

**ICANN**

**Moderator: Brenda Brewer  
April 7, 2016  
7:00 am CT**

Mathieu Weill: Thank you very much. Welcome to this Accountability call on the review of the draft bylaws. This meeting is the second on this very topic. And before we start we'll proceed with the administrative matters. And I would like to give the opportunity for anyone who is audio only to signal their presence so we can add them to the roll call.

Leon Sanchez: Mathieu, this is Leon. I am not in the Adobe Connect room.

Mathieu Weill: Thank you, Leon.

Jordan Carter: Jordan too, not on the Adobe Connect room.

Mathieu Weill: Okay Jordan Carter, noted. Anyone else? Okay. Is there any updates on Statements of Interest? No. So I think this is dealt with. And to start this meeting with a couple of opening remarks, I'd like to actually address the point that Kavouss Arasteh is asking for in the chat which is the working methods.

And it's a reminder of the – of a couple of things we've discussed in previous meetings so that we have indeed – we're all aligned on what we're doing today and what the next steps are.

We have received a rough draft of the bylaws by our lawyers and with a list of questions. We've agreed that focusing on answers the questions is our top priority and as a consequence that is what we are going to focus most of our call on.

We've also agreed, back in Marrakesh, that a detailed certification that the bylaws address fully and exhaustively our recommendations is an exercise that has been delegated to our CCWG legal team.

And we are all aware that we haven't received this certification yet, which is proceeding according to plan, and so the paragraph by paragraph or detailed review of the bylaws is not going to be our focus at the moment until we have received the certification by the lawyers. And then we'll have a last opportunity to chime in if there's anything that the lawyers find is inconsistent in any way with our report.

So this is I think extremely important for the efficiency of our call today that we keep these ideas in mind. Also a couple of just one single principle that we need to apply when checking the bylaws that have been provided is the need to ensure that these bylaws fit our – addressing our requirements as detailed in the CCWG supplemental report. And they should implement this requirement completely but no more no less.

And so any issues we have to raise we need to be extremely clear about in what ways they're a gap to the report and we should refrain from either

moving away from the requirements or going beyond the requirements. I think this is something that's very important at the beginning of this call.

And that would be it for me on the working methods. And I know a couple of hands have been raised on that matter so I'm now going to turn over to Malcolm for his first intervention. Welcome, Malcolm.

Malcolm Hutton: Thank you, Mathieu. You said that today we're going to be focusing on the questions that have been put to us and that post-certification we will focus on any discrepancies that the lawyers identify at the time of certification. When will there be an opportunity for us to consider any discrepancies that we have identified that the lawyers have missed?

Mathieu Weill: So as we said, thank you, Malcolm, for giving me the opportunity to clarify this. It's a very good point. We said that we had until our group was asked during the last call to provide any gap discrepancies that we would find by April 9th so we have another 48 hours.

Discrepancies would be then handed over to the lawyers to double check and then we will have to look at this once the next version of the bylaws come back.

Malcolm Hutton: Okay in that case...

((Crosstalk))

Malcolm Hutton: Okay in that case is in order to raise discrepancies in this call? And if so may I ask for one to be added to the agenda for this call?

Mathieu Weill: Okay so when we get to the list of questions if we have time available at the end, and I hope we do, then certainly it will be a good time for raising this point, Malcolm. If we did not have time can I – could I kindly ask you to put that in writing on the email list?

Malcolm Hutty: Okay.

Mathieu Weill: I think it's – anyway in the end we'll have to put it in writing but I hope we can discuss this during this call.

Malcolm Hutty: Thank you.

Mathieu Weill: Next in line is Kavouss. Welcome, Kavouss.

Kavouss Arasteh: Some clarification required. The transposition or transformation or translations of the CCWG supplemental proposal as approved on 10 of March was passed to lawyers. But the approval of that is up to us. We are not going to put ourselves at the mercy of few people getting in a corner and working very, very, very hard 24 hours around the clock.

Nevertheless this is right of the CCWG to ensure the accuracy of the transformed or translated or transitioned or whatever you call them, of the corresponding recommendation into the bylaw. So we have to go through that. Whether we go section by section or whether we go paragraph by paragraph that is another issue.

But I don't think that we should close our eyes and just put into the basket the result of 14 months of the hard discussions, so on so forth, saying that okay this is the lawyers and this is the ICANN lawyers and that is the (unintelligible) and so on so forth.

So we say is there any comment? No. Or like Malcolm mentioned, someone take a discrepancy going from top to the bottom. That is not true. We have to go systematically article by article to see whether it is reflected. I have seen the Annex 3 many things have not been totally understood.

So how we can do that? We have to go through one by one to see whether (unintelligible) or not. I give you an example. Carve out has been extensively extended to many areas which is not required. Its application was very, very limited. And then some of the term has been used is very awkward, even for me the language is not my mother tongue and I don't claim that is mother tongue, but it is very difficult to read, very long, title of these articles. This issue was much more simple of that.

Approval of the fundamental bylaws, that's all. But not so many word putting together. Rejections of and then total rejections of. Then approval or sorry rejections of the decision and so this is – this is we have not found. And then a document was provided kindly by the lawyers. I went through that. I could not map that at all.

I went to Recommendation 1 and looked at the two paragraphs. It is mentioned in Section 6. I went to Section 6. I didn't find that.

((Crosstalk))

Kavouss Arasteh: ...and it is just not correctly mapped. So how could I do that?

Mathieu Weill: Thank you, Kavouss.

Kavouss Arasteh: I think it is very, very critical. You have a very major responsibility at this moment so we have to be very careful. So I suggest that after this we go and define how we should proceed. And we should proceed according to the situation, either section by section, but not arbitrary the discrepancies in Paragraph 25 and come back (unintelligible) Paragraph 21.

We will mix up. We cannot follow. We go systematically. We have done this elsewhere, this is not the first time. We have done it in other organizations. Much more complex than this but systematically going paragraph by paragraph or article by article and so on so forth.

And there has been many copying provision to the other without really see whether that is applicable. Many thing has been copied, just cut and paste. Cut and paste from Article 1 to Article 6, from 6 to 7 and so on so forth. So I am not sure so we have to do that. Please kindly consider. It is very, very difficult in particular for some of people that they really spend considerable amount of time and investment in that. Thank you.

Mathieu Weill: Thank you, Kavouss. A couple of points. Number one, I understand your request for section by section or paragraph by paragraph examination. However, let us keep in mind that this is not the final product yet. So it would be premature to do that at this point.

Secondly, you've raised, on the list, a couple of the points you mentioned and I will draw your attention that this was part of one of the extra questions we added to the paper that we will be discuss today so it's – we are currently taking into account the discrepancies raised by members. And so we fully agree with you it's our role as the CCWG to do that.

And then we'll have to discuss exactly how we do the final approval. And certainly your suggestion to do it section by section or paragraph by paragraph is well understood. We will have a discussion later about how we should proceed with that to combine efficiency and inclusiveness in the discussion. But your proposal is well noted. So let us now focus with your permission on the question and ensure that any discrepancy spotted by members is actually taken into account and that is going to be our attempt today.

And with that I'm now turning to Thomas for the agenda Item Number 2. Thomas, if you're speaking I cannot hear you.

Thomas Rickert: Sorry, Mathieu, I had to get myself unmuted. Welcome, everyone. Some of you at least will have seen the note that I've sent to the email list a little bit earlier today that should have helped as a – some guidance for the group in order to help prioritizing what we need to discuss and also make it easier for you to follow the conversation.

I would like to ask staff to bring up the respective parts of the paper in the Adobe room as we move on. The idea is that we slice the areas we need to be – that we need to discuss into three sections. We have done a lot of work. We had a great discussion two days back on Questions 1-26 or 27 if I'm not mistaken. And we have worked on responses by the CCWG for those in particular. We've prepared responses for the remaining questions as well.

But for the questions that we've already discussed in this whole group during the last meeting, there are answers which we hope are acceptable for the whole group for all questions except for the answers to Questions 2 and 25.

You might remember that for 2 and 25 we did not conclude on an answer but we promised that we will try to distill the essence of the group's view and

prepare a draft response. And therefore what we would like to do today during this first phase of the call is that I will recap where we stand with the responses 1, 2, 26. We are not going to discuss 2 and 25 because we've made a little bit more discussion answers required on those. So please do bear with me as I walk you through the responses for the questions where we think we have found answers on behalf of the CCWG.

Keep questions or concerns that you might have in your mind and we will open it up for comments after this presentation that will hopefully help us to save a little bit of time concluding on answers.

I've also seen that there has been responses on the list, particularly by Kavouss, who has made some suggestions for answers. We've analyzed those as well. Kavouss has expressed his views that were expressed in part during the last call. I will try to speak to those concerns as we move on.

So let's dive straight into (unintelligible). And first question was with respect to the three words, "the root zone" where we had contradictory messages in our report and our group has agreed that we would remove the words "in the root zone" in response to Question 1.

Question 2 we're going to skip now, as I've indicated earlier. We will get back to that after we've discussed this first block.

Then Question Number 3 deals with reconsideration. And we have discussed whether we would need recordings or transcripts or both or whether it would be optional. But let's just refresh our memories of what our task is. We must ensure that the implementation of our report in the bylaws is reflecting what we had in our report. And since we have requested that records should be taken, we should stick to this since our group was sort of split.

There were some who said a recording is good enough; others said a transcript is good enough, yet others were concluding that we would need both. Kavouss has now proposed that we would do recordings by all means and transcripts only on request. This is to share with you that our group doesn't have a common view on that which is why our response covers that we should have both the recording as well as the transcript.

And also with respect to the question of redaction, we have emphasized that redactions that are allegedly wrong can be challenged. So that's Question Number 3.

Question Number 4 deals with the operating standards. And we have presented a response that was discussed during the last call. And that operation standards will be developed with the global Internet community. They must be aligned with the following guidelines, and then list the guidelines as adopted by the CCWG for the composition of review teams.

There are also, you know, there are some language about where this is cited. So if you take a look at Question Number 4 you find the full response there. Where consensus can't be found among the members then a majority vote of the members needs to be taken.

Can we move to Question Number 5 please? As I think you all have scroll control so I think you need to take care of yourself on this. So with respect to Number 5, our response is that in Annex 9 of the final CCWG report we include all AOC reviews except for the first sentence which describes an SSR plan. 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 DNS.

It does not include that line since it's the first to an existing plan as opposed to a commitment to update or generate (unintelligible) are planned regularly. So that's Question Number 5.

Let's now move to Question Number 6. That deals with consent that is required to keep – and I'm going to read that brief response to you. “The inclusion of the empowered community consensus required as a legal constraint due to the nature of the (unintelligible) model to keep as close as possible to the conclusions of the CCWG Accountability report.” We did not amend the ability for the ICANN board to remove one of its members.

We recommended that the – in part community consent should be drafted in the bylaws only as a matter of formality to endorse the board decision without any escalation or consultation process. Kavouss had suggested the deletion of the consultation process. And since in our escalation procedure we have consultation as well and we wanted to make it clear that this is different, I think we should stick to the language both of consultation and escalation not required.

Then let's look at the – or I see that there is a disagreement on Question 6 so since we have discussed a couple of questions now let me pause here and give you the opportunity to chime in. So Kavouss has raised his hand and then we're going to go to I think Brett's comment in the chat. Kavouss.

Kavouss Arasteh: Thank you very much for your very high speed like BMW your country or Audi. Please, one by one, when you have a Question 1 and cleared everything, agreed, you clear that point and go to the others. Because we don't understand. I have a suggestion that with respect to the recording we send the

recording and for transcription on request. This is important for us. It's important for the people in our country.

We have difficulty to transcribe a recording thing. And if we ask, transcription should be made available, and you have not discussed that. So what was the time that I spent put all these things? So either you do not listen to me or you listen. Please, one by one. Not go all together. So we were on Question 1 and then to skip and go to Question 3 and clear that. Please kindly slow down. One by one please. Thank you.

Thomas Rickert: Kavouss, thank you. We have discussed these matters during the last call. Your view is one view among different views that were held. And since there were different groups that wanted different things we proposed to stick to the response that can already be found in our report.

We are – we have dealt with this – or suggest to deal with this by almost way of a consent agenda where we confirm the last meeting's suggestion. So we are not – we have not planned to reopen the discussion on those questions where we already found answers.

Since you've asked for commenting as well as others in the chat, we're now pausing. We had planned to go through these in a block but we're going to pause every couple questions so that people can respond.

Mathieu, you have indicated that could give an answer to Brett's question in the chat.

Mathieu Weill: Thank you, Thomas. So Brett was raising a question on – was making a comment on Question Number 6 regarding the consent of the empowered community in the case where the board removed a director after a 3/4 vote.

And like Jordan did in the chat, I think the idea was the – we don't have a requirement in our report to remove that ability which exists today. And our lawyers have confirmed that the proposed way forward here is legally feasible, and it's the closest to our requirements the way the current report is structured.

So without any judgment or substantial call on whether it's appropriate or not I think it is – the proposal here is the closest we can make to implementing what's currently in our report without adding any change. That's why we are suggesting this approach. And I hope that explains the reasoning here. We've had the substantial on it during the call last time with our lawyers. Thank you.

Thomas Rickert: Thanks very much, Mathieu. Brett, I'm sure that you will give us an indication in the chat whether or not the answer is satisfactory. Or you've raised your hand. Brett, go ahead.

Brett Schaefer: Thank you. Again I see this more as a rubber stamp than anything else. And I think that the change actually happened when we moved to a designator model which put the legal responsibility for appointing the directors onto the empowered community. And I understand that the board has this power but ultimately the responsibility lies with the designator, not with the board. And if the board wishes to remove a director I think they should be able to do so by a vote but only with the consent, an affirmative consent, of the EC.

And I don't understand any circumstances under which the board would have to remove a director with such haste as it wouldn't need to consult with the empowered community over this matter. In cases of felony or gross misconduct there's already a provision in the bylaw saying that that's a removable offense. In cases of just non-engagement or failure to appear or dereliction of duty, that's something I think that the EC would actually be

very much in favor of removing the director so they can appoint someone that can represent them effectively.

And regardless, there is no decision by the board that requires unanimous approval. So if a board member is in dereliction or just not showing up or is disruptive, it doesn't stop the board from actually conducting its business. And it can proceed and engage with the empowered community about removing it and making the case for the why the board made its decision. I don't see this as a problem in terms of engaging the empowered community on this matter.

In fact, I think it would be troublesome on my – from my perspective to figure out why the EC would actually turn its affirmative consent into a rubber stamp in this instance. And I don't see anybody who has made, with all respect to Jordan, who has made any real case as to why this is necessary in the first place. Thank you.

Thomas Rickert: Thanks, Brett. I guess the – let me try and answer before we move on in the queue. We have discussed community powers including removal of individual directors or the whole board. That was a community power that did not yet exist and therefore we introduced this. The possibility for the board itself to remove directors existed before and we haven't changed that.

And therefore I think it's – maybe (unintelligible) the process a little bit too negatively, you say that this is rubber stamping. It's rather than following the approach that we would only touch things where necessary that we leave this process unaltered. And therefore in my view, we did not have in our report the wish to influence or change this already existing possibility for the board to remove one or many of their colleagues.

Kavouss is next.

Kavouss Arasteh: Yes, you can have the two options. Either stick to what we have today, that the board remove with votes, without any reference to the community. Or if you want to make it in analogy with the removal of the individual director by community for the board you do the same thing, that the designating community should give the final word or consent. So you have both options.

So I don't understand why we have – does everybody agree that we could not make with analogy with the removal of the director when we go to the community? Do exact the same thing when go to the board. That means board remove that but with the consent of designating community. No doubt that designating community need to invite views of others. So we have to have completely analogy with the removal of the director by the community in case of removal of director by the board.

This is more close to the reality. But if everybody agree that we don't need that at all you take the simplest case, the board remove the director without any reason, no consultation with anybody and no consent of anybody. Can you get the agreement of everybody on that? We need to have consensus on that. Thank you.

Thomas Rickert: Thanks, Kavouss. I guess the difficulty with this discussion is that we're trying to shape yet another power for the community that we simply did not have in our report. If the board chooses by itself to remove one of their colleagues they could do this previously. They need the empowered community's consent as a legal requirement due to the legal restructuring of the organization. And we're just helping the existing process to stay.

I think our job at the moment is just to ensure that our report is accurately translated into bylaw language and therefore we should not try to define a new process on this.

So having said that, nothing keeps the community away from starting the process to remove the entire board or individual directors. So there is no contradiction. There are distinct different processes and giving the community the power to chime in on this board internal process, if you wish, would be another community power that did not previously exist.

And I think it would be difficult for us to introduce it at this stage. Again, this is not the community power to remove the entire board or individual director. We have those. Those are in there. This is a difference process. Let's now move on in the queue. Alan.

Alan Greenberg: Thank you very much. I strongly support the methodology that is being proposed. We did not discuss this power ahead of time. The argument that it is a power of the designator, therefore we have to make it because we selected a designator model just does not hold water.

When we moved to the designator model there were people in this group who said we must have inspection rights even though it's not a statutory right of a designator. And we put that in. So we are – we made no commitment that because we selected designator we will go lock step exactly with what the California statutes say.

We are – if we follow the suggestion that the empowered community must approve, we are adding a new power. We are taking away a power from the board, which they did not – were not a party to the negotiation of. And we

have a legal construct which allows us to implement exactly what we proposed. And I suggest that we do that. Thank you.

Thomas Rickert: Thanks, Alan. I'd like to close the queue after Jordan. So, Jordan, please.

Jordan Carter: Thanks, Thomas. And hi, everyone. I think I might be repeating what other people have said. But it's very clear that because there is now a designator there has to be an action of some sort by that designator to approve any additions or removals to the board.

I've pasted in the chat the language that's there that requires the EC to validate the appointments by the SOs and Nominating Committee. And all we're proposing to do is the same approach to the board removal because the board's power to remove individual directors has never been taken away by our report. We never said that should happen.

We've got no mandate to let it happen. And so the easy and proper way to deal with that is not what the drafters have proposed, which does add this new power to the EC, but it's to use the same kind of pass-through language as we've already got in the bylaws for the appointment side of things. I don't see how anyone could argue that we should suddenly add in a new community power. Hey, the EC can interfere with the board's ability to remove directors, when that's never been mentioned, never been discussed and never been agreed by the community. Thanks.

Thomas Rickert: Thanks very much, Jordan. Maybe the reasons for the debate is the way the response is drafted. I'm reading from Milton, for example, that we're – that we're not trying to do a new community power.

So if there is common sense that we're not trying to do – trying to introduce anything that has not been in our report, then I think maybe our response should be redraft it to saying that the CCWG proposal, the CCWG report, does not speak to the existing power of the board to remove its colleagues, and that we are not taking a position on that but that the drafter should ensure that this opportunity still exists. So they should preserve that process that previously existed.

Let us make an attempt to come up with alternative language that hopefully is acceptable. I would suggest that we park this issue for the moment. Your concerns are understood. Let's think about maybe a bit more. We have a couple of more questions on our plate to be discussed during and hopefully resolved during this call. So we will get back to you on this one.

Let's now move to Question Number 7, which you find on Page – what it is – we don't have page numbers on this. Let me just scroll back to the last question before the CWG related questions come. And that was a question where we were given two options, one Option A, one Option B since our proposal was silent on how the interim board is to consult with the community to make major decisions.

We've included the drafter's suggestion that the interim board shall consult with the chairs of the supporting organizations and advisory committees before making major decisions. And, B, the other option is to consult through a community forum in the manner consistent with the process for rejection action from community forum pursuant to Section – unspecified of Annex D prior to taking action. And we have opted for Version A, so our response is that we would go with A.

Let's now skip the block of questions related to the CWG, for now we should look at Question Number 26. You might remember that I said earlier that we're going to park 25 since there might be some discussion around 25. So with respect to 26 there was a question whether there should be additional transparency by requiring the decisional participants to provide written notice of decisions. And we agreed that this is a good idea so I'm going to keep it as brief as that on that point.

Let's now move to Question Number 27. That related to PDP-related bylaw amendments. And the question was whether bylaw changes relating fundamental bylaws that result from a PDP should follow the process for changing fundamental bylaws or standard bylaws. And our group concerned that even though changes stemming from PDPs require the procedure for changing fundamental bylaws and also the support of the SO/AC that undertook the PDP is required.

There was some discussion on that during the last call. I think the question mentioned by Malcolm towards the end of the call. And we had this requirement that the organization initiating the PDP is required for support in our report so we're aligning our instructions to the legal drafting teams with our report in this case.

So let's now move to Question Number 28. Or let me pause here. I think we – this was the draft – we didn't get to 28 during the last call. So we should pause here and ask whether there are any concerns with responses proposed so far. Bearing in mind that we will get back to you with an attempt for another question with respect to the...

((Crosstalk))

Thomas Rickert: ...community. So Kavouss, I guess that's a new hand. Kavouss.

Kavouss Arasteh: The second (unintelligible) we need to add with sufficient justification. Would like to know what are the requirements or needs or justifications or logic for that additional as that is something that is required. So we could have that. And also we could add a qualification on very particular circumstances and so on forth.

Not always, we don't want that we have automatic (unintelligible) because it is difficult for the people attending, participating and so on so forth. So we need to have justification and we need to have on exceptional basis, on relative basis, cases or on particular circumstance we justify. We need to add something to that. Thank you.

Thomas Rickert: Thanks very much, Kavouss. Obviously your question is – or your comment is relating to Question Number 28. Let me pause for a second and see whether there are more comments with respect to the questions or the answers that we've previously discussed in this call. Kavouss, I will get back to 28 momentarily. Ed. Ed, if you're speaking we can't hear you. Maybe you're muted.

Edward Morris: ...now Thomas? Hello?

Thomas Rickert: Yes, we can hear you now.

Edward Morris: Okay thanks. Yeah, this goes back to Issue Number 3, the second sentence in the response. I'd just like to suggest that we agree (word) there to the fact that the redaction may be subject to challenge could be added as reminder to change could to should. I use as an example Section 22-7.e where in section

we actually put in specifically that you could challenge a negative decision on an inspection right.

And because of the rather confidential nature of anything that would be redacted I do think it's appropriate to put a similar reminder, so to speak, into the bylaws in this section. Thanks.

Thomas Rickert: Would you be as kind as to send these two sentences to the list so that we can insert it? It looks like it's a useful addition.

Edward Morris: Fantastic.

Thomas Rickert: Thank you so much. Any further comments or concerns with respect to the answers previously discussed? The queue is empty. So let's then move on with the discussion of Question 28. Just to refresh your memory on that, for approval action the drafters ask whether it would be appropriate for the board to be able to request an additional community forum likely for the purpose of helping to explain an action that the board initiated such as fundamental bylaws change or (unintelligible).

We did not have that in our report. And there are basically two facets to the response that we offered. One is that the language "additional community forum," might be understood as the wish or the comment of the drafters to introduce a new forum, a new community forum, in addition to the community forum that we have put in our report.

So we are clarifying that when we're talking about the community forum we're not defining anything new. So if the board wishes to call for a session of the community forum that would be the exact same community forum that we have proposed in our report.

And then the question is can or should the board be able to request that the community forum is being held. And we have proposed a response that it should be possible for the board to request that a session of the community forum is held. And that is optional and not mandatory for the board so the board might only choose to use that option if they see the need for having an additional forum to debate the matter.

And I understand that Kavouss is asking for justification for this. And I would be more than happy to include in our response the sentence whereby the board is required to offer a rationale for its request to invite to a community forum session. So with that addition from Kavouss, let me ask whether there are any concerns with that proposed answer.

And, Matthew, you commented that you thought the community forum came as a result of a petition, which is true in the escalation procedures that we've defined. But as Mathieu – and Mathieu is always a step ahead – typed in the chat, there is no petition requirement in the approval processes. And we're now talking approval of actions.

So there don't seem to be any concerns so let's mark our response as agreed with the additional language that I stole from Kavouss based on his proposal.

Let's now move to Question Number 29. On NomComm board member removal, should the GAC carve out only apply if the board member is subject to the removal process because of a vote in support of a GAC consensus resolution? The proposed answer is, no cause is needed for the removal of any board member regardless whether it is a NomComm board member or not. Only an explanation needs to be offered.

You might remember that this was a point that Tijani very much fought for that we don't have a catalogue of causes but that we would explain to the community why a board member is removed. Therefore no decision by the board member is challenged with the removal procedure. As a consequence, the GAC carve out should not apply to NomComm board member removal.

So, again, this is, you know, people might want to see this differently but sticking to what we had in our proposal or it appears to us as a leadership team that we should not establish an additional requirement for NomComm board member removal.

There are two hands raised. Let's move to Brett now and then to Malcolm.

Brett Schaefer: Thank you. I actually – maybe I misread the question but I reviewed it as a slightly different type of question and that was should the GAC, as a decisional participant have a role in a empowered community decision to remove a NomComm director. And the reason why I read it that way is that the GAC actually doesn't vote to appoint a NomComm director.

And I saw this as sort of a reflection off of the SO/AC appointed directors where they are the ones that are empowered to remove those directors. And if a NomComm director is to be removed then that power should be restricted to those SOs and ACs that actually vote to appoint the NomComm directors.

And so I saw this as an application of the GAC carve out to reflect the fact that the GAC doesn't actually vote for NomComm directors. You know, this doesn't have anything to do with the spilling of the entire board which I think is an overall EC power but the specific removal of a specific NomComm director. And that's how I read this. I thought that the GAC carve out should apply in that case. And so I apologize if this is not directly on target but I

wanted to raise the issue because I thought it was an interesting question that the lawyers raised, at least from my perspective. Thanks.

Thomas Rickert: Thanks, Brett. This is actually very interesting because we do seem to have different understandings of the question. I thought that, you know, board member participate in the decision that the carve out would be applicable the community does not like that the board member has gone with or has supported the decision based on – a decision where the carve out is applicable.

And then the question is if the community wants to take out that board member because he supported this or that decision, should the carve out also be applicable to the subsequential removal of the board member where the real root cause is actually following the – being part of the decision by the board that it's subject to the carve out.

I would suggest that since we have lawyers on our call, can I ask, Holly, Rosemary or any of their team members to clarify the nature of that request so that we can actually ensure that we respond to the correct question. Before we hear from them let's move to Malcolm and then Alan.

Malcolm Hutter: Thank you, Thomas. You said the reason why the GAC carve out should not apply in this case is because no reason – there's no reason for removing the board director. And therefore it can't be on the basis of what the GAC has done.

But that doesn't seem to me to be right because what our report says is that the empowered community can remove directors without stating a reason, without agreeing a reason. But that doesn't mean that no reason exists. On the contrary, it's likely that – I would think it would be extraordinary if the community were really to act wholly arbitrarily and randomly, whimsically,

there would surely be a reason for it. And it's possible that that reason relates to the views that a director has taken on GAC advice.

So I would think that your reasoning here is faulty. It's possible that of course that then the GAC advice, you know, is not (unintelligible) of GAC advice and that the GAC should have a full part in it. But I don't think we can exclude the possibility that the reason why the community is acting is directly in consequence to the director's reaction to GAC advice.

Thomas Rickert: Thanks, Malcolm. It's perfectly appropriate for you to consider my reasoning faulty. But if you look at our previous discussions on the carve out the idea was always to prevent the GAC from double dipping. And that is board takes a decision and then the decision is challenged and it should be avoided that the board – that the GAC can chime in in two instances through this whole process.

For board member removal, there is no first dipping and therefore there is no reason to prevent second dipping or double dipping from taking place. But let's hear Alan and Kavouss afterwards and the queue is closed after Kavouss.

Alan Greenberg: Thank you very much. With regard to Brett's comment, I think he's redefining the term carve out that says the GAC – I think he said the GAC should not participate in any removal of a NomComm director regardless of what the reason is because they don't participate in selecting the director. That's a completely new rule that we've never discussed before. And so I don't think it's related to the carve out at all. And I – again, as in the previous item, I don't think we can come up with a brand new rule that we never discussed at all.

In regard to the rationale, Malcolm is correct that the group starting the process may well have given a reason or at least explained why it is they are unhappy and are seeking it. The other ACs and SOs that would have to support that are under no obligation to give a reason. We do not know what their motivation is and we cannot attribute that to necessarily the same motivation as the original group.

So I think connecting a removal of a director with an explicit – because they supported a GAC policy recommendation I just think is connecting dots that just aren't there. We don't know why most of the other ACs and SOs made – make their decision to support the removal. They're under no obligation to give one. And therefore I don't believe we can make the connection that is directly attributable to GAC advice. Thank you.

Thomas Rickert: Thanks very much, Alan. And let's hear from Kavouss now. And while Kavouss is...

Kavouss Arasteh: Yes, Thomas...

((Crosstalk))

Thomas Rickert: ...getting ready to speak let me...

((Crosstalk))

Thomas Rickert: Kavouss, can you stop for one second please. Kavouss, can you wait one second please? While you speak can I ask one of the lawyers to get ready to shed some light on Brett's question of how the question needs to be understood. I wanted to get that out, Kavouss, so that we can get a seamless answer from the lawyers afterwards. Kavouss, the floor is yours now.

Kavouss Arasteh: ...or inability of GAC to participate in the removal of the NomComm director do it, if you want to do it now, do it; if it is not discussed before it is not agreed, it was not approved, but don't relate that to the carve out. Five people in the community always, as soon as the GAC name come, they come to the carve out and they support each other. Let us be friends to each other. Has nothing to do with the carve out. Who brought that?

And I disagree with the lawyers. I disagree with Holly saying that yes, this is all our thinking. This thing with Holly, your thinking was (unintelligible). This has nothing to do with the carve out. GAC may not participate in decision making, removal of the NomComm director. Similar that they have no power to remove the director designated by others because we don't designate any directors. But it has nothing to do with the carve out.

This carve out has been misused by some people getting together in (unintelligible) and try to extend the carve out everywhere. I totally disagree with that. Thank you.

Thomas Rickert: Thanks very much, Kavouss. Holly, would you like to speak? I saw you typed something into the chat. Would you like to take the floor?

Holly Gregory: Certainly. This issue has arisen because as we read the proposal it's less than clear on the role that the GAC is to take in a decision to remove a NomComm director. And so that's why the issue has been posed for the group to consider. I'm wondering if Rosemary has any additional thoughts.

So all we need is clear direction and the thought was that if – that if the GAC does not play a role in the removal of NomComm directors then we would

essentially use language along the lines of the carve out to make that clear.

We just need clarity from the group on it. Rosemary?

Rosemary Fei: I actually remember this as being an issue that came more from ICANN Legal in terms of raising a question that we couldn't answer. And I think Sam has put their interpretation into the chat.

Thomas Rickert: Okay thanks, Holly and Rosemary. I think we have some confusion in the group and we need to remove that confusion. So I would like you to – or the legal teams, including ICANN Legal, to reframe the question and make a specific reference to the part of our report that you think is unclear.

I think what's been unfortunate, and this is not to game anyone, but I think that the community power of the board removal is unrelated to the carve out question. And I guess that makes us conflate the two areas now in our discussion. And I think we should avoid that.

Let me just refresh our memory on the carve out, it's about a board decision to implement GAC consensus advice. And that is obviously not given when it comes to board member removal or board recall even though, as Alan pointed out, the reason why the process of removal is triggered might be because the respective community did not like how the board member chose to vote on this specific instance.

But we will try to work on an answer that is hopefully clearer. We've heard all the items that were made. And we will try to propose something responding to exactly the reframed issue that Holly and Rosemary are going to present us with that is in line with our report.

Kavouss, I'm not sure, is that an old hand or a new hand? If it's a new hand can I ask you to keep it very brief so we can move to the next question please.

Kavouss Arasteh: (Unintelligible) in 2015, we heard from our distinguished – the lawyers that the director could be made to be recalled or removed by those who appoint them. If GAC does not appoint SO AC director, nor Nominating Committee or NomComm director, there is no question about that. It is understood and crystal clear we don't need even to write anything.

If you want to write something to have a double walled safety whether we allowed after the approval of the meeting by the entire community, after three proposals and Marrakesh, that is another issue. But please do not relate that to the carve out. I know carve out is (unintelligible) of six people in the CCWG. I don't want to name them. That has nothing to do with the carve out. Please, you are the chair and you have the responsibility and must have the knowledge of what you have written.

Where the carve out relates to the Nominating Committee director removal.  
Carve out...

((Crosstalk))

Thomas Rickert: Kavouss, if I...

Kavouss Arasteh: ...decision of the ICANN board with respect to the GAC consensus advise when the community wants to complain that this is outside the mission or it is not consistent with the bylaw, that's all. Has nothing to do with...

Thomas Rickert: Kavouss.

Kavouss Arasteh: ...director removal.

Thomas Rickert: Thanks, Kavouss. I made exactly that point before you spoke...

((Crosstalk))

Kavouss Arasteh: I totally object any extension of the carve out apart from that little piece which is the Recommendation 1 and 2. And I have seen...

((Crosstalk))

Thomas Rickert: Kavouss.

Kavouss Arasteh: ...ten times carve out has been used either by ICANN Legal...

Thomas Rickert: Kavouss. Kavouss, sorry.

((Crosstalk))

Kavouss Arasteh: ...or by legal. And then you say it's off to legal, do you mean that we are stupid?

Thomas Rickert: Kavouss, I'm sorry...

((Crosstalk))

Kavouss Arasteh: ...something and we should be...

Thomas Rickert: Kavouss. Kavouss, sorry.

((Crosstalk))

Kavouss Arasteh: I have the right to talk about the legal aspects...

Thomas Rickert: Kavouss.

((Crosstalk))

Thomas Rickert: Sorry, we need to make progress on this one. Kavouss...

Kavouss Arasteh: Thank you.

Thomas Rickert: I have made exactly that point so I would like to end this conversation now. I've made exactly your point. I think it was not necessary for us to continue this discussion that has previously been closed. Thank you so much.

Let's now move to Question Number 30, which points (unintelligible) an inconsistency in our report. When it comes to the threshold for removing or to convene a community forum in relation to removing SO AC directors. In one part of our report we asked for majority when nominating SO ACs, and in other area of our report we asked for approval in accordance with SO ACs own mechanism.

So this obviously a glitch in our report. We've always made ultimately clear that we do not influence the decision making procedures inside the SOs and ACs. And therefore our response should be that in accordance with the SO ACs own mechanisms is the language to be used by the drafters. So unless there is the need to comment on that let's move to Question Number 31 now.

In the SO/AC director removal process the CCWG proposal has exclusions on who could manage, moderate the community forum. Consider whether this exclusion, i.e. person who initiated the petition as well as exclusion of the decisional participants designated liaisons, should be incorporated into the processes for managing, moderating community forums relating to other types of decisions by the entire community. Indeed, board recalls petition to ensure that the community for - managed in a neutral manner.

So community forums relating to what kinds of, in part, community decisions should include such exclusion. Our proposed responses, the exclusion might be difficult to manage in the case of decisions that affect ICANN's general direction.

And what's specifically mentioned in the SO/AC director removal process because of the potential personal conflicts that might be associated with such a process. That's for a recommendation to extend this exclusion to all any board director removal process, but leave it to the wisdom and the good sense of the community to prevent any conflict of interest in the organization of the community problem and other cases.

Are there any who wishes to command on that question? Or can we deem that approved? May we pause for a second? Okay.

Let's now move to 32. During the SO/AC director removal process, should there be a requirement to hold a dialogue between the relevant director, the SO AC and the chair of the board prior to the SO/AC accepting the removal petition?

The CCWG proposal contemplated such dialogue in the context of NomCom director removal but did not specifically mention it in the context of SO/AC

director removal. We're proposing to give an answer that has aligned the processes. The processes should be as similar as possible for any director removal. And this informal discussion at the start of the process can only be helpful in resolving concerns or ensuring that removal needs to proceed; thus, the CCWG supports including this required.

You might remember that we had lengthy discussion to ensure that the escalation processes are transparent and that there is a chance for everyone to be heard; therefore, we propose that this discussion should be held.

Alan, your hand is raised. Please.

Alan Greenberg: Thank you. Yes. I agree with your answer. I think that's a drafting error. You will recall that the concept that the director has to be confronted and given an opportunity to defend himself, in fact, was created for removal by the AC and SO where the rest of the community doesn't have to concur. That was the point at which it was introduced.

So if the report actually doesn't mention it in that case but does in the case of the removal of a NomCom director, that's a drafting error.

Thank you.

Thomas Rickert: Thanks so much, Alan.

Let's then move to 33. It is unclear from the CCWG proposal how issues based on GACs resolutions or PP matters are to be handled in the mediation community IRP process and how the relevant carve outside are to apply. Should anything be added to the bylaws to address this? Our proposed answer is the carve out should be applicable for decisions, whether or not mediation

or community IRP should be initiated because that is related to the original board decision.

So once the procedure is initiated, there is no need for exclusion of the GAC. Their voice shall be heard in both processes. Any comments on that? Brett, your hand is raised. There you go.

Brett Schaefer: Yes. I'm sorry. Is this relating to the appendix D area where the IRP and the RSR process is outlined in terms of thresholds for moving to various stages?

Thomas Rickert: That is my understanding, yes.

Brett Schaefer: Okay. So what you're saying is that once the process is initiated, then the GAC should be a voting decision maker in whether to proceed through various stage in the IRP or the RSR? The GACAR wants you to apply to the initial decision but not to the process going forward? Is that correct what you're saying?

Thomas Rickert: Exactly.

Brett Schaefer: I don't understand why you would apply the GACAR for the initial phase but not apply it through if the GAC - if the IRP or the RFR is based on a poor decision resulting from consensus GAC advice. Either it is or it isn't.

Thomas Rickert: I guess the thinking behind it is whether or not the decision shall be challenged. That would be related to the carve out. But when we are talking about the reconsideration cost or - sorry, mediation or IRP, we want to ensure that all dues are being heard and that the right decisions are being made. I think...

Brett Schaefer: I guess my question isn't about whether the GAC should be heard. The GAC always has the opportunity to be advise - or even under the GAC carve out scenario. What I'm saying is: Should the GAC carve out in terms of the voting thresholds for moving and proceeding from various stages of the IRP and the RFR process under the EC escalation staircase, should that apply? Is that what you're saying?

I think that if the GAC carve out is in place in the initial stage, it should apply throughout the process. And the GAC has the opportunity to provide advice or to comment throughout that process. And we've made that clear.

Thomas Rickert: Brett, I suggesting that we hear Alan and go to Becky afterwards to respond to that as the rapporteur responds to all that. So Alan?

Alan Greenberg: Thank you. I may be showing my ignorance in not having paid enough attention to the IFR - to the IRP, rather. I'm not sure what people are talking when they're saying the "various stages of the IRP." There is a decision to go ahead with an IRP or not. Then it goes over to the panel and they do stuff. I'm not quite sure what the other stages of the IRP are that we're talking about.

Thank you. I'm done.

Thomas Rickert: Thanks, Alan. Becky, are you in a positive to respond? Or maybe you get prepared and (unintelligible) many times?

Becky Burr: I'm ready to respond.

Thomas Rickert: Please do.

Becky Burr: So there are stages in the process and there is a decision about whether you decide to pursue it. Then there is mediation that is part of the process to attempt to resolve and narrow issues. Then there is a decision to go forward. There are, I think, decisions that persist beyond the initial call.

I think that what we have said is that where the GAC carve out applies, the GAC should not participate as a decisional participant, but the GAC may participate and would be welcome to participate in terms of advice, comment, all the like. It seems to me - I think I'm ending up agreeing with Brett on this one that, that is the process that we should apply.

If that where the GAC carve out has been properly invoked and vetted and determined to apply, then throughout that process, the GAC is welcome to participate in the discussion, but the GAC should not participate as a decisional participant.

Thomas Rickert: Thanks very much, Becky. Let's now here Kavouss. And Kavouss, can I please ask you to keep your introduction brief.

Kavouss Arasteh: This is another example of the extension of the carve out, carve out which was introduced by our distinguished, high-level lawyer. Becky was limited to the area that would decide on the GAC consensus advice and community objected that. That's all.

Now you are going to extend that to everyone. This thing is not correct, going beyond it. What was carve out? And I don't think that anything you put here, goes to the chart, to the organization, will not have the same situation as we had in Marrakech. There would be no minority. There might be difference. So please be careful not to extend the carve out.

I think all of the carve out should be taken out from this bylaw, and we should just introduce the paragraph that we have agreed in the condition 1 and 2, that's all, and not put in everything. Because now it seems that at every stage you apply carve out.

Thomas Rickert: Thanks, Kavouss.

Kavouss Arasteh: It's not surprising that these people, they agree with each other. Two agree. For example, are there three or four, but (unintelligible). I don't think that is correct. Unfortunately, there is no one from GAC at this session. There are some people whose names are there but they never open their mouth. That is the difficulty. Thank you.

Thomas Rickert: Kavouss, thank you. I'm not sure whether it's entirely correct that we're trying to - or attempt to put the carve out everywhere. We're responding to clarifying questions from the drafting teams; therefore, we have to deal with them. I guess what we need to do now since we can't offer a clear response is to do some more analysis of what decisions are being made, when and what these decisions relate to.

I think it's common sense that if you use the definition of the carve out which Kavouss has already made reference to -- i.e., that it relates to those decisions by the board that are based on consensus GAC advice -- then certainly the carve out would be applicable.

So let's process this question for a moment. Let's - maybe we can ask Beck team, the team that Becky chaired, to take a closer look at this to identify whether or not the points related to question 33 are relating to the carve out or not and then reframe the question and present to the group.

Thank you so much for that.

Let's now move to question number 34. That's hopefully a simple one. Should the use of the empowered community's right to initiate a reconsideration request be limited to the empowered community's decision --rights, power to the community IRP?

Our response is: Since the empowered community shall be granted limited and finite (catalog) of power, the answer is yes. So there is a limitation because we always communicate to the community that we're only giving the empowered community the limited set of powers that they (unintelligible) report.

I'm not sure whether there are any comments on this one. Brett, I guess that's an old hand, right?

Brett Schaefer: Correct. Sorry.

Thomas Rickert: Thank you. Kavouss, I guess that's an old hand, too, right? It might be an old hand. So with that, we've covered the first 34 questions. That was the first block, basically, that we need to take care of. We're going to refine the questions to cut. So we only have 2 and 25 from those questions left.

I will hand over to Mathieu now to guide you through the responses to go.

Mathieu Weill: Thank you very much, Thomas. I'm not sure how you're speaking. Thomas did the easy part of this call. And then I'm taking over for the next two questions, which led to significant discussions already on Tuesday.

Question 2 is on page 1 of your document. It relates to what we call the grandfathering aspect of the mission. You remember that our lawyers raised this question because they raise a significant legal risk in (tricked) implementation of what our report is putting; the risk being that given the way the agreements are framed at this point, (unintelligible) I cannot renew some contract would lead to litigation.

The draft response that we tried to capture from the debate we had on Tuesday tried to recap it, recapping that the existing 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 existing renewal provisions in these agreements and that the new form gTLD registry and registrar agreement should receive the same treatment, for only for the terms and conditions of the new agreements that are contained in the existing form agreements, which is the confirmation that was requested by the lawyers.

So we're suggesting to follow those suggestions of our legal team because it's the closest to the CCWG recommendation, while managing and avoiding, mitigating, if you will, the legal risk that wasn't there to ring the drafting phase. This is what we're hoping we can agree on.

Kavouss, is that a new hand?

Kavouss Arasteh: What you are saying, what our distinguished lawyers are saying, is that we have a permanent grandfathering. That means whatever we have today would be there forever, no matter what improvement or changes or modification will happen in the future, whatever agreement we have today that will be repeated or renewed permanently; is that right?

I have never heard of such grandfathering. Grandfathering is for something which exists and it is not appropriated to be imposed in the new law because

of change of the provision. We say that until the lifetime of this provision or whatever or this application, you could have the existing situation. As long as you renew that, it depends. Either we maintain the same or we modify. If we modify, we have to know it.

So are you talking of the permanent grandfathering? Who has said that? Which international law said that you have a permanent grandfathering? You have a grandfathering with a lifetime and you put unless it is renewed, this grandfathering - you could not put in the bylaws today that the permanent grandfathering for century. Could we have some clarification?

Thank you.

Mathieu Weill: Thank you, Kavouss. I'll turn to Becky or lawyers for detailed legal (unintelligible) that's definitely not in my qualifications. But my understanding is that it's not for a lifetime, but obviously contracts have a lifetime. They can be extended, be changed. When they're changed, the close would end. Alan, you're next.

Alan Greenberg: Thank you. Our contracts -- and I'm looking particularly at the registry because that's the contracts where this particularly kicks in because we have a unique conditions associated with each registry contract.

As far as I know, there are no terms in our contract to violate our mission in the general sense of the boilerplate contracts. This is only talking about things that may be specific to a registry. We could have written our contracts to say they continue forever, but there is a window every ten years where they can canceled, or something like that. We chose not to. But that should not change the dynamics under which these contracts are administered.

If a registry has committed to something in their current contract, the fact that the ten-year timer has expired and has to be renewed should not be a rationale for changing the terms of the contract unless the parties decide to do so on a global scale.

If, indeed, there are clauses in our boilerplate contract that violate our mission, I really wish someone would identify what they are so we can know what we're talking about. Barring that, my understanding is we're talking about specific registry-dependent clauses. There is no reason, in my mind, that those should change because the timer happens to have expired.

Thank you.

Mathieu Weill: Thank you, Alan.

Becky, would you like to respond to that directly, maybe?

Becky Burr: Yes. Sorry. So this is a product of drafting and looking at this. What we said was that we wanted the current agreements to be grandfathered until the form of agreement was replaced. What we meant when we were thinking about that is, for example, in the registrar context, there was an entirely new registrar agreement, accreditation agreement, that came into place in 2013. And there was a new form of registry agreement that came into place for the new gTLDs.

So the notion was that the current forms of agreements would be grandfathered and could be renewed until the expiration date that occurred after a new or substitute agreement came into place.

The contract for registries don't exactly work that way. Every registry has the right to renew its agreement on the exact terms and conditions that are in the agreement right now. We can't put ICANN in a position of having to breach its contract with the registries, right, because the registries have the choice that they know I don't want to change the terms and conditions of my agreement.

So while I don't - I can make an argument that there is one provision in the existing new gTLD agreement that in the absence of policy is out of ICANN's mission, I don't think that we really have a lot of flexibility of choice here because we cannot force ICANN to breach its agreement with existing - and registries that come into place under the existing new gTLD agreement. ICANN has the right to extend that contract.

Now if there is a new registrar agreement that comes into place, that will have to be entirely within the mission and every registrar has the right to substitute a new and replacement contract. That right doesn't exist precisely. It doesn't exist at all for registers, but that is something that registries might want to talk to ICANN about and negotiate going forward.

But I think at this point, because of the way the contract is drafted and because we have to respect the ability of ICANN to make good on its contractual commitments, we really don't have a choice but to permit this grandfathering for so long as the contracts are in place.

Mathieu Weill: Thank you, Becky. Robin?

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

Mathieu Weill: Yes.

Robin Gross: Okay. Thanks. So the question that I wanted to ask and is really to what extent and how do we challenge existing provisions that are, in fact, out of scope, is the renewals can be extended. So it kind of sounds like Becky just answered that question.

I'm wondering - so it sounds like the registries can want ICANN to continue to operate under the existing agreement. But what if the registries would prefer a different agreement. Then would those provisions be able to be challenged under the new agreement or is that a way that we could sort of get past this ability to bypass the mission scope limitations?

Because I'm concerned that by extending existing agreements to all the renewals, that we've just created a huge loophole that essentially swallows the whole intent of trying to put limitations on ICANN's mission.

Thanks.

Mathieu Weill: Thank you, Robin. My impression is it's about - yes, can you respond?

Becky Burr: Yes, a quick response. So Robin that's exactly the issue. And I think that the bottom line is that - I think that it is in the - that the registries have incentives to negotiate with ICANN to have the option to move into a replacement form of contract; for example, for a further back - a contract that's developed for a further batch of new gTLDs, for example. But we can't force every registry to do that because they have a contractual right.

So I think that the bottom line here is we're stuck with a not great solution, but there are incentives for registries to collectively go to ICANN and secure the right that the registrars have to move into a new form of agreement. But we can't force them to do that.

Mathieu Weill: Thank you very much, Becky. I hope this clarifies. My conclusion is I don't think we have much better options than what is being suggested by Becky and the legal team at this point. So I would suggest that we keep that way of answering at the moment.

Now moving to question number 25. You will find it on page - it starts on page 6. Question 25 is about the language to describe how a petition in the empowered community process can be identified based on GAC advice.

You will remember this discussion about whether it's solely or almost solely related to the GAC consensus board resolution. We had a discussion on Tuesday about the wording itself. Certainly, there was some difference of use expressed.

Sorry. I see that Kavouss is requested to speak. I thought it was an old hand. Kavouss, I apologize. Please take the floor now.

Kavouss Arasteh: You were so kind before but now you're becoming not as usual. On this question 2, I put something in the chat. My understanding (unintelligible) even I was a project manager for the work plan for the grandfathering in something much more sensitive than ICANN activities. Grandfathering is (unintelligible) up to the end of the lifetime of the grandfathering or the agreement.

If agreement is renewed, grandfathering is renewed. It is the applied. If not, grandfathering will not apply. So that is what we have to do. I am not (unintelligible) what they wish. We are far from wish of the people. We have to look into the legality of the situation.

Grandfathering is just subject to the end of the lifetime of the agreement. If the agreement is renewed and grandfathering is renewed, that will be continued to the next lifetime of the agreement. If it is not renewed, it's old. No one gets.

So I don't know what you want to put, what the lawyers want to put. Still you're listening to some registrar or you want to listen to the law? Thank you.

Mathieu Weill: Thank you very much, Kavouss. I'm not a specialist on that. My suggestion would be for you to - because you've made this point a few times - I would kindly suggest that maybe you could put your suggested response to the question raised by the lawyers in writing on the list by April 9 like the rest of the discrepancy issues that we all have to look for so that we could add it to our list of topics.

I think that would be the safest way to move this discussion forward in a constructive manner. Once again, apologies for the oversight of not turning to you in time on question number 2.

Back to question 25. Once again, it's about the identification of each empowered community processes when it's based on GAC - when the carve out would apply. So it's a board decision that follows the GAC consensus advice. We have tried to recap the relevant parts of the report in our proposed answer, which states that in annex number 1 - so the first step to answer this question is that there is a board confirmation in their rationale that the action they're taking is based on GAC consensus advice that needs to be stated in their resolution, and that's part of the draft files.

And then the petition to use a community power, not mention that the GAC carve out should apply. Our working is that "when a board action that is based

on GAC consensus advice is challenged, the petitioning SO or AC will need to indicate in the initial petition that the matter meets the requirements for the GAC carve out and clearly identified the applicable board action and GAC consensus advice at issue." And then the decision threshold required for the escalation and enforcement will need to be met for the community power and so on.

We recognize, then, going into more detail about the how and why it's going to be difficult within this group. The consequence given that we already have the first protection that the board has identified this. And then the complaining party decides how to frame their complaint to meet the standards. And finally, any improper characterization could be subjected to an IRP.

Our leadership recommendation is that let's just keep that language and add nothing more, because anything we would try to add in addition is likely not going to meet the consensus requirement from our group. So that would be our proposed answer to that complex question, which can be summed up as the report, the report and only the report, nothing less, not more.

And I see Brett's hand is up. I'm turning over to you, Brett.

Brett Schaefer: Thank you. I actually think that there is a provision already contained within the revised bylaws that might help resolve some of this. It's section 25.3 which says that the board shall not combine an amendment of these bylaws that was a result of a policy development process of a supporting organization with any other amendment.

I think a similar provision should be put in their for GAC consensus advice. And that way whenever an issue comes up, a board decision based on a GAC consensus advice or consistent with GAC consensus advice, it would be

treated in isolation. It would not get tied up with all these other potential issues that may give some concern to some people.

So I would suggest putting in that specific requirement that would allow the EC to focus on the discrete issue at hand, rather than having it involved in a larger, more complicated combination of issues. And I can put into the chat perhaps a very brief description of what I would be proposing.

Mathieu Weill: Thank you, Brett. That would be welcome in the chart. I remember this idea being discussed during our meeting on Tuesday and raising some different reactions but certainly an interesting suggestion and very constructive. Next in line is Kavouss.

Kavouss Arasteh: Once again, it is an extension of the carve out. I don't understand some of these things we print - not print, because I told them friends they don't agree with that. They said no, we are not your friends; we are your colleagues.

So I disagree with this colleague that they want to extend again carve out. Carve out has a very, very limited application. We do not want to include carve out in so many provisions of the bylaw. This should be a cut and paste from recommendation: one, an applicable recommendation; two, in one provision relating to carve out. That's all.

I don't understand at any point this extension which could have unintended or intended in view of some consequences. So I'm sorry, I cannot agree with any extension of the carve out or any decisions until (unintelligible) carve out as a specific application.

Community objects to the ICANN decision on the GAC consensus advice, claiming that it is inconsistent with the boiler or the mission. Then they have

two (past) funds go to the hierarchy. There is a threshold for that. Then they have another path. We call over the board. There is also threshold for that. And that is what discussing the last call.

So I don't agree with any extension. I totally disagree with any provision that our distinguished lawyers, or ICANN lawyers, or anyone could relating to this extension of the carve out for many, many, many provisions which is totally confusing. Even the provisions in recommendation one have disagreement of the government already. So please don't...

Mathieu Weill: Kavouss, if I may, I think the discussion is actually - I haven't heard anyone in this discussion on 25 extending anything here. Trying to provide clarify, I think, it welcome. I know that Brett made a suggestion. He feels it does not reflect the situation and so is not yet convinced. I'm now going to turn to Greg for the next speaker.

Greg Shatan: Thank you. It's Greg Shatan for the record. First, I think we need to go back to first principles, if you will, on the GAC carve out because the idea that the GAC should not be in a position to block or vote against a community decision to override the board adoption of GAC advice. So everything that we're doing here, as far as I can see, is consistent with that. So I don't think there is any extension of anything.

As far as Brett's suggestion, I have a little trouble with it. I would modify it slightly so that the board needs to specify where its decision is based on GAC advice. But I think it might be torture to the board a little bit to have to essentially ring fence GAC advice from other aspects of what's going to be a multi-various decision process.

In any case, we need to keep going back to first principles. If the decision - if the board's decision is consistent with and aligned with - stems from GAC advice, whatever else has also fed into it and that is being opposed by the community, the GAC carve out applies. It seems pretty simple to me.

Thanks.

Mathieu Weill: Thank you, Greg. I think...

Seun Ojedeji: Hello. This is Seun. I'd like to stay in the queue.

Mathieu Weill: Go ahead, please, because I was about to close this item. So, please, Seun.

Seun Ojedeji: First, a quick one. I'd just like to get clarification. I think where we are approaching this question should be (unintelligible). The leadership has presented a response. I think it should be better to hear specifically what response (unintelligible), what part of response is being questioned. Presenting - talking so much about it, would that actually addressing the response which was proposed is not (unintelligible).

I personally thought the response for this particular question, even though I'm not a fan of the carve out, I think it adequately reflects the intent of the carve out. Anyone who opposes or has a different view should specify what part of the response they don't agree with (unintelligible). Thank you.

Mathieu Weill: Thank you, Seun.

So at this point my summary on this item is that - of course, no one is disagreeing with the report, so that's our safest best, safest initiation of an answer. There is a suggestion by Brett which is getting some support with

some qualifications but also getting some - others are not willing to follow that. So we don't have a consensus here.

I would note, also, that it would put a certain burden upon the shoulders of the ICANN board, so I would be very reluctant to introduce this new requirement on the board before checking with them. So at this point in time, I think we don't have position support to move forward with this.

I strongly encourage, once again, Brett, that you maybe launch this conversation. We can definitely try and see whether that's something that gets reaction on the list. Until this point, I think the proposed answer for 25 will remain as is now, which is reminding the lawyers of the report and keeping it that.

And so this answer to question 25 will be: We will keep it as is. When we finalize our responses and analysis by early next week, if anything gets reaction and comes up in addition, then we'll see.

And that concludes the list of questions we have received from the lawyers. We have a little bit of time to go through the first questions that have been identified and that are mentioned starting on page 11, which are labeled "additional questions from the CCWG" which were added after the legal team circulated their drafts on April 2. So this is obviously a first reading of these questions here.

The first one is on the selection of IRP panel. Our report states that the community would nominate the slate of proposed panel members and that the final selection would be subject to ICANN board confirmation. The bylaws mention that the ICANN shall, in consideration with the global internet community, initiate a process to establish a standing panel to ensure the

available of a number of IRP panelists that is sufficient to allow for the resolution of disputes consistent with the purpose of the IRP. The community shall be directly involved in the selection and the designation of the chair of the standing panel.

Our initial assessment as the leadership team was that this does not fully capture the importance of a community-driven selection process as well as the role of the board which is to confirm or veto panelists. Our recommendation is to provide additional safeguards about this process in the bylaws to ensure that the intent of the report is carried out.

I'm putting this year - if there is any immediate reaction, let us know. We'll certainly have some form of second reading on this because you're discovering the questions as well as the answers here. But that would be our first suggestion.

Our second one is still on the IRP, and it's somehow similar. The reports on the rules of procedure for the IRP, they report states that the implementation will necessary require additional detailed work. Detailed rules of the implementation of the IRP, such as rules of procedures, are to be created by the ICANN community through a CCWG assisted by counsel, appropriate experts and a standing panel when confirmed and approved by the board. So approval not to be unreasonably withheld.

And what the bylaws are currently stating is that members of the global internet community shall (unintelligible) processes for the IRP that are governed by clearly understood and pre-published rules applicable to all parties rules of procedures.

Our recommendation would be to strengthen the community-driven nature of the establishment of these rules of procedures in the bylaws, because we had the impression that it was maybe too light and not enforcing enough that it's the CCWG that should be driving the rules of procedures.

So I see that Malcolm was supporting the first additional question. Second is somehow similar. We have the impression that the bylaws are not strongly enough supporting the principles underlying in the report. Malcolm was kind enough to support the second.

The third question or issue is related to the GAC carve out. It's an issue that was raised by Kavouss about the manner in which the carve out is described. So this is exactly the point you've been making a few times already, Kavouss.

The suggestion would be to ensure that the - does not give the impression that the board recall process is solely designed on ICANN's implementations of a GAC consensus board resolution. Clearly, that would not be consistent with our report. So that's a request to double-check, maybe clarify a little bit the wording around the carve out, which appears in several places in the bylaws but is well-identified through your e-mail, Kavouss. So thank you for putting this in writing on the list.

Sabine is rightly pointing out that we'll have to (unintelligible) connection with question 29. I tried (unintelligible) on the numbers, Sabine, because I'm not so sure about it. But certainly there are several questions on the carve out and things are interconnected here.

The fourth issue we have identified -- and it's a shame Leon is not on the call right now because he had a meeting -- was about section 27.3 about human rights. It had three subsections. The question raised was whether the

subsection, which is currently in the transition article, should be moved back into section (1.2) which is the commitment by ICANN since it's a commitment to human rights, because the commitment itself is not a transitional bylaw.

What is transitional is the fact that until the FOI is approved as a consensus recommendation, then there is no IRP possible and so on and so forth. So that's more of a structural aspect for this item. I see Niels's hand is up. So Niels, you have the floor.

Niels ten Oever: Hi. Thanks for having the opportunity to talk about this. I am not sure if this was completely in line with the remark made by Steve DelBianco, but I was a bit confused about that because in the report we said within its core values, ICANN will commit to respect internationally recognized human rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond or to consider any complaint, request or demands seeking (unintelligible) human rights by ICANN.

But this was meant to make a difference between respect and protect and enforce. So CCWG tried to limit any demand for enforcement and protection as opposed to respecting human rights. Of course, after the framework (unintelligible) is implemented, challenging ICANN with regard to respecting human rights shall be one of the mechanisms. The new bylaws text is worded closely to the initial idea and I think is fully in line with it.

Mathieu Weill: Thank you, Niels. This is noted and I think - thank you for the clarification.  
Greg?

Greg Shatan: Thanks. Greg Shatan for the record. To my mind, I mean there are a number of different ways to deal with as they - a drafting element. I don't think there is anything particularly incorrect in the proposed way to handle this.

On the other hand, I think it would also be appropriate to take section A of the human rights section beginning within the scope of its mission and core values and put that into the mission and core values section and leave B in the transition article stating since A, wherever it now sits, shall have no force in the fact, et cetera, et cetera.

Then take away the part that says - and revised it accordingly so that upon approval of the FOIA (chair) is contemplated, the text in A will become effective.

I think substantively, there is not a huge difference between the two points. Cosmetically in terms of showing the current commitment, even if it's not an effective commitment until we carry out the FOI, might preferable. I don't think there is any deep meaning, frankly, to it in either direction. But I could see doing it the way I've just suggested as well.

Mathieu Weill: Thank you, Greg. It's a good suggestion. We are obviously at a first reading stage here. So we need to make sure we got that. I'm seeing Brett back in the line. Brett?

Brett Schaefer: I'm just a little bit confused here. The text is pretty clear that after the FOI is developed and the board approves it and the community approves it, it will be moved to the operative section of the bylaws. So why would you prematurely move it there before that process is complete? It's pretty clear to me that there is a process here and then it goes operational after that process.

It seems to me that inserted into article 1 now, before any of that process is complete, is premature and not necessary. Thanks.

Mathieu Weill: Thanks, Brett. I think Greg was trying to prevent a work around this issue and I'd suggest we try and work it out this way for more formalized answers. But I think it would address your concern about not giving the impression that the commitment applies when it doesn't and yet not creating the impression that this commitment is separate from the others. It's way down in the bylaws compared to the cosmetic approach that Greg was mentioned.

So I think we'll find a way that meets everyone's requirement here. And I think it's well noted.

We're five minutes to the top of the hour, so I will not go through all the remaining questions. Just encourage everyone to review those questions. The remaining ones are about the AOT reviews and the mediation initiation process and how community chairs council to their important matters.

If we receive any additional issue raised by this group by April 9, then we will update the list and try to provide either answers or questions of clarification for the lawyers. So please consider the deadline to be 23:59 UTC on the 9th of April so that we can finalize our discussion.

The questions we have had agreement on and clear agreement on during this session after the first discussion on Tuesday are we will recap the answers in a document that we will send back to the lawyers so that they can take these answers and work on them without any further delays; that's giving them extra time to do that. The others, obviously, we'll (unintelligible) to finalize early next week. So that's our conclusion on that item.

Brett, I think it's an old hand. But I think Kavouss' hand is a new one. Can I ask you to briefly state your comment, Kavouss, please?

Kavouss Arasteh: Mine is a new one but a reminder that any extension of application of carve out other than to those very limited area of contained and described in recommendation one is strongly opposed. I request the lawyers to take out all of the reference to the carve out in their drafts and put second page paragraph, which is in recommendation one.

It (unintelligible) to a lot of difficulties and those people that have written in red or green or blue, they will take benefit of that and we would have another testimony saying that the private sectors have another net gain from the bylaw by extension of carve out.

Thank you.

Mathieu Weill: Thank you, Kavouss.

Recapping the next step. After this call, we will send the lawyers those questions that are civilized - those answers that are civilized. A few of the questions we have on the question -- if you are able to follow me -- we need some clarifications on the questions, and so that's going to be sent back to the lawyers for clarity.

On your side, we want your issues, if any, by April 9, 23:59 UTC. We had considered the opportunity of a call on Saturday, 400 UTC. We know it's a very inconvenient time. We have a deadline on Saturday, 23:59. So maybe what I could offer, the generosity of the coaches would be to not have a call on Saturday but certainly we'll need a call on Monday. We will also plan for a next call, if need be, on Tuesday to finalize this review for the questions.

Depending on the number of questions and the complexities of the questions you have, we would set the Tuesday call. And that would be our next bet in order to be able to provide our lawyers with the clarifications requested as soon as possible.

So that's the next steps. I also owe you an answer - we owe you an answer on the questions that were raised on the ICANN 56 meeting in Helsinki. As you would recall, we have requested some time a little bit before Marrakech that we would organize a meeting on the Sunday before Helsinki -- remember Helsinki is a B meeting, so it's only from Monday through Thursday -- in order to kick start Work Stream 2.

The request is being studied and I understand it may be on the agenda of the board finance committee call very soon. So we don't have a clear answer yet, but we are now confident that we will be able to have an answer to that request soon. We haven't had it yet. We haven't had a no yet. Hopefully we'll get one very soon so that we can all make our own arrangements. We will have to get back to you on this as soon as we get an answer.

My suggestion is that we put this agenda item on the Monday call as well so that we can report back about the latest developments.

I think we're at the top of the hour. It says any other business. I'd like to ask if there is any. Okay. I'm being suggested that maybe we should clarify the time of the calls on Monday and Tuesday.

Seun Ojedeji: Hello. This is Seun. Can you hear me?

Mathieu Weill: Yes, Seun. I'll come to you in a minute.

Our suggestion would be - I'm turning to staff to see what time of the call would be appropriate. Maybe 19 UTC on Monday? 19 UTC on Monday it would be. On Tuesday, what would be appropriate to avoid any conflict with other meetings that you are already supporting? Maybe 12 UTC something, if need be? Good. So we're speaking at this point of 19 UTC Monday and 12 UTC Tuesday. We will confirm in the next few hours. Ching, you now have the floor.

Seun Ojedeji: Okay. Thank you. I just wanted to ask - can you hear me?

Mathieu Weill: Yes, I can, Seun.

Seun Ojedeji: Okay. Thank you. I want to make confirmation of the time by which the lawyers will get back before getting into public comments. I understand that public comments will be 20th. Then are we going to get a satisfy, okay, from the lawyers before the public comment? Is there enough time for that because I saw that it was lumped together on the timeline? I need to get the schedule on that because I think there is supposed to be a timeframe for us to review whatever it is that the lawyers are sending back to us.

Thank you.

Mathieu Weill: Thank you, Seun. What I suggest is that we include an update on the timeline during our next call on Monday so that it's clear for everyone. Certainly, given the answers and the cycle of clarification back and forth we're having with the lawyers, I think we'll need to double check with them on that before answering your question. So let's take that on for the next meeting, if you agree to bear with us for a few days on that. Is that okay?

Seun Ojedeji: Yes, that is okay. Thank you.

Mathieu Weill: Thank you for raising this point, Seun.

With that, I think it's been a good meeting. We've made good progress across almost all of the questions. This is not always easy. But implementation - the implementation phase we're in is sometimes tedious. It's detailed work. But it's good to see that we are still very engaged and constructed around it.

Thank you very much, everyone. Don't forget the April 9 deadline if you want to submit something. Thank you.

END