acting as part of the numbering in terms of support or rejection.

So it's not as if they are sitting mute to the side. They are still engaged, but they don't get to have two bites at the cherry, I think is the terminology that some people are using.

ALAN GREENBERG: Thank you Cheryl. We're just about out of time, so I'm going to try to summarize. Just for the record, the issue that caused the proposal not to be issued a week ago, but only a day ago said was exactly on this subject. The last draft proposal, just prior to this current one, added an extra condition under which the number would be reduced from four to three. That is, if an IRP could not be used, it was not usable, or because of the specific reason for the GAC advice being, for the community

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objecting to the GAC advice being implemented, then that would also have lowered the threshold to three.

That was a much wider set of circumstances. And specifically, if the community didn't like the GAC advice, they could kick the whole Board out with a lower reduction. A much more likely event, that was what the final issue was, and that ability to remove the Board with only three ACs and SOs supporting it, under the much wider condition, was what was removed in this last discussion that took place very early Tuesday morning for some of us.

So it is indeed an important issue, and it is one of the ones that delayed this whole process, but as it stands right now, it is only in a very selected group of situations that this can happen. And I realize that I did not include a slide of the current objections, concerns. No, I did, sorry. Next slide please.

And the only concern I'm aware of, and I may be oblivious, that has been raised at this point, is in fact, the reduction from four to three in the exceptional case we just described.

All right, we are at the two hour mark. We ran a little bit over what we had expected. I'm willing to stay on. I don't know, can interpreters stay on for a little while?

TERRI AGNEW:

Yes. This is Terri, and yes they can all stay a little while, the interpreters.

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ALAN GREENBERG:

All right, then we'll go to the next slide.

And we'll open it for questions. Some of you may have seen this in briefings before. That was the best spot I could find, which indicates the state of mind of many of the people who have been working on this for the last 15 months, very heavily. So we're just a little bit short of serenity.

And I'll open the floor, if there are any questions or issues. Tomorrow, we will be following on this briefing with a second one, which will be looking at eight recommendations. So a much larger number of recommendations, but they are not nearly as packed as the ones were today.

But I open the floor to any questions, comments, or suggestions on how to better do the briefing tomorrow.

And Olivier, go ahead.

OLIVIER CRÉPIN-LEBLOND:

Thanks Alan, it's Olivier speaking. And I was going to ask, well not ask but, just focus on one small thing, which is the actual escalation sequence. We're seeing thresholds that you presented on various community powers, but these thresholds are just members. The escalation sequence in itself is one which makes the use of the actual voting power the threshold at the end, as being just, I would hopefully imagine, in the majority of cases, be a big, big stick that would never have to be used.

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And so initially, you know, [inaudible] SOs power, you would think, oh my goodness. What are we doing? What are we getting the community...? Sole [inaudible] type powers where they could just go forward with those and break all of ICANN up, or whatever it is.

And yet, there is the escalation process is actually rather complex, and has all sorts of safeguards to really hopefully find a solution prior to things, you know, sort of resolving the problems prior to the point of them actually reaching a community power being exercised through a vote.

That said, I've also heard the opposite view from other parts of ICANN. They're saying, yeah, it's making things so complicated that we will never get to those community powers, and you know, we're just making this escalation too complex. Do you have any view on this? And is there any view of the working group on this?

ALAN GREENBERG:

Well, I can certainly give you my view. The largest part that these powers give is their existence. In today's world, and certainly, less so in today's world, but if you go back over the years, it was not uncommon to have parts of the community being very vocal against something, and the end result is, it was done anyway.

Certainly the number of changes that resulted, that were made to draft budgets before they were implemented, if you go back a number of years, were very, very small. So yes, we went through a process by which we asked the community, do you agree? And then we

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implemented it anyway. That was not very different from how public comments were treated in some GNSO and other actions.

That is, we solicited public comments, people went to the trouble of responding, and then we basically didn't read them. And went ahead and did what we were going to do anyway, did what we were going to anyway. That doesn't happen nearly as much anymore.

So we're in a better state, but the powers say, if the community gets really upset, they can do something. That's a strong incentive to not let the community get really upset. So the existence of the powers to reject the budget make it much more likely that we would never get to that stage.

So that's the intent. The counterbalancing part is, if you look at the delays associated with exercising these powers, and how quickly many, there are several ACs and SOs will have to respond, is it every going to be possible to exercise the powers? Or are we going to be, literally have these powers which can never be exercised at all because the time constraints are too tight to actually make these decisions?

Now, for some person, that's a delightful situation. We've made people happy by giving them powers, but we know they can never exercise them, so we don't have to worry about them exercising them improperly. On the other hand, there are concerns that if the powers cannot be exercised, they won't be taking seriously.

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So it's a balance and hopefully we've struck a reasonable balance. I see we have two issues or two questions. One from Harold and the next from Tijani. Harold please.

Harold will be on the Spanish channel.

HAROLD: ...Harold for the record. Can you hear me?

ALAN GREENBERG: Yes we can.

HAROLD: So thank you very much Alan. First of all, we have just talking about the thresholds to activate [inaudible] certain powers. And I remember that, Alan, you mentioned the GAC. This is a very intolerable situation, but I remember, I understood that if some of these powers were activated, the role of the GAC would be quite limited. So my question is, taking into account this, why is the GAC put aside in terms of participation or decision making roles, and on the other hand, why or are there other groups with other interests?

For example, the registries or the registrants, not only the ACs or SOs. Do they participate in this thresholds? Please let me know if I am wrong in my interpretation, but if that is the case, we are now having [inaudible] within ICANN with different stakeholders, we are having a threshold considering certain parties, but we are putting aside the GAC



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which is an interested party, and we are putting that committee outside, and perhaps this might be something risky for our multistakeholder model.

ALAN GREENBERG:

Thank you very much. We will be talking a lot more about the GAC when we get to recommendation 11, so I'm not going to talk about it in great detail here. But there are concerns in some parts of the community, that we are giving the GAC too much power by allowing them to participate in the empowered community at all.

And there are concerns about some in the GAC that we are not giving them enough power. So there are some, people often say that a good compromise is when everyone is unhappy, so maybe we have a good compromise. But on the specific issue you raised, and on the first one, of putting aside the GAC, we are not putting aside the GAC.

The one place that we are talking about the GAC not taking, not being able to participate in an action, is if the community is reacting to the Board implementing GAC advice. Now, GAC advice is not like ALAC advice. If the ALAC gives advice, the Board can ignore it completely. In general right now, they would have hopefully explained why, but they're under no obligation to consider our advice.

With GAC advice, it's different. The Board must either implement GAC advice, or enter into negotiations with the GAC to try to find something, some compromise. Ultimately they can refuse it, but they have to go through a rather elongated process to do that. So, it was generally felt,

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and again, this is not universal, the CCWG has been taking part in some very heated discussions, but it was felt by many people that if the community is reacting to the GAC, to the Board doing something on the strong advice of the GAC, the GAC should not be able to use its objections to stop the community from voicing its concern.

So it's essentially, if the GAC could use its objection, it could be part to the party to trying to stop the rest of the community from voicing a concern. Now, it's different from how some of the other things work because, if for instance, we the ALAC doesn't like something that the GNSO is doing, there are many common periods, we can participate in the working groups.

There are many opportunities for us to voice that concern. With the GAC, their advice is created essentially in private, with no consultation. So given that they do that unilaterally without any consultation with the community, it was not felt by some people that they should be able to object to the community objecting.

So if there are some concern that there are countries that believe this might be disenfranchising the GAC? Yes, there are some. And hopefully we struck a good balance, only time will tell. Tijani.

TIJANI BEN JEMAA:

Thank you very much Alan. Tijani speaking. Olivier, the two alternatives you mentioned are possible. What is true is that you will not have this thing, will not an easy life in ICANN in the future. During this period of CWG work, I understood a lot of things that I didn't understand before.

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I saw some parts of the community who wants to have the control of everything in ICANN, but fortunately inside those communities, there are people who are really [inaudible]. And I'm really, really impressed by, for example, [Greg Shanton?].

I think I am not, with whom I am not always in agreement. But yesterday, he took a very good position, wide positions, that made me think perhaps the impression that I had about the GNSO and the people from the GNSO, is not always right. There are people who can make the balance, and perhaps you will have better way to interact with those people in the future, since we are obliged to [inaudible] before we can [inaudible]...

Because we are in the same empowered community, the same designator, so we have to work together. Thank you.

ALAN GREENBERG:

Thank you Tijani. I think you make a good point, and it's really important to know that our communities are made up of many, many different people. Some have very strong views and strong prejudices, and I'll use a strong word, and other people really are going into this, looking for the best, not only for themselves, but for the organization.

So I don't think that anybody, any single group has a monopoly on either only caring about themselves, or caring passionately about the organization. And that's a good thing. You know? We're all different, and there are many different positions, some of them exceedingly strong.

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And hopefully, the balance will result in good things in the end. That's about all I can say. We are 15 minutes past the hour, and I think we've pushed our good interpreters as much as we can.

So we will try to make sure we have more time for questions tomorrow, and I look forward to continuing. I think the Spanish and English interpreters very much for their work. I thank everyone for paying attention, and I'll look forward to seeing you back here tomorrow. Thank you all.

**[END OF TRANSCRIPTION]**