ICANN

Moderator: Brenda Brewer
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2:00 pm CT

Coordinator: The recordings are started.

Mathieu Weill: Thank you very much. Welcome, everyone, to this CCWG Accountability meeting. I note that we have lost the count now for the number of meetings, maybe it's a better choice not to count them anymore. And as we reconvene after the Marrakesh sequence I think we'll start with the administrative matters. And I'd like to ask if anyone is on audio only at this point?

Keith Drazek: Hi, Mathieu. This is Keith Drazek. I'm on audio only at the moment. Thank you.

Mathieu Weill: Thank you, Keith. You're added to the roll call. Anyone else?

Jordan Carter: Jordan Carter here. I'm on audio only for about 10-15 minutes.

Mathieu Weill: Excellent. I know that Barrack Otieno also is on audio only. That's noted. And anyone else? No one else. If there is any update on statements of interest? I am noting none. So let's get back to work. It's been quite a little while since Marrakesh. And actually we – as we reconvene we're still following closely after the successful outcome of this Marrakesh meeting for our group at the

momentum we had in Marrakesh has carried us into very fruitful collaborative working sessions amongst the lawyers.

And we've been presented on – it was on Sunday for many of us, maybe not all of us, a very high quality document which is an outstanding (unintelligible) considering the amount of changes to the bylaws that had to be taken into account with both the CWG and CCWG report. And I think we should really recognize the extraordinary amount of effort that has been carried out by the various – the legal teams.

They've been able to deliver on time based on the very aggressive timeline we had defined. And we have a very high quality document so it's – I don't think we could expect any better place to be now than what we have. And certainly I wasn't placing the expectation any higher than that when we discussed last time in Marrakesh.

Our top priority tonight is going to be to answer the questions that have been raised by the lawyers because answering those questions really is the critical path at this time. I think it's worth noting that these questions are mostly seeking clarity on our intent. And that's why I think it's really top priority to clarify this.

We have 34 questions for both reports. Not all of them are for us as a group. But it's quite a limited number considering the breadth, the variety of our recommendations, and the complexity of the work that we've been undertaking for almost two years now on that – on those recommendations. So I think we should, as a group, once again acknowledge the quality of the work from the lawyers, and also take this rather limited number of questions as a good sign for the quality of our work in terms of clarifying where we are.

I will – that will be my only opening remarks. And maybe we can just step into the item Number 2 because I'm seeing Holly Gregory's hand up. And I was about to turn to you, Holly, for an update on the work to date to give us a flavor of what has happened and where you are at this point. And I think that will certainly help kick start this meeting right away. So, Holly, please take the floor.

Holly Gregory: Well thank you very much, and it's great to be having this opportunity to talk with you all with a solid draft in front of us. As you know, ICANN Legal took a shot at drafting a first rough draft and then we had a face to face in LA for three days, really four days. We were lucky to have Becky Burr and Chris Disspain with us to help work through some of the issues.

And we also had the help of the bylaws coordinating group who we had a number of calls with to go over open issues along the order of the kinds of issues that are on the agenda for today.

Post-LA, we entered a very – another very intense week where we shared drafting back and forth between ICANN Legal and Sidley and Adler at an extremely intense pace. As you know, it's a very lengthy document. There are a number of sections. We did them section by section, article by article.

And I have to just call out to the team I know at ICANN Legal, at Adler and here at Sidley there were a number of members of the team who pulled more than one all-nighter. It was really an all-hands on deck effort.

I'm very appreciative of the cooperation and good will between ICANN Legal and the Sidley and Adler teams and the commitment to working through the issues together. We don't agree on all issues but we really were committed to trying to understand the viewpoints and working together.

And I think the draft that you have before you reflects that commitment and that good will. The draft is a work in progress. I just want to make it really clear. We haven't certified it not because we don't think it's in line with the proposal. We think of course that it's in line with the proposal. As you know, there are some open issues and we need your additional input on those issues.

And also, frankly, we need some time to review the document. In just looking at it over the last 20 minutes before the call I found two little sections that somehow didn't make it into the draft. So we're doing what we call a rules check. We're going through the proposal line by line, ticking and tying to see that everything is reflected in that draft. That takes time to do. We did that on the rough draft and it helped us organize our thoughts for that discussion and we're doing it now so that we can be prepared to certify.

We've provided you with a mapping document that shows where in the bylaws the various items of the proposal are. Kind of a rough map. We had to – we did it overnight last night. And haven't had a chance to check it all. Nor do we think that it's really a good use of our time right now. I think it gives you a general sense and I think we'll be able to find things.

The tight timeframe is our biggest challenge but I want to emphasize we expect that we will be able to certify the draft but we need to make sure that we've identified the nips and close the open areas.

So with that if there isn't something else that you'd like to do we can go into the questions. So I'm going to turn it back to you, Mathieu.

Mathieu Weill: Thank you very much, Holly. Kavouss signaled in the chat he had a point of order. Kavouss.

Kavouss Arasteh: Mathieu, before you going to the presentation you need to have approval of the agenda. This is an ordinary arrangement of every meeting. We don't have approval of the agenda yet because I want to talk about the working methods. Last night we have CWG. We spent one hour and 25 minutes listening to the lawyers explaining what is on the paper before. So we don't want to spend one and a half hours of presentations. This is number one.

And I have a statement to make once you deal with this matter, please, provide us with the working methods. How you want to do this work. How much time you want to give to the lawyers to present the things. We know they have done a good job. We really appreciate their work. But we would like to know how you proceed. And I have a statement to make with respect to the testimony that made before the subcommittee of the House. Thank you.

Mathieu Weill: Thank you, Kavouss. I don't think we've ever, in any of the CCWG meetings, formally done any approval of the agendas. However, I note your comments on the agenda. I'm certainly – your point on the subcommittee will be – we'll come back to you in any other business. I think it's certainly something that can be addressed at that item of the agenda.

Regarding the use of time, our intent today is to take questions by questions and provide as clear an answers as possible so that the lawyers can keep working. It is not our intent to have a lengthy presentations by anyone. I think a good use of everyone's time is making sure we understand the questions, provide the clear directions for the lawyers.

And I think that's what we try to explain so I think that should be consistent with your expectation that we don't need anyone, and you, bandwidth in the time – limited time we have in this meeting. And I think Holly gave an

excellent and clear and concise summary of where we are which sets up nicely into our timeline and next steps. And maybe what Thomas is going to address in the next agenda item is going to respond to part of your questions.

Thomas, would you like to introduce the timeline and the way we're planning to approach things on the bylaws certification?

Thomas Rickert: I'm more than happy to do that, Mathieu, if staff will please bring up that slide with the timeline, that would be appreciated. And while we're waiting for the slide to be uploaded into the remote participation room let me also use the opportunity to welcome all of you back to our calls. I hope you haven't missed us or each other too badly.

Let me also use the opportunity to congratulate all the legal teams for an incredible piece of work. You know, Rome hasn't been built in a day. But you've almost rebuilt ICANN in a matter of a fortnight. That's really remarkable.

And I think we, you know, even though the document is not yet on I think we should all respect the sequence of happenings that's going to take place over the next couple of days and months in order to get organized.

We do know that some of you have spotted issues in the bylaws that they want to discuss. There will be time for that. We have basically four phases in the work to come. And we're now in the first phase. And we would like us all to focus on that first phase. And this first phase deals with responding to the lawyers' questions or the legal teams' questions.

That this seem to be the issues that they need to get clarification on first with highest priority so that they can closer to finalizing the draft and certifying it.

So even though you might really feel the need to make points that you've identified, please hold that back. Let's go through the questions as by the lawyers one by one. And let's try to get through that exercise as quickly as possible to complete what I've called Phase 1.

Phase 2 is going to be working on the issues that you have identified in addition to what we've heard from the lawyers. And we will then, as a leadership team, try to provide answers to you where we can so you might identify issues where we have an easy answer. But in cases where we can't offer a satisfactory response, we will take your concern back to the legal team so that they can take a look at it and see whether your point needs some refinement of the draft bylaws.

And that's the exercise that you find in the second bullet point. After that hopefully the lawyers will be – or the legal teams, I should say, will be in the position to finalize and certify the draft. And that is going to be Phase 3 where you're going to get an opportunity to look at the draft and provide feedback to the certified draft.

And then finally there will be a fourth phase where the ICANN Board is going to put out the bylaws for public comment. And you can certainly chime in during the public comment period to make yourself heard with any questions or concerns that you might have.

So this is roughly the schedule of work that we have in front of us. I'm not going to read out the slides and the dates to you because you see them on the slides in front of you or on the slide in front of you. And while going through that I see that Kavouss's hand is raised. I think that's a new hand so, Kavouss, the floor is yours.

Kavouss Arasteh: Yes, it is new hand. Thank you very much, Thomas. And…

Seun Ojedeji: Hello, this is Seun. I'd like to get in the queue.

Kavouss Arasteh: Can I talk?

Thomas Rickert: Yes, and, Seun will be in the queue after you, Kavouss.

Kavouss Arasteh: Yes. Thank you very much for your explanation. And sincere and profound and millions times of thanks to lawyer that they have work around the clock. That has been said. I suggest that lawyers, they put the question up, explain them one by one but not altogether, after each questions seeking some preliminary comment to the questions and then getting these comments we come back at the next meeting or at the end of this meeting if possible to the questions whether we could have a firm reply to that which I believe it is not possible.

We have the same cases of exercise last night, CWG, and the entire period we just discussed. There was some comments but no conclusion was made with respect to some of the questions but very few of them have the firm reply. So I suggest, if you agree, we take the questions one by one, pose and asking comments and gathering comments and then based on that if we are able to either reply now on a consensus basis so far so good. If not we have to sleep on that and come back to it at later stage. Thank you.

Thomas Rickert: Thanks very much, Kavouss. And before we move to Seun let me briefly respond to what you said. It's almost like you were reading our minds because when we prepared for this call we chose to suggest to the group to go about with this almost exactly as you just stated. We're going to go through the questions one by one, so we're going to have – we're not going to mix them

or have a presentation of several questions at once before we ask for comments.

So you can expect us to go through the questions one by one and we're going to – or we certainly try to identify an answer for the group already. So we're going to suggest what we think might be an appropriate answer. So that we can hopefully truncate the discussion with the group and ask you to confirm whether our solution or clarification is the one that is shared by the whole group.

And I think that we will be able to quickly identify uncontroversial points which we can take off the list vis-à-vis those points that might need more debate and we can get back to those at a later point. But rest assured that we will give the group the opportunity to chime in and that we will try to make it as easy as possible for everyone to follow the conversation because it's quite challenging to look at quite such a lengthy document and such a quite long list of questions.

And the other good news is that we will not need to look at the draft bylaw language today, we're just focusing on the questions because we can discuss them in isolation and I think that will make it easier for the group to follow and also to form a view on what feedback we should give to the legal teams.

Seun, the floor is yours.

Seun Ojedeji: Yeah, this is Seun. Can you hear me?

Thomas Rickert: Yes, we can hear you.

Seun Ojedeji: Okay thank you. Thank very much, gentlemen. I just wanted to say that for the sake of the remote participants during the presentation of the (unintelligible) it'd be good to also hear if there specific days (unintelligible) going to take because I'm audio only.

The second point is in relation to what you just responded to Kavouss. I just want to get the process straight. By now I assume that the responses we make to these comments now will be sent back to the mailing list and will be given separate time (unintelligible) time to actually get final feedback before it's actually certified as the formal response to the legal team. Thank you.

Thomas Rickert: Thanks, Seun. We will certainly send the feedback that we've been working on to the list for everyone before anything is passed on to the legal teams. So unless there are more questions on the timeline and the approach I suggest that we dive straight into responding to the questions or working on the answers.

And the first couple of questions are going to be dealt with by Mathieu. So, Mathieu, over to you.

Mathieu Weill: Thank you very much, Thomas. We will put in the AC room the document titled Issue List that was circulated. I think we can – yes, we can all zoom in a little bit. And what we're planning to do is to introduce the question shortly, go to – ensure with the rapporteurs and the lawyers that we have captured the essence of the question correctly and then try and answer.

So Question Number 1 is a bit long in the document. I will not read everything. But it's basically about the words "the root zone" in the mission, so it's Annex 5 in our report. And our report mentioned that ICANN coordinate the allocation and assignment of names in the root zone of the domain name system. And it was noted that the root zone (unintelligible) did

not appear in the existing bylaws and was not defined. And so the question was whether to define this term or remove the words.

And maybe I could ask Becky whether there's any extra context to provide to that?

Becky Burr: Well just to keep clear I think it's exactly what you said, you know, the contracts with registries and registrars do have to do with second level registrations. And the current bylaws don't limit it to the root zone. So none of us could recall precisely where that language came from.

Mathieu Weill: Okay. And so, Becky, what would be your recommendation to this group? Do you think it would be consistent with the intent of the report if these words were removed or do you think defining it is better?

Becky Burr: Yeah. No, I am comfortable with the definition given the limitations in the mission that follow.

Mathieu Weill: I'm not sure I understood exactly what options you were comfortable with, Becky, I'm sorry. I'm a bit slow.

Becky Burr: Well I am comfortable with removing the words.

Mathieu Weill: Removing.

Becky Burr: Yes.

Mathieu Weill: Okay. Would anyone have comments on that or concerns about this? As we said, we've shown it, it's not a final answer we're giving now. So we still

have time to think about it. But obviously if anyone has immediate reactions it's going to be most welcome. Kavouss.

Kavouss Arasteh: Yes, I have one general comment and I have specific answer to this. First of all, we are talking about bylaws. You can make any changes that you want but if you face any difficulty in future to change that bylaw there is a very complex procedures. So, would it not be possible that if it is not absolutely necessary we do not go to the level of detail and put the things in a very high level and general manner.

I said unless it is absolutely necessary. You can do whatever you want now within this time. But once it is there and we find the problems and we're tying up our hand if you want to change it there is a very complex procedure. So let us when there is changes see that whether we could maintain whatever is proposed to be in a general term, high level, and putting a sort of the latitude for further – further implementation or if it is very, very necessary like CWG last night, then we need to clearly specify the situation, we specify that. This is one.

Second, still I'm not sure what Becky propose. She says the removing. Removing what? There are two proposals. One, is in Recommendation 5; the other proposed by the lawyers. Which one, Becky, is…

((Crosstalk))

Mathieu Weill: Becky is suggesting to us the phrase – the sentence that is closest to the existing bylaw and which does not mention the words "the root zone." And I think the argument is close to the one you were using, Kavouss, that we need to stay on the safe side and limit our changes to the strict necessary because of

the potential unintended consequences. So I think she – that's going in the same direction as what you seem to say in your general comment.

I'm seeing some traction in the chat for how sensible it is to remove this. So I think we can use this as our assumption, our draft answer at this point for Question 1. And move to the next question which is Question 2.

Question 2 is also on the mission. And it's related to the gTLD registry agreements discussions we've had. There was a note to drafters in our report in Annex 5 that is – that the lawyers attempted to translate. And one thing – there's actually two sub questions.

One is, to confirm that existing gTLD registry and registrar agreements should not be subject to challenge as outside of mission just because they have expired and have been renewed pursuant to the renewal provisions that are part of those agreements.

And the second sub question is to confirm that the new form of gTLD registry and registrar agreements would receive the same grandfathering treatment but only for the terms and conditions of the new agreements that were contained in the preexisting agreements.

So Becky, maybe it's worth explaining a little bit why this question was raised and what your recommendation is here.

Becky Burr: Yeah, so this is actually a complicated issue. I apologize for it. What we said in the report is that the provisions of the existing registrar accreditation agreement and the registry agreement would be immune from challenge on the basis of the language – would be grandfathered until they were replaced by another form of agreement.

Now that works reasonably well in the registrar accreditation agreement context where registrars have the option of going to a new form of agreement which becomes available. The same is not true for registry agreements. Those automatically renew on their term for 10 year periods of time.

The difficulty is that the sense of the group was that we were not grandfathering the provisions of the existing agreement permanently forever after. And we certainly don't want to create, you know, a way in which this can be gamed. But the simple fact of the matter is that right now ICANN has an obligation to agree to the – to renew the contracts on – by their terms.

So there is a bit of a disconnect between what we were trying to do and what - and the actual manner in which the contracts themselves work out. And since we cannot, as part of our process, modify the registry agreement and the registrar accreditation agreement, I think that we have a somewhat inelegant solution which is to use the language that's provided here but then have the registries and registrars negotiate potential changes in the context of, for example, further expansion.

Mathieu Weill: Thank you very much, Becky. So your recommendation would be to confirm both of the sub questions here in the light of the reality of the contract.

((Crosstalk))

Becky Burr: Well I guess…

((Crosstalk))

Becky Burr: Just to – I'd like to hear from Holly and Rosemary if they've had any further thoughts. We've been wrestling this to the ground fairly recently. And I wonder if there – any other solution has emerged.

Mathieu Weill: Okay so maybe I'll go to Kavouss and Alan and then back to Holly if you want, Holly. Kavouss.

Kavouss Arasteh: Mathieu, I don't have any problem if we could put some clarity. But do you remember how many hours we discussed this grandfathering then on joke or reality I said why not grandmothering. How much time we have spent. What I heard from Becky that for one, the grandfathering could apply for the other does not apply if (unintelligible) correct.

But the issue of grandfathering was very important that whatever agreement is already in place should be continued without being considered that they are outside the mission until they are renewed. Now Becky wants to separate registries from registrars, if I understood correctly. I have difficulty that one person at this stage or two from the lawyers proposing something which the group discussed for hours and hours and hours.

So if there is a proposal that proposal in a very clear language, not in the question 2, which is very complex, to put a clear option for further discussions at a later stage. So I am not comfortable with the answer given by Becky. I'm very sorry, I don't understand that. Grandfathering must continue to be applied. Thank you.

Mathieu Weill: Thank you, Kavouss. And I think Becky is stating in the chat that she was not implying that they would be treated differently. But certainly we need to get some clarity here. Alan.

Alan Greenberg: Thank you. I guess I'm also asking for clarity because although I heard the words Becky used I got really confused towards the end. What I'm trying to understand is what – with the current intent right now when a contract expires after 10 years and there is no desire from ICANN to change the terms, for instance, associated with voluntary PICs, even if they are outside of the mission, will they continue or will they not? I guess I'd like to have a simple answer to that.

Becky Burr: So…

Alan Greenberg: My understanding when we put the words together was the grandfathering would continue past renewal. Otherwise we're suddenly in a position where eight years from now the terms of a contract are going to change and perhaps the terms associated with why – how the registry was granted its TLD. So this is very…

((Crosstalk))

Mathieu Weill: Becky, would you like to clarify right away?

Becky Burr: Yes I would. Look, guys, there's no confusion at all. The notion is that the current terms and conditions would continue to be in full force and effect and could be renewed. However, the reports, and that includes voluntary PICs, so if ICANN never changes the form of agreement then they're renewed. But if, for example, there is an updated registrar accreditation agreement or there is a revised registry agreement associated with a new round of gTLDs, the report contemplates that existing registries and registrars would move over to the new forms.

That works for registrars. It doesn't work for registries because of the way the registry agreement is structured. So that's – so, Alan, the answer to your question is for so long as those forms of contract remain the forms that ICANN uses, and they are not replaced or substituted, they are grandfathered.

Mathieu Weill: Thank you, Becky. Robin.

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

Mathieu Weill: Yes, I can hear you okay.

Robin Gross: Okay so I actually am concerned about extending the grandfathering to renewals of existing agreements because it seems to me that sort of circumvents the whole point of having the mission limitation. I think that it's fair to say that we agreed that existing obligations with respect to things that could be considered outside the mission, would be out of scope.

But I don't think that it's fair to say that we went so far as to say all renewals because that just sort of is an exception that really swallows up the whole rule in terms of trying to put some kind of mission limitations on what ICANN can do. So I think it goes too far to include the renewals in the grandfathering clauses. Thanks.

Becky Burr: Could I just respond quickly to that?

Mathieu Weill: Yes, very quickly. And I'll try to close the queue after Greg Shatan. Okay. I just want to be very, very clear. The language says that this means that parties who entered into existing contracts intended and intend to be bound by those agreements. It means that until the expiration date of any contract, any such contract following ICANN's approval of a new or substitute form of registry

agreement or registrar accreditation agreement, that is in the report, the language that we use to describe the length of grandfathering.

So it clearly includes renewals. And I think it says that specifically that it includes renewals until such time as ICANN approves a substitute or replacement registry or registrar accreditation agreement. So, Robin, I just want to be really clear that we're trying to get – we're trying to be faithful to the language in the report.

Mathieu Weill: Thanks. And maybe Rosemary could add a few of the latest so it's on that in the lawyers team. Rosemary.

Rosemary Fei: Sure. So there are basically three categories of agreements I would say. There's agreements that are either in existence or shortly to come into existence. There are agreements that are not, you know, there's a form out there but there's no negotiation or there's no counterparty at this moment. And then there's in the future when there's a new form. So those are the three buckets.

The problem I see with the proposal language, and I think there's a sense in which the proposal language did not anticipate that both the registry and registrar agreements have provisions regarding renewal that doesn't allow ICANN to impose on the counterparty a new form even once a new form is in place.

In the case of the registry agreements they can't do it at all. I mean, there's no provision for a new form at all in the agreement. In the registrar agreement there is a provision for a new form but it's at the option of the registrar. If we put in place bylaws that require ICANN to impose terms, we are essentially requiring ICANN to breach the renewal terms of both registry and registrar

agreements. And that I think would spark an avalanche of lawsuits potentially if people didn't like it.

So I don't think that will work. So given what the existing agreements say, and by existing I'm also including everything that's kind of in process now, you're stuck with essentially permanent grandfathering because you can never force them onto the new form under the way those agreements are now. Now some of the registrars may opt for a new form when one's available, but we can't force them.

So I think – I don't think we have a lot of choice with respect to that first bucket. And obviously with respect to the last bucket the new form, who knows what that's going to say and we can certainly put in appropriate renewal provisions so that future new forms would also be able to, you know, which obviously the new forms are, I assume, subject to extensive community discussion and transparency and process so those are things that we would maybe feel comfortable requiring counterparties to live with the possibility that a new form could come down after, you know, when their contract renews.

What that leaves is the middle bucket. These are agreements that have not yet even begun to be discussed. Right, so there's no counterparty yet. There's – it's just in theory. We've got a form and we've got people out there who might someday want to use that form. And we have no new form.

During that period, right now anyone who comes in in six months and says, I want one of these agreements, is going to be using the existing form. But the existing form has this provision in it for renewals. So once you sign, even though it's not even in negotiation now, if in a year you sign something – ICANN signs something on the new form, it will then have to be

grandfathered forever just like the stuff in the first bucket, the bucket of existing agreements.

If…

((Crosstalk))

Rosemary Fei: As far as I know, the only way to change that would be to make a change in the renewal provisions of the RAs and RAAs. And I don't know whether that's even something we can discuss. I just don't understand how that happens, how new forms happen.

Mathieu Weill: Thanks, Rosemary, for highlighting that basically our choices are a little bit constrained here. Kavouss, your second round on this discussion and then I'll close after Greg.

Kavouss Arasteh: Yes, yes, my second round. I'm sorry we are opening a new idea. What some people said it was discussed lengthy or at length during the CCWG. The only thing with respect to the issue is, first, grandfathering concept. It is to be accepted. The second is the lifetime of grandfathering. One option which is embedded already is at the end of the contract. You could add something if everybody agrees a consensus saying that up to the end of the agreement unless otherwise specified and approved at later stage.

That means you leave the door open. Mathieu, we are not going to settle all the problems of the world now. There is an ICANN continued and we don't talk about new gTLD, we could live with that. So let us make the minimum changes if you could add something unless otherwise specified would be valid until the end of the agreement. This is one suggestion. Thank you.

Mathieu Weill: Thank you, Kavouss. Good suggestion. Greg.

Greg Shatan: Thanks. Greg Shatan for the record. I actually think this strikes pretty much the right balance within – in terms of what's being grandfathered. More specifically I think that renewals should be part of the grandfathering. We're talking about the same agreements and the idea that when we roll over to a new agreement recognizing there are complexities and fit issues here, but conceptually when we're coming around to using a different set of terms, you know, that's when the grandfathering should stop.

At that point there'll be, you know, whole serious set of reconsideration of issues that that point. But should not have agreements that are essentially going from acceptable to unacceptable on their terms solely due to the passage of time.

Related issue is making it clear that we're talking about essentially going to a new set of terms and not just any modest revision if there's a change to or an amendment to an agreement or a change to one provision of an agreement that should not extinguish the grandfathering. You know, that's essentially the agreement is continuing on its terms at that point and should remain within the grandfathering.

Otherwise we end up I think with a bunch of very odd things which is where an agreement that's been in place for instance for any number of years, is suddenly challengeable solely because it was renewed, solely because of the passage of time. And not because, you know, now there's a whole agreement in front. Thanks. I think we should avoid that. Bye.

Mathieu Weill: Thank you. Thank you very much, Greg. So my interim conclusion on that would be that certainly it's a matter where we've discussed – we spent a

number – a very important amount of time so we need to proceed with caution. We sort of have an inclination into confirming both questions. But by next meeting on Thursday we will try and provide a more substantial and argued – argument about why we inclined in this way so that the whole group can make sure we're all in line. So we have a good candidate for an answer. And we'll confirm on Thursday.

Question Number 3 is related to reconsideration requests. So we're going on to Recommendation Number 8. And there's a proposal in our report that says that recordings and transcripts should be posted of the substantial discussions at the option of the requestor. And there have been concerns between – during the drafting that this may add substantial burden and expense without commensurate benefits. I'm quoting here. And also concerns about some legal aspects like (unintelligible) contractual obligations, and so on.

So the lawyers were providing a provision to be considered that is slightly adjusting our requirement. And which is that if the party seeking reconsideration requests the board posts either recording or a transcript and the board shall decide between recording and transcript and the board may only redact the portion of the record that reflects privileged advice from legal counsel or includes ICANN trade secrets or for which if disclosed it would breach a binding contractual obligation or legal requirement, etcetera, etcetera.

So I think maybe I will go to you, Becky, for a quick word whether that's – that provision is the one that you would be suggesting.

Becky Burr: Yes, Mathieu.

Mathieu Weill: Okay. And I'm seeing a – I don't know if, Greg, that's and old hand or a new hand. Old. So, Edward – Ed Morris. Welcome, Ed. Ed, if you're speaking I

cannot hear you. Ed? Still nothing. So I suggest – I suggest that we move to the next speaker while Ed's sound is being sorted out. And the next would be Kavouss.

Kavouss Arasteh: Mathieu, I think there is a difference between a recording and the transcripts. I have heard several transcripts and I saw sometimes there are differences in the way that they have been assembled. Secondly, we are transferring the burden from ICANN to thousands of the people requestors, why not put it in an option? That on the request of the requestor, whoever is party, you provide either of the two, otherwise you provide both. If there is no specific request, you provide both.

But if there is such a request that I'm happy with the transcript – transcription – you provide transcription. Or I'm happy with the recording. Because the difference is a lot for some people to download the – this recording and so on so forth. So they may need both. So why we transfer the burden from ICANN to all other people. So can we make something is more latitude that depending on the request. Otherwise, provide both. So default would be providing both unless it is specifically requested either of the two. Thank you.

Mathieu Weill: Sorry, going off mute. Thank you very much, Kavouss. So you would be in favor of slightly adjusting this provision. Ed is now back on audio apparently. Ed. Still not hearing any…

((Crosstalk))

Mathieu Weill: Yeah, that's good. Now it's working.

Edward Morris: Sorry, guys. And thanks, Becky and everyone who put this together. When I first read this issue my first reaction was you have to be kidding me. We do

recordings and transcripts of sub groups of sub groups of sub groups of supporting organizations, of stakeholder group and supporting organizations. There's not a huge administrative burden here. We need the transcript in case the requesting party wants to take this matter further. We need the recording in order to ensure the accuracy of the transcript.

In terms of the redaction categories, they look reasonable. But I'd remind everybody that the defined conditions of non-disclosure of the DIDP look reasonable too. There's 12 of them. And at least some of us believe that the staff and board have used those maybe to avoid releasing information that should be released.

So what I would suggest, if we're going to go down this path – and I do agree that there is a reasonable cause of times for redacting information. There need to be a prescribed appeals mechanism, fast track, free of charge for the requestor. We can't put the board in the position of deciding what information is released or not released without providing the requesting party some sort of appeal to make sure this is done in the spirit in which it's intended. Thanks.

Mathieu Weill: Thanks, Ed. Robin.

Robin Gross: Hi. This is Robin. Can you hear me okay?

Mathieu Weill: Yes, Robin.

Robin Gross: Okay. So I actually didn't have a problem with ICANN wanting to provide either a transcript or a recording. I think that as long as one is provided that can – people who are present can check against their own memory, then that's probably sufficient. And I can live with that.

And I think it's reasonable for there to be a list of categories of things that for which the transparency requirements don't apply. However, I'm a little bit concerned that this was just a little bit too broad and a little too sort of subject to only the discretion of ICANN and its lawyers. You know, what they want to consider privileged information, what they want to consider trade secrets. Things like that I think can just be very broadly categorized and then barred from the transparency requirements.

And, you know, these are the kind of categories we see currently in the DIDP request denials. So, you know, there's a precedent for abusing these kinds of categories. And so I think we may want to just narrow in a little bit more on these categories to make them just a little bit but not entirely at the discretion of ICANN's lawyers and an opportunity to easily abuse the transparency requirements that would have otherwise baked into the reconsideration request process. Thanks.

Mathieu Weill: Thanks, Robin. Alan, Kavouss and then we'll try to wrap up this question. Alan.

Alan Greenberg: Thank you very much. I have no concern in theory. I have a real concern in practice about saying only transcripts in that the transcripts we often see are loaded with man, woman, man, woman and not always getting that right, unintelligible in brackets around the whole sentences, and just blatant incorrect transcription in others. So if all we're going to get is a transcript which might be loaded with those kind of things it's close to a useless document. Thank you.

Mathieu Weill: Thank you, Alan. Kavouss.

Kavouss Arasteh: Mathieu, I would like to draw your kind attention of everybody that the document that we are going to modify was gone through three public comments. And it was gone through the chartering organization, and approved by the ICANN. Unless we have a good reason we cannot change it just because of the wish or because of the view – legal view of somebody.

However, in order to have some clarity we need to maintain the envelope of the initial proposal as approved on 10th of March but we should further clarify that in order to make it easier for the people. And I agree also with Alan that transcribe or transcription sometimes there are a lot of difficulties and problems. And we don't blame anybody. So I would suggest once again that we leave it at the requestor to select between either of the two, however unless otherwise requested both should be available just for food for thought. Thank you.

Mathieu Weill: Thank you, Kavouss. I had closed the queue but Christopher's intervention would be the first in this meeting so I'm prepared to make a small exception for you, Christopher.

Christopher Wilkinson: Thank you. Very, very briefly. I think the staff should write proper minutes of these meetings. The transcripts are not very useful. I think Alan has made that point. And the recordings, well, if I don't have time to go through a conference call it is probable that I don't have time to listen to the whole of the recording either. I really think that things could be much – made much more simple and transparent if we had minutes of the meetings rather than relying on so-called transparency of transcripts and recordings. Thank you.

Mathieu Weill: Thank you, Christopher. I think this is an item where we are going to need some time to think about the various comments we've received. It's clear to

me that we have a very direct and straightforward answer to the question at this point. It's certainly a small deviation from the record so it's certainly natural. I think we'll try and come back by the next meeting with some form of proposal that tries to take into account the various inputs we've received. I'm not 100% sure we can make everyone happy here. But certainly it's a new issue, new question we hadn't considered in the report obviously since it's a change from it. So we'll have to come back to that question.

Number 4 is related to the review teams. So maybe I will just turn to Steve DelBianco, who was leading the effort on the AOC reviews to give us a flavor very shortly of the question and the proposed his way to see the answer. Steve, on the Question 4.

Steve DelBianco: Thanks, Mathieu. Question 4 gets to the idea that in the Affirmation of Commitments reviews that are brought into the bylaws how explicit should the bylaws be versus referring to some external document called Operating Standards for details.

We had a back and forth with a couple of board members and with ICANN Legal in late last year on this. And concluded that we needed to reflect what the CCWG report contained and there could also, in parallel, be operating standards at some point but we didn't want to lose any of the requirements that CCWG came up with. And I think that the legal teams working together came very close to satisfying the ability to do both.

But I have three points in suggesting how we respond to Question 4. And Question 4 asks, "Are the changes on operating standards acceptable?" The first thing I'll note is that it does feel acceptable that the draft bylaws say that operating standards would be developed with the global Internet community for the conduct and reviews under this section.

It goes on to say that operating standards have to be aligned with the following guidelines. And then they list the guidelines almost verbatim that were approved by the CCWG for the purposes of how review teams are composed. If you recall it was up to 21 members. The process by which the chairs of the ACs and SOs could make the assignments. So far so good. So I think on that respect we're in good shape.

Then, Number 2, the operating standards are also cited in Section 4.6.8.3 and that regards how a review team would make its decisions. And they didn't indicate in the draft bylaws that there was a requirement to align with what we said in the CCWG final report which was that in the event that a consensus cannot be found among review team members the majority vote of the members may be taken.

And that all of the majority and minority responses would be included in the final report. So that's in our Paragraph 58 of Annex 9, but it didn't make its way into the draft bylaws.

It's interesting to maybe take a queue on that whether members of the CCWG think that we need the bylaws to reflect how a review team goes to majority vote if it can't make consensus or leave the bylaws silent on that with the assumption that either the review team itself would determine its decision making methods or the community would eventually come up with operating standards for how review teams make those kind of decisions.

So, Mathieu, I could defer to you to see if anybody has a reaction to that. And my personal reaction is we can leave it alone and let the review teams determine it or get operating standards someday to address that. But I just

wanted to faithfully report whether the bylaws actually reflected what we had in the report.

And then I have only one small item to finish with, the third of the three items on this question. Mathieu.

Mathieu Weill: Thanks, Steve. And I think your suggestion is on the safe side into taking what is in our report and only what is in our report. Ed, I don't know if it's an old hand or a new hand. Okay so we have of course we have Kavouss. Kavouss.

Kavouss Arasteh: Yes, I have no problem to take whatever you have in the report. But the bylaw or bylaw is the highest level of the legal text. If there are some cases that we put in the operating standards, the approval or modification, if that does not have the same formalities of the bylaw, why not take that. But I have serious difficulty with the last suggestion of Steve that then we don't reach consensus we go to the majority. We had this discussion yesterday in the CWG and I opposed to that.

It is it up to the team or the convener to seek the consensus and we don't define consensus. It is not only GAC issue that is a consensus, means approval of everybody without the formal – consensus has various meaning, various types and so on so forth, draft consensus and so on. So we don't want to change from consensus to simple majority.

((Crosstalk))

Kavouss Arasteh: And even yesterday we discussed that. And we don't agree with that. Steve, I'm sorry, I can't agree with that. Thank you.

Mathieu Weill: Well Steve will answer but I think Steve agrees with you in terms of what we write in the bylaws. Steve.

Steve DelBianco: Yeah, here's the thing, Kavouss. Our job is to match up the draft bylaws with what the final report said. And as I just indicated, the final report in paragraph 58 of annex 9 says - and we approved this – in the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

So we said that in our report (unintelligible) and I'm trying to align us to the report. If we leave that out of the bylaws you have two implications. That either the review team determines it on its own, and we don't know what they'll determine. Or the community eventually develops an operating standard that would define how a review team reaches its decisions.

So under those cases we don't know what the outcome will be, but if we wanted to maintain absolute fidelity to what we approved, we would have to insert the words "in any event a consensus cannot be found, a majority vote of the members may be taken. I am comfortable leaving those words out on the assumption that the review team, or eventually the community, will do operating standards. So you're sort of off base because I'm not debating what's better, (unintelligible), I'm debating what is in a final report and trying to match that up with what we have in the bylaws. (Unintelligible) there's no further comments and then I can quickly come to the third one on question four.

Mathieu Weill: We have Sebastien first. Sebastien.

Sebastien Bachollet: Yes – sorry. Thank you Mathieu, and thank you Steve. Yes, just to be sure that I think as much as we can leave outside of the bylaw very defined things.

Too much definition or too much detail is good. And you can just think that – I agree with the fact that we produce (unintelligible) operating document because it was my proposition in the beginning and it's not new for you about my position. But I think it would be easier to have lighter bylaw and to have something else to deal with as this type of discussion. Thank you.

Mathieu Weill: Thank you Sebastien. So your last point, Steve? And then we'll conclude after that.

Steve DelBianco: Thank you. So this is the third and final point. Because it's the third time in the draft bylaws that the phrase, operating standards, was referred to in the discussion of the affirmation of (unintelligible) reviews and that is in section 4-6-A-4. And it relates to how the review teams can consider independent expert advice. And the bylaws on that suggest that operating standards will determine that, but our final approved report said, "the review team may choose to accept or reject all or part of the independent advice." And that's in paragraph 60 annex 9.

So in our report we said that the review team could choose to accept or reject all or part of the (unintelligible) and the bylaws are silent on that. Either leaving it to the review team or assuming that the community would come up with an operating standard about how to deal with that. This hasn't been a significant problem with the AOC reviews that have happened so far and I believe that it's acceptable to let that fall to the operating standards and not necessarily be in the bylaw. Mathieu, any discussion to that?

Mathieu Weill: Thank you, Steve. I see Alan's hand is up.

Alan Greenberg: Yes, thank you. I have only one minor concern. If the bylaws are referring to operating standards and they have not been written, does that fall back to the

group simply makes a decision? Or are they in violation – are we in violation of our bylaws by not having operating standards?

Mathieu Weill: Okay, that's the point we will take to the lawyers, I guess.

Steve DelBianco: Right, and I'll just quote Alan. It says in the draft bylaws that operating standards will be developed with the global internet community for the conduct it reviews under this section and it requires that they be aligned with guidelines. So the bylaws indicate that they will be developed. I'm unaware of whether they're complete – although we were told by staff last fall that operating standards were in development, but were not ready for circulation. And if anyone on ICANN board or management can give us a better indication of what the state of those operating standards is today.

Mathieu Weill: Okay, so let's not do that now, but so can we note the question from Alan to make sure we don't get into a deadlock here? I think question five – on this question we'll circulate the thoughts that you had developed, Steve, as a draft and on question five, which is on the SSR review, I think it's more of a detail. So maybe you can summarize it quickly and provide your recommendations, Steve.

Steve DelBianco: Happy to. The lawyers in drafting this bylaw for the security, stability and resiliency review. We'll just call it the SSR review – it's one of the four reviews required in the affirmation. They note that we did not in our final report we dropped one sentence from the commitment part. And without that sentence in there they wonder whether the rest of the section actually makes sense.

Okay, so I'll tell you the sentence we dropped. It's early – it's in annex 9 of the final report. We included everything from the SSR review except for this

sentence, "ICANN has developed a plan to enhance the operational stability, reliability, resiliency, security and global interoperability of the DNS, which will be regularly updated by ICANN to reflect emerging threats to the DS."

So that was a declarative statement in the (unintelligible) that ICANN has developed a plan for SSR and a promise to say that it will be regularly updated by ICANN. So we did not include that as a new commitment in the bylaws. Since I don't know whether there is an existing SSR plan. So my suggestion (unintelligible) is to quickly ask ICANN management, particularly security, stability and reliancy teams, to tell us what document that is. Give us a formal reference to how to refer to that document so we can reference it in this part of the review and therefore the rest of the concerns raised in question five will be addressed.

So all we need to do is to reference that plan specifically. I think the lawyers made a good catch on this one, but I didn't want to just put in the verbatim language of the affirmation because it vaguely refers to developing a plan. That's all I've got on that one. I think this one will be easy to solve.

Mathieu Weill: Okay, thank you Steve. Kavouss?

Kavouss Arasteh: Yes, I don't agree to replace plan with effort. Effort is voluntary in nature - almost, but not 100%. But plan could be something like security measures, so it is more a stronger word and we have difficulties. Replace plan with efforts. Thank you.

Mathieu Weill: Thank you. Steve, can we take that into account?

Steve DelBianco: Kavouss, the suggestion I just made agrees with you. I suggested that we find out what management describes as their plan and reference the plan.

Mathieu Weill: Okay, excellent. So I think we're good to go on five with your suggestion to reach out to ICANN on that. Question number 6 is about – it's getting on the section regarding the board – the ICANN board. Basically there's – the draft (unintelligible) are keeping the option for the board to remove directors without cause, which is an option that exists currently. And there's a question which is that considering that our proposal does not clarify how the board could obtain the consent of the empowered community, there's a few suggestion about how to achieve that.

And (Alan Greenburg) raised that question as well in one of this emails. I think there's a need to make sure we understand why there's a need for the consent of the empowered community first because that was not part of the repot. And Alan's speculation was that it was due to the fact that we have a designated model. I wonder if we could have some confirmation on the reason why there's the consent of the empowered community here from Rosemary first and then get into the discussion. Rosemary?

Rosemary Fei: Yes, Alan is exactly right. Once directors have been designated then removal by the board is only permitted with the consent of that designator.

Mathieu Weill: Okay, so that's something we had overlooked in our proposal then. And the proposals were – was to provide the empowered community the opportunity to oppose the removal using the escalation process and the (unintelligible) standard by this rejection process. So that would be an escalation process.

Rosemary Fei: (Unintelligible) recommendation briefly?

Mathieu Weill: Sure.

Rosemary Fei: Our thought was that if ¾ of the board, which is a fairly high standard, is finding a particular director appointed either, you know, named or originally by the nominating committee or one of the (unintelligible). So problematic from some perspective that they would like to stop working with that person. Because they're finding perhaps that the board meetings aren't going well or, you know, it's not workable. That that is something that in general, as a matter of good governance, ought to be respected.

So we chose the suggestion of looking at the same escalation process as a fuse for standard bylaws rejection. Because that's the one that says, you know, the board picked the bylaw and unless we really hated and can organize to oppose it we will live with the board's decision. We felt that that was probably the closest existing standard. And we didn't want to be creating a process, I should say. And we didn't want to be creating whole new processes.

And the only difference that would result between the way the escalation process works for standard bylaws and the way the escalation process would work for consenting to a board removal of a director is the last step – the number 3 there where it says if they do not oppose there has to be certification. Because we actually do need the designator's consent.

Mathieu Weill: Thank you very much, Rosemary. I think that lays out the question quite well. We have quite a few. I would encourage people to be brief about indicating either support or their concern with the proposed way forward. Brett?

Brett Schaefer: Thank you Mathieu. I don't have an issue with going through the existing processes in terms of exercise of the community powers to derive the EC consent on this matter, but I think we need to reverse that and go away from the rejection model to go toward the affirmative action model. Both would involve a three SOAC threshold, but I think you would get consent through an

affirmative action and you would get rejection – not get consent through a rejection because that would imply – it would sort of reverse the standard here because it would setup the situation where it wouldn't be ¾ vote of the board and the consent of the EC. It would be ¾ vote of the board and a lack of opposition from the EC in order to block this. And so if you're looking for consent I think you've got to go for affirmative action. Thank you.

Mathieu Weill: Brett, I think you're extending the requirement beyond what our lawyers are actually seeing as visible. So I'm not sure this is strictly a requirement. So it would leave – which leaves us with a question of opportunity.

Brett Schaefer: But it is a requirement they said because the designator must approve the removal…

Mathieu Weill: Yes, but they're suggesting this process and if I understand that if Rosemary's suggesting this process because the lawyers assessment is that this process is consistent with the California code.

Brett Schaefer: I'm not saying it's necessarily inconsistent. I'm saying it's a much more – it gives the board much more leeway in terms of removing a board member than would otherwise be the case. You're looking for a consent of the (unintelligible) board members.

Mathieu Weill: But our report says…

Brett Schaefer: And there's also a process here – a question is if an SOAC, an individual SOAC, is appointing an individual board member, that board member is target of a board dismissal and that SOAC can solely decide to remove or appoint them. How much say should they have in that process as well in terms of this? Could they then just reappoint the same member after the board votes ¾ to

dismiss them? I mean you're – I think in terms of a process and in terms of respecting the communities input here, having the community affirmatively say they sport the dismissal is a far more – a far less controversial or one to result in confrontation between the board and the EC than the opposite. Thank you.

Mathieu Weill: Thank you, Brett. Alan?

Alan Greenberg: Thank you very much. Clearly it's somewhat unfortunate that we weren't aware of this requirement ahead of time. My first inclination was to say that we should use the same processes we used for fundamental bylaws, which essentially is the same situation that the board takes action and it has to be confirmed by the empowered community. However, both of these processes – both the one proposed and the one I just suggested I find somewhat troublesome.

If the board is actually taking action to remove a director, I think it's important the direct cease to be active immediately and not still be there during the – what will effectively be weeks of time for either the community to decide they're not opposing it and certify that they're not or to support it and certify that they are supporting it. So either way I find that somewhat troublesome.

So I guess I'd like to hear from the lawyers. Is there a mechanism by which that person can succinctly be off the board pending the community taking action? And at that point I'm not particularly concerned which direction it's taken in and, you know, as for what Brett said clearly since no single AC or SO can veto the board could remove an AC or SO director and that AC and SO could not stop it. They could reappoint them, but they couldn't stop it. And I'm not unhappy with that, but I really would want to make sure – find

out is there a way that when can do it such that the director is removed effectively – immediately and we're not dragging out for weeks or months while the community takes action or decides not to take action. Thank you.

Mathieu Weill: Alan, just noting that you had an answer that it's (unintelligible) in the chat.

Alan Greenberg: Sorry, your voice is mangled, Mathieu. I don't know what you just said.

Mathieu Weill: Okay, so just check the chat where (Holly) said it's not possible from a legal perspective.

Alan Greenberg: Ah.

Mathieu Weill: Which is general governance. You don't dismiss a board member just like this. (Unintelligible), and I'm closing the queue after Rosemary. Kavouss? Kavouss, if you're speaking I cannot hear you.

Kavouss Arasteh: Do you hear me now?

Mathieu Weill: Yes.

Kavouss Arasteh: Yes, the issue is that the board removing the director or (unintelligible) director with the threshold and consent of the designating community. Why not we take the same text when we the community removed the director? The final decision will be within the nominating constituency, but invite comments from other constituencies. So the text is mentioned in the (unintelligible) invite and considered comments from the SO and AC and then the majority within the (unintelligible) majority within the nominating community. So why not in this case (unintelligible) comments from other SO and AC. However,

the final decision and consent remains within the designating communities. So why not (unintelligible) the same text? Thank you.

Mathieu Weill: Thank you for your suggestion, Kavouss. Jordan?

Jordan Carter: Hi everyone, it's (Jordan Carter). Good morning from (Unintelligible). And I have a different view on this one. I don't think there's any mandates in my reports to do anything to the board's power to remove a director. And so I don't think it would be proper for us to impose the explanation process in any way. I think this is much more like the fact that, legally speaking, the designator needs to approve the removal, but practically speaking – as with the appointment processes for the SOs in (ILAC), it should be an automatic action.

In other words, we shouldn't be seeking to tie down and restrain the board's ability to use this power because we've got no mandate to do that from the proposal that was approved on the 10th of March. If we do have that mandate I can't remember it being in the report at any of our draft stages. So I would much prefer there to be kind of an automatic validation process. So there isn't a decision – there isn't an escalation process – there aren't weeks of delays. We have lots of remedies if the board fires a director that the community didn't want fired. And altering that process without a mandate shouldn't be one of them. Thanks.

Mathieu Weill: Thank you Jordan. Greg?

Greg Shatan: Thanks – Greg Shatan for the record. First, I'll agree with Jordan in that I think that beyond that, you know, at most it should be the other way around. That, you know, perhaps the empowered community should have the power to overrule the board removal – at least the board removal without cause for a

board member. Where we're talking about board removal with cause, which I see (Steve Crocker) posted a couple of things in the chat that I would consider to be with cause – for instance – and I think these may actually be in the current bylaws – taking, you know, just sure absentee-ism or violations of confidentiality or conflict of interest or things like that. I think that the EC is out of bounds in having a role in that kind of a removal. And I think we need to be careful, generally, from kind of introducing new matter into our work at this point. It's one thing to clarify our decision. It's another thing to start extrapolating, which we should avoid. Thank you.

Mathieu Weill: Thank you, Greg. I'm seeing people adding themselves into the queue again and we've asked (unintelligible).

Seun Ojedeji: Hey, Seun, let's (unintelligible) the queue.

Mathieu Weill: Okay, Seun, I had closed he queue already.

Seun Ojedeji: Oh okay.

Mathieu Weill: But we'll – I mean we'll certainly circulate something for the list on that topic. I'd like to hear - Rosemary can probably give us a – insights about the legal feasibility of the various options. Rosemary?

Rosemary Fei: Yes, very briefly. I think this is really not a legal decision that you need to make. It can be done largely along the ways Jordan has suggested – not quite the way Alan described it in the chat, but essentially that the empowered community would have an obligation in the bylaws upon notice that the board has voted by the required level to remove a director without cause to consent. We could draft that in I think legally given the flexibility we have with the unincorporated association governance form. We could also use the standard

bylaws approach, which would give the community a chance to object if they really felt strongly and mustard the level required or we could go all the way to actually requiring a full escalation and consent in the same way that we do for fundamental bylaws changes. So really all three options can be done legally. We just need your direction.

Mathieu Weill: Thank you Rosemary and certainly I think the point for this is what is closest to our existing reports and we should introduce this as (unintelligible) new requirements or powers or phases as possible in this – at this point of the process. Alan, I understand you're insisting on a last word before I conclude?

Alan Greenberg: No, I'm not insisting. I would like to see what Rosemary said in the chat or something because as words fly by when I'm listening I don't always capture the full substance of what it is. So I would like to see that in some level either now or immediately after the meeting. I suspect one of the – her options is quite acceptable.

Mathieu Weill: Thank you Alan. And indeed what we will do is elaborate a little bit on what I've called the Jordan option – the Jordan approach. Because my impression is that this is the closest from the requirement to the requirements of our report. Elaborate on that and include that as a draft answer to the question so that everyone can consider it in the meantime with the next meeting.

And with that, we are going to make a big leap in the document because the next questions are for the CWG and so follow me, if you will, until question number 25. Oh, have I missed 7? Where's 7? Oh, I've missed 7 – sorry. I was too optimistic. We need to go back to 7. And 7 is about the interim board. And our proposal was silent on how the interim board would consult with the community to make major decisions. And the suggestion from the legal teams is that the interim board shall, A, consult with the chairs of the SOACs. B,

consult through a community forum in a manner consistent with our community forums prior to taking actions. And the question is whether this process are the right ones. I don't know, Jordan, if you would as the (unintelligible) for (unintelligible) would you like to share what your thoughts are about the relevance in the context of our report?

Jordan Carter: Sure, Mathieu. Hi, it's Jordan here again. I – this isn't something I think that we gave a great deal of thought to and the approach of using the SOAC leadership as a sounding board there makes sense to me. It's a known group of people. There are existing methods for the board and the executive to reach out to that group of people and if something comes through there that's going to cause concern, those people are the head of organizations that can easily be notified and mobilized to deal with any concerns. So I think it's a nice, simple, pragmatic way to.

Mathieu Weill: Thanks Jordan. Greg? Or is it an old hand, Greg?

Greg Shatan: It's either an old hand or I'll pass.

Mathieu Weill: Okay, I'll take a pass for an answer. Sebastien?

Sebastien Bachollet: Yes, thank you Mathieu – Sebastien Bachollet speaking. I think we need to try find as much as possible a way not to couple the decision from one body and asking (unintelligible) what it is they are thinking about. We must be confident that we put an interim board – if they need to have a very early decision because it's an interim board – if they need to go through a discussion with everybody ICANN will be already dead, but this time it will be the end.

And I suggest not to have those rules. We the community choose an interim board and we need to trust them if (unintelligible) process is going wrong.

And the second point, if we decide to have discussion, is it with the chair of the SOAC or is it with the (unintelligible) community council. I read somewhere that there is (unintelligible) council that may be it could be the best way if we (unintelligible) to have some discussions. Thank you.

Mathieu Weill: So I don't think the EC council is a good approach because it's supposed to be an administrative type of body that just collects and rubberstamps decisions in the construct of the reports. But I take your point about not imposing too many rules. So I think we need to be conscious of that. Kavouss?

Kavouss Arasteh: Mathieu, does paragraph not discussing this issue? It mentions that the ICANN board will (unintelligible) they accept in the circumstances where the urgent decisions are needed to protect the security, stability and the resilience of the (unintelligible) the interim board will consult with the communities to to the (SONAC). Is this not the case here? Paragraph 98.

Mathieu Weill: Oh, case settled. Case settled. You know the report much better than me, Kavouss.

Kavouss Arasteh: Yes, (unintelligible) 98 explaining that.

Mathieu Weill: Excellent.

Jordan Carter: Because all this question ins – Mathieu, it's Jordan. Sorry to interrupt.

Mathieu Weill: Yes.

Jordan Carter: All this question is is about how that is done. So all of this is asking for the clarification of how that requirement to consult is actually achieved. And the lawyers have made that concrete suggestion (unintelligible) SOs and ACs. To me, that makes sense. It's consistent with our reports. It's nice and simple.

Mathieu Weill: Excellent, thank you. Alan?

Alan Greenberg: I can accept silence that trust that the interim board that we put in place will do something reasonable. I can accept saying it's the chairs of the ACs and SOs. Anything more complex than that I would object to very strenuously. Thank you.

Mathieu Weill: Thank you, Alan. Okay, so we seem to have a way forward in how to answer positively about the processes that we need to be – that need to be lightweight on question 7. So now we are moving to question number 25, which is a very interesting one because it's related to the – our well famous cop-out. The question is, that there's a requirement to describe how a petition in the empowered community process can be identified as based on GAC advice. And there was a discussion about whether the word solely was sufficient and that's maybe in some cases quite difficult to assess. So I know, Steve, you gave some thought about this question. Maybe you can share your understanding of the issue as well as a proposed way forward with the group. Steve?

Steve DelBianco: Thanks Mathieu. It's (Steve DelBianco) and I discussed this today with (Matthew Sheers) who is also on the call. And we agree with the legal teams by saying that the words almost solely is a bit unfamiliar to speakers of English, let alone those for whom it's a second or third language. I think that the concept makes sense and that GAC advice there are going to be instances

where the GAC advice will not be solely based on or entirely based on the GAC's input by the time ICANN's management makes a decision.

It could be acting on a budget item for a particular piece of GAC advice, but GAC advice may have been supported by another AC or an SO. In which case is it solely at that point acting on GAC advice? Or maybe not. So there needs to be some shade of grey there for what is acting on GAC advice. So just parsing the words, solely or almost solely, was very difficult. So the recommendation (Matthew Sheers) and I have is to use the words entirely or almost entirely. Entirely or almost entirely – it's just an easier way to understand the concepts. It preserves the need for a shade of gray in that if you just said entirely (unintelligible) what happens if the GAC advice isn't the only means by which ICANN decided to take an action? And then we would not be able to invoke the carve out.

So the idea there is to preserve the carve out when we need it, when something is clearly either entirely based on a GAC advice or almost entirely. And that proposed – that's how we addressed that. Thanks Mathieu.

Mathieu Weill: Thank you Steve. Next is Malcolm.

Malcolm Hutty: Thank you. I'd like to…

((Crosstalk))

Mathieu Weill: Noted (Unintelligible). Malcolm?

Malcolm Hutty: Directly arrange of common terms that are used in these situations – primarily is one, substantially is another, significantly would be another – that would give you a range of weights. I would be concerned about using any language

which limited it so tightly to this that actually the recommendation was not given effect because, for example, the board conducted a public comment and also took into account the results of the public comments as well as the GAC advice before forming and (unintelligible) its policy and then said, oh, it's not based solely on the GAC advice. It's also based on the public comment feedback. That really undermined the effect of the recommendation that we've given. So I would suggest something less than solely or almost entirely, but significantly or substantially or primarily or materially as options to be considered.

((Crosstalk))

Malcolm Hutty: It's a little weaker than what Steve just said.

Mathieu Weill: Thank you Malcolm. Next is Kavouss.

Kavouss Arasteh: Mathieu, I'm sorry I don't understand the discussions and I would like that somebody clearly explain what is the difficulty. What is the problem (unintelligible) two people in the drafting team that they not agree with each other and are creating some of the (unintelligible) solely, entirely, significantly, remarkably and so on and so forth? All of this (unintelligible) I don't agree. Because it delays to a very very sensitive issue. Please kindly clarify what we are talking – what is the problem – what is the discussions. Thank you.

Mathieu Weill: Steve, would you like to attempt to respond to Kavouss' question please?

Steve DelBianco: Kavouss, this is Steve. It's not a disagreement among members of the drafting team, nor even among members of the CCWG. It's trying to find the right words to know when the carve out is appropriately exercised. And we talked

about our draft report said that the carve out is there. When the board is acting on GAC advice – GAC consensus advice. That that action (unintelligible) action of the board, if challenged by the community, would invoke the carve out for the GAC.

So the question is, how do we define it in the bylaws? Where language is more precise, how do we define acting on GAC advice? And the lawyers in their all-nighters were looking at ways of saying, does it mean entirely on GAC advice? Solely on GAC advice? Substantially? I mean they're trying to find the right word and we are trying to help find the right word. And we can all understand so that it cannot be gamed in such a way that the mere posting for public comment – the mere indication of one other entity supporting a particular action means that it's not based on GAC advice anymore. On the other hand – now on the other hand, if the GAC advice came in and the entire community supported it, then that wouldn't seem to be entirely based on GAC advice. So we're trying to find the right words and is an appropriate conversation at this point. Thank you.

Mathieu Weill: Thank you very much, Steve. Alan?

Alan Greenberg: Thank you. The kinds of things that worry me are if the GAC gives advice, but the (ALAC) also gives similar advice – and that's number 1. Or, number 2, the situation is the GAC raises something and the board says, gee, we never thought of that before. That's really true. They're no longer deciding it based on the GAC advice – simply the fact that the GAC raised it. I think it all comes down to what the rationale is that the board uses to justify its action. And, you know, I think words largely like, but it's going to be a subjective call at that point because it's got to be geared off what is the rationale for taking the action. I'm not sure how we can have a black and white situation

that doesn't require judgment by call by somebody at that time. At least I don't know – I don't see how. Thank you.

Mathieu Weill: Thank you, Alan. Rosemary?

Rosemary Fei: Yes, I think actually it's – Alan's point was a good segue into what I'd like to say, which his that I want to be clear that there are two different steps to this process and we shouldn't conflate them. The first one is that the board has to determine when its decision – when it makes the decision that it is essentially following or consistent with GAC consensus advice, the bylaws draft says that the board has to determine whether the GAC advice was a material basis – and that's not the exact words we use, but a material basis for the board's decision.

And, if so, the board labels that decision a decision based on GAC consensus advice potentially triggering the carve out. So the first step is that the board thinks – and I think that's exactly what Alan was saying. The board has to think about – because, yes, sometimes there's going to be five things – five different groups all giving the same advice. Was it really because the GAC gave it that you did it or not? So it can't just be that you happen to follow GAC advice and, you know, we felt that the best we could do was impose on the board a materiality.

Decide what was material to your decision. Once the board does that and labels – then we get to the second step. Now we have somebody objecting and the concern we had here is that GAC advice – let's take the budget. GAC advice might have been followed on one piece of the budget, but not the whole rest of the budget if the GAC advice concerned only a piece. And that's where we got into this idea that you – the person complaining about the board decision based on GAC advice, has an obligation – is in a position to frame the scope of their objection. And they have to tailor it to be basically about the

GAC consensus advice issue. And the idea of having a little bit of wiggle room was that there might be some issues where it's virtually impossible to tailor it to only address the GAC advice because the issue is so intertwined with something else that you couldn't frame it that way and we didn't want people to be prevented from framing a complaint.

Then, if they have a broader complaint, that's where you get into this bifurcated – maybe there are two rejection processes proceeding at the same time, one of which is solely or, you know, just terrible wording we had initially related to the GAC advice piece that the board has identified that the GAC consensus advice was material to their decision. Or if it's not – it doesn't meet that standard, then you have a separate rejection that would not have the GAC carve out. I hope that helped.

Mathieu Weill: Thank you Rosemary. Kavouss, Jorge and then we'll close this discussion for now. Kavouss?

Kavouss Arasteh: Yes, Mathieu, I am very very sensitive to all of this discussion. People – they describing many things – all of (unintelligible). Alan says that may be GAC advice plus (ILAC) advice. So we should take them individually. GAC advice means the advice coming from GAC only, not from the others. So we just take that one and we carve out relate to the GAC advice. And that is only it. If we want to talk about strictly or exclusively and so on and so forth. So I don't think that we should mix of the situation.

The carve out is that if there is a GAC advice and (unintelligible) a GAC advice is not in line with the bylaw, the board would not accept that. It (unintelligible) the bylaw the board accepted then the communities object to that and that is another process. So we should see GAC advice entirely and different from any other mixture of any other advice. Because that is the

whole thing that I sent you. A long message of today – the people and the lawyers, they mix up the GAC carve out totally and that is the subject of my email. I put it in color and I explained why it is a total misunderstanding of the carve out created by some colleagues and so on.

So we do not agree to mix up the situation and it is very very critical. So we should just (unintelligible) GAC advice where (unintelligible). Some part of the budget is GAC advice. We don't take this advice on the budget - a little bit of the budget. What does it mean a little bit of the budget? GAC advice certain of something and that advice should be considered GAC advice. If there is (ALAC) advice that is another issue. I don't think that that should be mixed up with the GAC advice. They're two different things and the board should see them separately. So I cannot agree with any text unless we have a clear understanding of what is the carve out is. And probably is not replicated in the bylaw as I see in the section – article 3 in section 33 and second 3 F I or II, totally mixed up and I am confused with all of these things because people misunderstand everything. Thank you.

Mathieu Weill: Thank you Kavouss. Jorge and then I'll do my best to summarize. Jorge ?

Jorge Cancio: Hello, good evening. Do you hear me?

Mathieu Weill: Yes. Yes, very well, Jorge .

Jorge Cancio: Hello, Jorge Cancio here in GAC Switzerland for the record. I had – the question is trying to address the situation where a board decision is based on different inputs from the community. One of them being the GAC inputs. So in that situation I think that we need a rule of conflict to say – to make sure that the carve out is not (unintelligible) and does not act also as a disincentive for the GAC to engage into community dialogue with other SOs and ACs.

So perhaps the – another – I wasn't a proposal of the carve out rule, but I guess the object or the finality of this carve out was to exclude the GAC from decisions of the board being challenged by the community when those decisions are based distinctively on something only the GAC said. And not something which could have been shared by other parts of the community. So perhaps this should be an element to reflect the thought that the carve out and the exclusion only applies where there is this distinctive element or this distinctive basis on a GAC advice and GAC consensus advice. And this is – this GAC consensus advice is clearly differentiated or unique (unintelligible) inputs given by other SOs and ACs.

And this would be my take of the issue and also a question to the lawyers because this has never been very clear to me. (Unintelligible) conflict of interpretation on these rules, who gets to decide in the end on the interpretation of (unintelligible) almost solely or distinctively or whatever we include in the bylaws on this topic. Thank you.

Mathieu Weill: Thank you Jorge . Actually, before summarizing I need to go Sharon that – I'm sorry, Sharon, that I overlooked your place in the queue. So you have the floor, Sharon.

Sharon Flanagan:: Yes, thank you Mathieu. Can you hear me?

Mathieu Weill: Yes, I can.

Sharon Flanagan: Okay – yes, so I didn't know – I lost audio – I don't know what the (unintelligible) discussion. I'd like to comment on the options that was presented in relation to the carve outs. I think – I don't really know what is (unintelligible) the options. I think it should be straight forward. The proposal

was about the – the carve out was about the board's action of GAC consensus advice. (Unintelligible) almost entirely (unintelligible). It is GAC advice or not. If there is a public comment where GAC made its own consensus advice toward the public comment (unintelligible) SOs as AC also did (unintelligible). That is not entirely GAC advice. It's the community that is (unintelligible) the carve out should not be applicable in that situation. I think it's – the proposal was straight forward. I don't think we need to (unintelligible) this process unless (unintelligible) a distressed stage. Thank you.

Mathieu Weill: Thank you, Sharon. I think your point is clearly (unintelligible) adding to the discussion, which shows that we have a range of options, a range of words available. There's a diversity of views as well raising issues about appeals that Rosemary is attempting to actually address in the charts. So there's need for further work on that one. So it's a complex one that we need to provide a draft approach to – before the next meeting. That I don't feel we're in a position to actually conclude on that one. So thanks to the legal team for raising this. That's going to be an interesting one.

26 would be – maybe a quick one. Maybe we can be fast on 26. The – question number 26 is a suggestion to increase transparency by adding a requirement for the decision or participants supporting a petition to give notice with some language proposed. I think it goes in the right direction. There's no harm in adding transparency into the decision of participants by notifying to the various stakeholders and so I think we could go for approving this one fast unless there's an objection on the 26 which, once again, only adds a little bit of transparency to the decisions of the (unintelligible) participants. And seeing no hand up, that's going to be our entering position. And I now have the pleasure to hand over to Thomas for the remaining – how many questions Thomas?

Thomas Rickert: Yes, it's a couple of questions. Let's try to be brief and get as much covered as we can before the top of the hour. Looking at question number 27 now. There's the possibility that in PDP requires a change of bylaws - that could be fundamental bylaws as well. So the question was whether that should follow the standard for standard bylaws or for fundamental bylaws. I think – we think, having prepared this, that if changes to fundamental bylaws are required these changes should be following the procedure for changing fundamental bylaws. Otherwise, our requirement for fundamental bylaws would be diluted. So unless there's opposition to this in the chat or hands are raised, I would suggest that this will be our response to the legal team. Then question number 28 – oh, Jordan's hand is up. Jordan?

Jordan Carter: Just really quickly, Thomas, to clarify that you would use the fundamental bylaws change process, but the So that did the PDP would have to agree. So they would still retain the protection of their PDP while we were still following the process.

Thomas Rickert: Correct. And I guess that's something that we had in the report already so that wouldn't be a change or clarification to the report. Thank you Jordan for adding that. Let's now briefly look at 28…

Mathieu Weill: Thomas, (unintelligible).

Thomas Rickert: Malcolm?

Malcolm Hutty: Does the report require us to remove the rights of the SOAC to object to the bylaws change? Because clearly the final report must have primacy in this, but if this is being introduced anew I think it's highly questionable. It may well be that the PDP gave rise to the bylaws change, but is being implemented in a

way that the SOAC does not support and would wish to object it, doesn't agree with the way the board has done it, doesn't believe that it needs – the change that's being made needs to be done even though some change needs to be done. So I would – I don't see that requiring the SOAC to support that bylaws change is at all appropriate.

Jordan Carter: Malcolm, it's Jordan here. Just to clarify that's the whole point. So if the SO doesn't approve the change, it can't happen.

Malcolm Hutty: All right, thank you for the clarification. I remove my objection.

Thomas Rickert: And, again, that's not a deviation from our report because that's exactly what we had in our report. I'm afraid we have to end this exercise now. We are two minutes to the top of the hour – now one minute to the top of the hour and (Aaron) has mentioned that he has an (AOB) as well as Kavouss. So Kavouss will go first and then we will hear from (Aaron).

Kavouss Arasteh: Thomas, I think we, members of the CCWG, to work together for 10 months in a way to collaborate with each other in a professional manner. Some, not all, GAC members are very disappointed, frustrated and even was angry of the statement of one of the persons who made testimony before the sub-committee of the house and in many areas GAC was the aim of the testimony and in one of the items among seven or eight it mentioned the follow, "while reducing GAC influence to several measures, it is clearly a net gain for ICANN private sector stakeholders when a particular constituency has a net gain means that the other constituency has a net loss." I don't think that that was an objective of the entire group. That created considerable difficulty in the GAC – a lot of email was exchanged. Some people – they talked that this is totally offensive to the GAC. Some people wanted to react.

So I am very very sorry to hear some sort of (unintelligible) to perhaps make the sub-committee happy to what has happened and saying that, okay, very good. You have done a good job now the GAC influence has been reduced to the minimum – almost zero – and the private sector has a net gain. Does (unintelligible) talking of gains and losing something? Or we are saying that (unintelligible) or equal (unintelligible) is what this statement is about. Thank you.

Thomas Rickert: Thanks very much, Kavouss. I think it is (unintelligible) would like to respond to that and then we will move to Alan.

Steve DelBianco: Thank you, this will be quick. Kavouss, you know very well that I'm the strongest offender of making sure the GAC is part of the empowered community decisional role that many other object to. I want you to understand something, I was asked by the committee's chair to respond to a statement by another witness that was submitted and their statement called upon the US Commerce Department to extend the (IANA) contract by two years. Because the proposal, "Would greatly enhance the power of governments within ICANN relative to the status quo."

So my response to that statement was what you would expect it to be. I suggested that adding the that to the empowered community is appropriate and I explained why. And I went on to say that GAC consensus advice has been constrained significantly in the sense that only true consensus would enjoy the special treatment even though we have increased the threshold for board rejection of GAC advice. But on balance I believe we did not increase government's power at ICANN. And I had to make that statement to rebut the statement that GAC's power had increased. So those contexts should be appropriate for you to understand that I was asked to respond to a statement that claimed government's got too much power and that the entire transition

be extended by two years. So I hope that helps you understand a little more of the context.

Kavouss Arasteh: No, it does not. You said a net gain for the private sector. You consider that you gained. You considered that GAC was lowered down. I don't use another word. So that is your statement that a net gain for the private sector. Thank you.

Thomas Rickert: Thanks, Kavouss and thanks Steve. I think we need to end this discussion. We're three minutes beyond the top of the hour. Let's hear Alan now.

Alan Greenberg: Thank you very much. When I raised – in the email when I raised the issue regarding question number 6 and I pointed out that it wasn't just that we hadn't specified how the community would support it, but we hadn't specified that the community would even have to support it. I asked for the legal team or whoever to identify any other changes they have made to our proposal, which were simply put in perhaps because a matter of necessity were put in. This one raised – this one came up as one of the questions because they had a quandary of how to implement it. But I would really like to make sure that if we have anything else that was put in, that it be highlighted explicitly. We not have to find them ourselves. Thank you.

Thomas Rickert: Thanks very much, Alan. Sebastien, you just raised your hand. If you could please keep it brief.

Sebastien Bachollet: Thank you, Thomas and, yes, I will. Just to say that the document we received seems missing in the table of contents annex E, F and G. And I would like to suggest that as the change of numbering from Roman to Arab number was a good move that we use one in 1.1 and so on and so forth. Like that when you cut one part of the document it's easier than today when you

have to say it's in the one 1AH or whatever for purposes of discussion. Now the point it will be better if it can be done it would be great. Thank you very much.

Thomas Rickert: Thanks very much Sebastien. I would lease that to the drafting team that has heard your comment. Before we end the call, let me briefly announce that in order to get our answers to the drafting team as quickly as possible we will offer suggestions for questions on the remaining questions until question number 34 on the list tomorrow for you to be able to comment o and then hopefully save some time during the next call to get those answers finalized. And, also, we would like to encourage you to send to the list issues that you have identified. We need to discuss or issues where you think that the draft falls short of what we have in our report so that we can then try to offer responses to you or as the case may be pass the request on to the legal drafting teams. So with that we would like to thank all of you for your participation in this call and for your contribution. We will continue the conversation on the list and reconvene on Thursday. Thanks everyone and bye for today.

Woman: Bye.

Man: Thank you, bye bye.

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