

ICANN

**Moderator: Brenda Brewer
April 11, 2016
10:00 am CT**

Coordinator: The recordings are started.

Grace Abuhamad: Thank you. All right, do we have anyone on audio only? Okay. Everyone, welcome, this is the CWG IANA Bylaws Review call. It's the second of two by law to review calls that were having that are specialized only to discuss bylaw review items. So we will turn it over now to Jonathan who is back and is chairing our meeting today. Lise will be on audio only I think, once we dial out to her. Thank you.

Jonathan Robinson: Thanks, Grace. And hi everyone. Welcome to the call. Good to be back with you. I missed the last call but I've caught up on quite a bit and I kept on track via email.

So the opportunity here really is to be (unintelligible) in the second call. We had the previous call where Sharon from Sidley, who is on the phone with us, so thank you, Sharon for joining us again. But she talked us through in detail various elements of the bylaws and now the design team leads have gone away and dealt with specific – dealing with specific questions, which are laid

out in front of you under 1 A, B, C, D and in the document that Grace circulated, I think it was on Friday.

So really I think without any sort of further ado it makes sense to simply go through those answers and make sure those responses from the design teams are satisfactory and clear to the CWG, and that we can essentially bank those responses and or discuss them as necessary.

There are a couple of them that have been – there's been some discussion on the list about. I've been through those with Lise this morning and discussed it in some detail. And it seems to me that I'm reasonably optimistic that we can find solutions to the various issues that have been raised. But let's not preempt that, let's get to those when we come to them.

I was hoping and expecting in fact that on the CSC items, which are the first set, that I would be able to call on Donna. And I see you're here, Donna. So ideally, Donna, if you're willing it would be great if you can talk us through Items – what's it – 8-12 and we'll go through those first of all and see if we can either put these to bed or take any discussion or issues arising on them. Are you willing to do that? I'll just give you a moment, that's fine Donna.

Yeah, so, Donna, let me know as soon as you're in on the audio and we will pick up on those. And just so that I don't surprise anyone else on the Item 13 through to 15, and in fact 16 through to 17, SCWG work as well.

I know Avri and Matthew in particular have worked on the open doc and others have commented on that so I'll be asking, let me see if Avri is around and/or Matthew to talk us through those. I don't see either Avri or Matthew (unintelligible) available at the present but I hope one of them does join or

otherwise I'll leave the discussion through on those points, but it would be helpful if we had either of them.

And then I know Chuck and the Design Team O have work done items pertaining to the budget that's really, from what I can see is 24 here. And then we may look at the final appendix items under Section – the various bits and pieces there. So hopefully we can work through this in relatively short order. Thanks Chuck, for confirming your on 24, and Donna, you're in. So let me, without further ado, and the mic over to you Donna, and we'll take it from there.

Donna Austin: Thanks Jonathan. So I guess I'm just walking through the Sidley question and my response to that.

Jonathan Robinson: Yes, Donna, that would be great. And essentially, as I say, I think we can then at that point, I mean, I've certainly been true your responses and I've talked it through with Lise. To the extent that you think these are straightforward and clear I think we just emphasize the response and the answer. To the extent that anyone on the CWG have an issue with it or it's insufficiently clear we have the discussion and update via the notes in the chat. So let's just work our way through and as briefly but thoroughly as you can and we will just work our way through them, so go ahead Donna.

Donna Austin: Okay. So in relation to the first question, clarify whether direct customers and primary customers are the same thing, yes they are, certainly from my perspective. So we were trying to draw any distinction. So I think, you know, I don't have a strong preference for whether it's direct customer or primary customer. Probably lean towards direct customers because I think the NTIA announcement of 14 March actually referred to direct – directly affected

parties. So yes they are the same thing. We can use direct or primary, I don't have a preference.

Jonathan Robinson: All right, Donna. Well, you know, in that example, I mean, I think it's a yes and its direct customers because that's your (slight) preference unless someone objects to or has a strong view. Otherwise – and here we have some input from Kavouss so, Kavouss, go ahead.

Kavouss Arasteh: ...customer, however, I think the text which is now before us have one further element, which would say "include the top level domain name operator." Then we say include that we would not exclude any future thing. So let us accept direct customer and let us put that "which includes top level domain name operator." This includes – or inclusion does not exclude any future talks. Thank you.

Donna Austin: Thanks, Kavouss. I think that's actually customer – I think that's covered by the fact that we say the primary customers are – of naming services, our top-level domain registry operators. So I think we have covered that.

On Number 9, confirmed that the appointment of a liaison to the CSC by the GNSO is intended to come from the Registrar Stakeholder Group or the non-contracted parties house. So the only restriction here is that it not be from a registry because the ccTLD or gTLD registry operators will form part of the committee as members. So the liaison, the only exclusion here is that not come from a registry.

And, Chuck, I know you had some comments on this but I didn't necessarily understand but hopefully it's clear that the only restriction here is that (unintelligible).

Chuck Gomes: Donna, this is Chuck. I thought that what you said was the same thing that's in Number 9. I didn't see any difference.

Donna Austin: Okay.

Chuck Gomes: So I agree with what you say that it just can't come from a registry. I just didn't see any – I thought that's what Number 9 set already. But I think we're in agreement that the only restriction is that can be a registry.

Donna Austin: Right. Sharon, I see your note in the chat. Is it easier if we say that, you know, it comes from the Registrar Stakeholder Group or the non-contracted parties house rather than – you're suggesting that non-registry is not specific enough. Okay. So just change it to the fact that it can come from the Registrar Stakeholder Group or the non-contracted parties house.

Chuck Gomes: This is Chuck. Sorry to jump in. But I think – I like the wording that Donna had. It can't be from a registry because if there are future organizational changes in the GNSO structure that would still work I think. And who knows, there might be a, you know, a new stakeholder group or something. I'm not predicting that but I think that's – covers it in a way that would also work in future structural changes of the GNSO.

Jonathan Robinson: Okay, I see there's another hand from Kavouss. Kavouss, come in at this time.

Kavouss Arasteh: Yes, I don't think we need any explanation apart from the text stated it would be for the GNSO to decide. That's all. We don't mention anything, registry, registrar, commercial, noncommercial. In reply to this question it is depending on the GNSO to decide. (Unintelligible) thank you.

Donna Austin: Thanks, Kavouss. So, Sharon, you're correct. You've asked the question, "Why is the answer to 9 no?" it sounds like what you're saying is yes. That's correct, I just misread the question so that's why I said – answered no. So hopefully we are clear on that. Do you want to go ahead, Sharon? Okay.

So 10, "Confirm that we can add it by law that requires appointing organizations to use reasonable efforts to fill vacancies on the CSC within a month and if so whether the ccNSO and GNSO are required to approve the filling of vacancies."

So my response here was, agree to include the use of reasonable efforts to fill vacancy in the bylaws, but rather making it a requirement for the ccNSO or GNSO, and sorry ccNSO and GNSO, to approve when a vacancy replacement may make more sense to include that the appointing organization also gives due consideration to the overall composition of the CSC. So that was my preference on that one.

Okay, "Clarify which organization selects the representatives from the ccNSO and the Registry Stakeholder Group who will review the CSC charter." So I suggest the ccNSO and Registry Stakeholder Group would select representatives from their own groups to form a committee to review the CSC charter. And I said it may be appropriate for the ccNSO Council and Registry Stakeholder Group ExComm to collaborate to develop a process for the review including a selection process. Does that make sense to people?

Kavouss, go ahead, please.

Kavouss Arasteh: Yes, the previous question I am not comfortable with that qualifier. I think it is difficult to say what is reasonable, what is not reasonable. It is not necessary to say "make effort" (unintelligible) what is reasonable effort or not

reasonable effort, whether it's effort, I think it's quite clear. If there is a vacancy that should be enough. So I am not comfortable to put that qualification "with reasonable effort" and so on so forth, both of them are (unintelligible).

I don't know who is going to decide whether something is reasonable or not reasonable, whether something is effort or is an obligation. For me it is more or less an obligation to fill that vacancy, that's all. And we have to (unintelligible) you raise this in three times in the previous cases and we would be much comfortable not to have any qualifier with reasonable effort or not reasonable effort or effort (that's) not effort, so please delete that. I am not comfortable with that. Thank you.

Donna Austin: Sharon, did you want to go ahead?

Sharon Flanagan: Yeah, thanks Donna. I think Kavouss was back on Number 10. My question related to Number 11, which I think is where we were which was just to confirm that new language at the end that says, "it may be appropriate for the ccNSO and RySG to collaborate to develop a process." I wanted to confirm that's not something you contemplate in the bylaws, that's just something you're suggesting as a potential process, and maybe it goes in the charter.

Donna Austin: Yeah, every time I read the charter, Sharon, I see that there's gaps in it so, yeah, that is just not for the bylaws but just a note that, you know, we have to pick up at some point. Thanks.

And, Kavouss, to your point I'm not sure how to respond to be honest. I think in my mind, you know, make reasonable efforts does make sense. You know, there's a requirement there that any vacancies be filled within a month. And I think what this is suggesting is, you know, that the one month isn't absolute so

long as we can show that the filling organization has made reasonable efforts to try to fill the vacancy.

Alan, did you want to go ahead?

Alan Greenberg: Yeah thank you. On Item Number 10 I agree with you. A month – it sounds reasonable but given the cycle – the monthly cycle of meetings and the need to actually go out and find someone or ask for volunteers it could well be that that month is not met. I would not want to see language which says they are in violation of something or other if they have not met that absolute deadline.

On the other hand I think the words to convey the fact that there is some urgency and they have to get on with it, they can't just ignore it altogether. So I support words like that, reasonable effort or something similar, to that. And I agree with the word Sharon is suggesting for Number 11. Thank you.

Donna Austin: Thanks, Alan. Kavouss, did you have...

((Crosstalk))

Kavouss Arasteh: Yes, when you mention correctly that it should be filled within a month is already covering the situation because should from legal point of view is not mandatory, it's some sort of invitation, not obligation sort the option and so on so forth. So I don't need to add another qualifier apart from this should. So I agree with the way you have explained that, should be filled within one month.

And I think that we should not say that reasonable effort because people may say that we made effort but it did not succeed or we made effort but it is not

reasonable. So a position is (unintelligible) should be filled up in one month.
Quite clear. Thank you.

Donna Austin: Thanks, Kavouss. Jonathan, do you have something you wanted to say?

Jonathan Robinson: Yeah, I mean, it's essentially what's covered in the chat. But I wanted to assure Kavouss that – and I thought that Sharon and/or Greg and others would come in on this. This is not – this is not weakening the position, it's simple creating a – a situation where should this not be – there is every intention to fill the vacancy within a month and should it not happen what your problem is if you don't put something, a qualifier like reasonable, then you end up with some form of violation.

So I think it's – Kavouss, you shouldn't take this as weak language or problematic, it certainly demonstrate the full intent to fill the vacancy and reasonable efforts, as Greg says, is a well understood concept. So it's not – so I think just in support of – and recognizing those points. Thanks, Donna.

Donna Austin: Thanks, Jonathan. Sharon, are we okay on Number 11? Sorry, I got a bit confused there.

Sharon Flanagan: Donna, no it's clear. Thank you.

Donna Austin: Okay thanks. So on Question 12, given that there will not be a regularly scheduled review of the CSC charter beyond the first review (unintelligible) can call for a review of the CSC charter. So I had no objection to the ICANN Board being able to request a review of the charter, and also thinking about it I have no objection to the PTI Board being able to request a review as well, provided that the ccNSO and Registry Stakeholder Group conduct the review and any recommended changes are ratified by the ccNSO and GNSO.

Kavouss, go ahead, please.

Kavouss Arasteh: Yeah, you put the qualifier here. It may be appropriate, why not we say that these two should collaborate with each other? That's all. Why we always trying to put this (unintelligible) it may be appropriate or may not be appropriate to collaborate, and who decide that is appropriate or not appropriate?

And why we say maybe appropriate. I have been suffered from this sort of qualifiers in CCWG many, many times and I would put in an end to that in the CWG or CCWG that was a concept. But here while writing the bylaw and we should avoid all of these which and (shaky) point like it would make every effort or it may be appropriate. Why not we say that these two entities should collaborate with each other. What is wrong with that? Please convince me.

Donna Austin: Thanks, Kavouss. So as I mentioned previously it may be appropriate for the ccNSO Council, that's really a note for this committee. It's not related to the question that Sidley asked but it's something that I picked up when I reviewed the charter again is that we don't specify how a selection process will be done. So this isn't for the bylaws, it's not for the charter at this point, it's just a reminder really to me and others that there's another element of the charter that we need to go back and have a look at. So I take your point but it's just a note at this point, it's not for the bylaws. Thank you.

Does anyone have any questions for 12? Are we okay with what I'm suggesting there?

Cheryl Langdon-Orr: Yes.

Donna Austin: Okay. Thanks. So, Jonathan, I think that's the end of my bit.

Jonathan Robinson: ...Donna, and I think that may mean that becomes my bit since I don't see Avri and I don't see Matthew Shears. So it may be that I need to lead us through this and if I'm missing someone. Kavouss, did you want to say something before we go on to this next point...

((Crosstalk))

Kavouss Arasteh: ...really surprised, whatever I suggest is rejected by the presenter. And she insists to dominate us and impose us her own wording. Why we are here? We don't need to be discuss so what she presented we should take it as granted. So I don't agree with all these qualifiers. I'm very sorry, I don't agree with that. This weakens the situation, may need to be collaborate. No, they should collaborate to have this. I don't understand.

And I request, respectfully, kindly that she respect our views and do not insist on her wording. Thank you.

Jonathan Robinson: Thanks, Kavouss. I think – I certainly didn't get that impression that there wasn't any intention not to respect your input. On the contrary, I thought that – listened to and (unintelligible) some answers were given. But let's – I saw some other hands come up in response so maybe I should defer to those and then we can see where we get to. Greg.

Greg Shatan: Hi, it's Greg Shatan for the record. And in response to Kavouss, I'm listening carefully to both what Donna said and read what is written here, and Kavouss's comments. And if I...

((Crosstalk))

((Foreign Language Spoken))

Coordinator: This call is interrupted. Please try again later.

((Foreign Language Spoken))

Greg Shatan: It's Greg. Are we back in...

((Crosstalk))

Grace Abuhamad: Yes, sorry about that Greg.

Greg Shatan: No, just speaking for myself, I for one am listening to Kavouss's comments and reading what's on the page and listening to what Donna's presented and if I felt that I wanted to weigh in on an issue and if I felt that – and if a number of us weighed in on an issue and agreed with Kavouss I'm sure we would be making those changes.

If one person has a disagreement with what's put out there then I think that's not going to make a change. I don't think that is a – I think it's unfair to characterize this as dominating anything or that the comments are being ignored.

I'm sure that if I made a comment and nobody else agreed with it, it would also be, you know, duly considered and not acted on. So I don't think there's anything going on here other than a very normal conversation. As far as I – I think there's a lot of hair-splitting going on here about the language. I think it's all very appropriately drafted so far.

And, I'm, you know, concerned with the level of – in Yiddish we call it (topol), which is the microscopic review of text such as done by rabbis sitting around all day everyday doing nothing but dissecting the Torah. We don't have that time or the beards to do that. Thank you.

Jonathan Robinson: Thanks, Greg. And I note there's some support for that. Kavouss, rest assured, I will listen carefully from the chair as well and if the material points coming in we will accommodate them especially if they receive support. My sense is that your points are understood and (unintelligible).

Cheryl Langdon-Orr: Who's next, Jonathan?

Jonathan Robinson: While we wait for Cheryl I'll just emphasize that...

Cheryl Langdon-Orr: No, I'm back.

((Crosstalk))

Jonathan Robinson: Okay.

Cheryl Langdon-Orr: Great. I just also put my hand up – it's Cheryl Langdon-Orr for the record – to assure Kavouss that if I agreed with him I would indicate I did, as I indicated I agreed with other speakers on other interventions. This is not a domination by any presenter. It is all of us either agree or not with each other.

As it turns out, when you look at the chat so far most people have agreed with, as it turns out, Donna as our last presenter, and she was specifically asked by our cochair to lead us through and give her preferences as she led the drafting team – the design team, sorry, for these issues. So let's be clear, none of us would not come forward if we agreed with you, Kavouss. Thank you.

Jonathan Robinson: Thanks, Cheryl. Let me pass straight on to Alan then – I hope I didn't cut you short, Cheryl, please put your hand up again if I did. I thought that you had finished. Alan, go ahead.

Alan Greenberg: Thank you very much. I tend to support pretty much everything that Greg and Cheryl said, with the exception of the beards. Some of us do have beards. But there has been a significant amount of support. It's not everyone has been silent, there have been comments in the chat and a number of us, including me, did make comments in support of the wording that we see on the screens. Thank you.

Avri Doria: This is Avri...

((Crosstalk))

Jonathan Robinson: Thanks, Alan.

((Crosstalk))

Jonathan Robinson: Was that Avri?

Avri Doria: Yeah, I just wanted to say I joined the meeting between two flights but I'm only on the phone and not on Adobe Connect.

Jonathan Robinson: Avri, we may well need to decide how we handle the next section. And I'll come back to you in just a moment then. Thanks very much for joining. But just reminding everyone of the point of this, we are not constructing text from the outset here. We have a series of very big questions that require

clarification in order that the bylaws can be effectively drafted. What we're doing is making sure that we provide clear responses to those.

In providing those clear responses our principle point of reference, as I think Andrew reminded us in the – or someone reminded us in the email dialogue earlier, is to go back to the proposal. So this is not – we are not in any sense contracting things from scratch, we are making sure that the work of the bylaws, which is based on our proposal, accurately reflects the intent and purpose of the proposal. So – and thank you for those that assured Kavouss and others that we are all intending to listen carefully to one another in doing that work.

So, Avri, where we are now is just the area of dealing with first of all then IFR then special IFR and then, SCWG. Now as you well know, these are areas that you and Mathew have worked on closely. I anticipated that, well, perhaps I shouldn't say that, but my sense is that the answer was substantially noncontroversial. There's probably a couple in here that need some discussion, two or three.

I would be willing to lead the group through it since I have access to the Adobe Connect. But if you would be happy to do so and you have either a printout or a screen copy of the document that Grace sent out on Friday, you are in a position to do so. So let me know, Avri, whether you are...

Avri Doria: Yeah, no.

Jonathan Robinson: ...happy to talk people through the answers or whether you'd prefer me to do so.

Avri Doria: If Matt is there he can – no, I am – de-boarding from one plane and walking to another so I definitely don't have sheets of anything in front of me. I'm just – so I'll listen and I can answer any questions but I'll go back on mute now.
Bye.

Jonathan Robinson: ...in which case I will lead us through it. And if I'm wide of the mark according to you or anyone else on the call I'm sure you'll let me know. So question 13 seeks to clarify whether gTLD and ccTLD registry operators are the same as the consumers of the IANA functions whose needs must be considered by the IFRT. And this refers to Paragraph 276 on Page 65 of our proposal.

And I – actually to be fair, I didn't fully understand your answer. My understanding of this is that they are – that gTLD and ccTLD registry operators are the same as consumers – of the IANA naming function. And in fact I went back and referred directly to the proposal here. So...

((Crosstalk))

Avri Doria: ...and what I was trying to differentiate between – and pardon me for just jumping in. But what I was trying to differentiate between, and I believe that Matt concurred, is the fact that we have, I mean, all of the groups represented in the IFR and in the SCWG is that certainly the direct customers are the two sets of registries. But in terms of the consumers now I didn't find the direct language on consumer versus direct customer and maybe I didn't search – so perhaps you have that. But that was the point.

Jonathan Robinson: So let me – thanks, Avri. Let me tell you what I did and then let's see if this meets the requirement. I went to Paragraph 276 on Page 65 and the second bullet there says, "Any additions..." it refers to additions to the IANA

segment of work. It says, “at minimum the IFR will consider any necessary additions to the statement of work to account for the needs of consumers of the IANA naming function or the IANA community at large.”

Now in my opinion it probably should say, “and/or the IANA community at large.” But in principle what this seems (unintelligible) is that any necessary additions to be considered would derive either from the direct customers or the broader ICANN community.

So it feels to me like that second bullet point covered it – covered the broader community and through the broader community, therefore, the other point that you made where, you know, sort of consumers of the IANA function in a more general sense, in a more broad sense. So it felt to me like if we clarified that gTLD and ccTLD registry operators are the same as consumers of the IANA function, because we’ve got that (unintelligible) statement following it in Paragraph 276, everyone is accommodated there.

That’s the way I understood it. Now let me go back to the Adobe and see if – or if you or anyone wants to come back on that. Martin Boyle, go ahead, Martin.

Martin Boyle: Thanks so much, Jonathan. Yeah, I think certainly I would – well I did on Saturday evening quite late, read this in the way that you’ve just approached it. When I looked back at the text of the draft bylaws and I think it was – now I’ve lost this again, yeah, 18-3, the – no 18-12, I thought that that text actually looked reasonably okay because what it did was make a specific reference to the requirements of the direct customers and also of the community – of the wider community. So I think the – certainly for me the current drafting looks like it does take your point into account and certainly the concerns that I expressed on Saturday evening. Thank you.

Avri Doria: This is Avri. Yeah, I don't think – and perhaps this is where the confusion is – I don't think that I was trying – and I guess I missed the point about consumers versus the rest of the community. But I wasn't trying to say that the bylaw needed to be rewritten in that case, I was just trying to answer the question that we had to contain the interests of the larger community.

Jonathan Robinson: Thanks, Avri. So I think the reading – yeah, and Sharon proposed an alternative that has the same meaning as direct customers and naming service – exactly. So I think to answer your question where you said is it one and the same, I think that's right. The – Sharon's answer covers that providing that we have that second – we have the understanding of the second part of 276 which says that the IANA function review will consider both the needs of the direct customers of the naming services and the broader community.

Avri Doria: Exactly.

Jonathan Robinson: Okay good, well that seems to resolve that and I suspect Sharon has her marching orders, to so speak, on that one then. So let's move on to Item 14 and it says, "Is it appropriate for language to be added to try and align some of the review process, the (ASC) review, a proposed inclusion is any IFRT recommendation should identify improvements that are supported by the data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures," and so on.

Avri said – Avri and Matthew's response agrees with that so that seems to make sense, although it would be useful to know where the proposed language is being drawn from.

Avri Doria: Yeah, that was sort of – and when I went back looking for – and I took that as a question of should this review be described in (unintelligible) to all other reviews. And specifically in these details. And I took that as, yes, it should be. When I looked for the – the text I found it showing up in pieces but never necessarily in that altogether piece like it was being quoted there. So I found it so the question was from Matt and I wasn't able to completely adequately answer it. It's essentially from the other text – but gee this is a long walk in this airport – but I never found it in that one piece that's being discussed there.

Jonathan Robinson: Thanks, Avri. And Sharon has a hand up so let me go straight to Sharon.

Sharon Flanagan: Thanks, Jonathan. So there's a handful of sentences here – the first sentence, which is that recommendations should identify improvements that are supported by data. That sentence, that was in the CWG language for the special IFR and so it was just – it was just put over here as really we thought a conforming change, probably intended to be in both places.

The rest of the language came from ICANN Legal. And I believe it is coming from AOC. We've asked for confirmation. I haven't heard back yet. But my understanding is they were just trying to conform to the process that was used in the normal AOC reviews.

Avri Doria: Yeah, this is Avri again. I was able to find, you know, the bits and pieces of all those phrases in the AOC reviews. All I was saying is I never found it in there as one altogether piece.

Jonathan Robinson: Okay so thanks for that then. It sounds like there's sufficient confirmation subject to that clarification from ICANN Legal that you've sought, Sharon, that Question 14 is then answered satisfactorily in the affirmative. So it does make sense to add that form of language.

All right so 15, “Confirm that we can add a bylaw that requires the (unintelligible) reasonable effort to fill vacancies on the IFRT (unintelligible).” (Unintelligible) the earlier point like that and the answer from Avri and Matthew was yes. Okay we’ve got the line muted so our position is that the answer in the table is yes to Question 15. And I’m not hearing any opposition to that.

We then go on to the special IFR which has its first – I hear the suggestion in the chat from Kavouss again. “Here I suggest replace ‘reasonable’ by every.” And some discussion around whether or not best efforts could be used. Sharon, your hand is up. Sharon, your hand is up. Go ahead.

Sharon Flanagan: Yeah, with respect to best efforts it depends on – it depends on the intent. And it’s understood in, you know, under US legal analysis, best efforts really is a very, very high standard. It’s usually something people are unwilling to agree to. It means you must do everything possible to, for example, fill that vacancy. Whereas reasonable efforts is just that, it’s reasonable. You have to be trying. But if you’re trying, you’re trying hard but you’re failing, you’ve met your obligation. Best efforts is a very high standard.

Jonathan Robinson: And, definitely, Kavouss, it’s important to recognize here that these are – as you’ve rightly (unintelligible) a moment ago, Sharon, these are both well understood terms. So it makes – rather makes sense for us to use either best efforts or reasonable efforts because these have established legal understanding with them rather than us invent variations which is why they are in here in this form.

Greg Shatan: This is Greg Shatan for the record. Just to follow up, reasonable efforts is also a term of art. It does not require that every possible effort be made, especially

those that are commercially unreasonable or unreasonable in terms of any other kind of capacity to get things done. Best efforts basically can be interpreted that you need to bankrupt yourself, go without sleep, pay tens of thousands of dollar for a single airline ticket, etcetera, etcetera, to get something done kind of like climbing Mt. Everest should be a best effort exercise.

Although if you're more prudent you may want to make it only a reasonable effort's exercise because best effort's exercise you might actually die. Reasonable efforts you would probably survive. Reasonable efforts are – reasonable is an objective standard under US law and it's what the reasonable person would do who is similarly situated with similar skills and abilities. And what they would do in order to get things done, not asking to do anything unreasonable but they should be making all reasonable efforts to get things done and that's what's understood by that term.

Sometimes lawyers try to split the baby and put in things like commercially reasonable best efforts. Since this isn't a commercial exercise I don't know if that would work. I don't want to get into that. I think reasonable efforts is an appropriate level and putting in terms that can't be interpreted under US law in a document that is a – intended to be a US legal document I think would be inappropriate or at least not the best – it would not be reasonable. Thank you.

Avri Doria: Hi, this is Avri.

((Crosstalk))

Jonathan Robinson: ...reasonable effort to ensure that we get through this document during the course of this conversation so if I can encourage you to help me to keep things

moving without wanting to, in any sense, discourage relevant and necessary discussion. Alan.

Alan Greenberg: Thank you very much. I tend to agree with what's being said. The issues we're looking at are not something where the world is going to be destroyed if something isn't done at a certain moment. You know, we've put together a nice balanced groups and balanced proposals that should work in the absence of one person being there. And, you know, these are not the critical kind of things. You know, if actions are taken they can usually be reversed and fixed if they were taken because one critical person wasn't there to some position hadn't been filled. So I think reasonable efforts is exactly what we want to use in this point. Thank you.

Jonathan Robinson: Kavouss, you get the last word on this before we move on to Question 16. Go ahead. Kavouss, I'm not hearing you.

Kavouss Arasteh: ...that CCWG and CWG we have been told by people that we must follow the US law. And I take this what drafted. Thank you.

Jonathan Robinson: Thanks, Kavouss. All right, let me move us on then to Item...

Cheryl Langdon-Orr: Jonathan, you may have muted yourself.

Jonathan Robinson: Sorry. Thank you, Cheryl. I had muted myself. Thank you, Kavouss. Let's move on to Item 16 where we deal with the CWG response chart stated the following response to a question around the method of consultation. CWG Stewardship has chosen to reference mechanisms developed in CWG Accountability. And CWG final proposal contemplates a community forum mechanism as well as optional conference calls to clarify which consultation

mechanism CWG expects SO/ACs to follow and whether such mechanism is to be referred to in the bylaws or left to implementation outside the bylaws.”

And a response from Avri and Matthew is why would this be any different to the IFR? The only intended difference between the two is the manner of initiation. In other words, it should correspond with the IFR. So is that a sufficient answer for you, Sharon? Go ahead.

Sharon Flanagan: So, Jonathan, this is – this issue relates to whether a special IFR will be initiated. So it is different from a periodic IFR which just goes on its own calendar. The issue we were struggling with is we weren't entirely clear – so the CWG proposal refers to the ccNSO and the GNSO conducting a meaningful consultation with the other SOs and ACs, okay. And that's all it says.

And so we had asked the question what was the process for that consultation. And the response that came back on March 10 was that there was an intention to reference the CCWG Accountability mechanisms. And I think there was even a reference to a community forum. So then we were I think further confused by that actually.

We didn't know if the intention was to say that you're trying to cross reference and pick up an escalation process, in which case are you referring to having a formal community forum or having a conference call as part of the CCWG escalation? Or were you just using that by analogy or something else?

I mean, the other approach was simply to go back to the literal language of the proposal which just says meaningful consultation with the other SOs and ACs and leave that to the ccNSO and the GNSO to determine how to, you know, how to undertake that consultation process.

Avri Doria: Can you put me in the queue? This is Avri.

Jonathan Robinson: Avri, go ahead right away.

Avri Doria: Okay thanks. Yeah, okay I had not understood the question properly. And I don't believe that we should go into the escalation procedure on that one, not in any formal sense. But I think at other times, what we were trying to say, is that we should use in general the same mechanism. I personally would see no reason not to leave it open and just a significant general consultation. Thanks.

Jonathan Robinson: Thanks. Essentially that responds and accepts what Sharon was suggesting if we were to go down that route I think. Paul Kane.

Paul Kane: Yes, I think we're in semi agreement. The intent of a special IANA functions review is because there's be a failure in delivery of vital services and so it needs to be triggered efficiently and then the consultation process needs to commence efficiently with the intent of rectifying the failure in service so I think we're on the same page. Thanks.

Jonathan Robinson: Okay so where we seem to be headed then is back to the – as Sharon suggested – the original wording in the proposal. Is that sufficiently tight for you to work with, Sharon? And go ahead.

Sharon Flanagan: Yes, Jonathan, I think we're comfortable. I think ICANN Legal was comfortable with that as well so just referencing meaningful consultation with the other SOs and ACs.

Jonathan Robinson: Okay well let's bank that then and move on to Item 17 providing there are no objections. And I see a support checkmark from Cheryl, thank you, and

Paul Kane and Martin Boyle and others – well are supported in the chat. Item 17, “Confirm that the following insertion is acceptable which would require each recommendation of the IFRT to be directly related and limited to mediating the PTI performance issue. CWG proposal provides that there is no prescribed outcome of an IFR.”

And the response is yes, although suggest an insertion that qualifies the use of the word performance by noting the IFRT’s responsibilities as listed in Section 18.3 8(k). Is that response sufficient, Sharon and...

((Crosstalk))

Avri Doria: This is Avri, if I can get in the queue? Okay, I don’t know if I’m in the queue, I didn’t hear a response but I don’t hear anything. I think what we were trying to deal with was the two meanings of the word “performance” and that, yes, it’s the overall performance of IANA but it can’t be limited to just performance on a particular SLA point, that the issues could be broader than that and that was the specific problem with a word that has both a weak and a strong definition.

Jonathan Robinson: Okay so Sharon, come back in on that then.

Sharon Flanagan: So, Avri, am I understanding that you’re okay with referencing it has to be a PTI performance issue, but not okay limiting that PTI performance issue to just a failure under the contract or the SOW? Is that right?

Avri Doria: Exactly.

Sharon Flanagan: Okay, got it.

Avri Doria: Yes, that once we get into the SIFR it could be broader than, you know, it is a performance issue but is it specifically one that – of that sort, yes.

Sharon Flanagan: Okay, I think what that means then, just a technical point, is we won't use the defined term that's in 17 because that is limited to the contract and the SOW. I think we'd have to use more of a – just a conceptual point that could go beyond that so we'll make that change.

Jonathan Robinson: Thanks, Sharon. Martin.

Martin Boyle: Thanks, Jonathan. I actually am not sure whether I properly understood that. I'm struggling to understand where you would establish a performance issue where it didn't come up with failing to meet the performance levels agreed under the statements of work or under the service level expectations or any other already-defined document.

And it would seem to me to be at this particular stage a little bit difficult to start sort of turning around saying, we're going to use this to rewrite the performance levels, our expectations, our requirements from the operator. So I would welcome some clarification on that because just at the moment I'm feeling a little bit nervous about essentially giving an open invitation with all the consequences that that might actually have on delivering the service that the customers need. Thank you.

Jonathan Robinson: Is anyone able to assist by responding to Martin there?

Avri Doria: Yeah, this is Avri. I think that's why we made a reference to those specific paragraphs there where, yes, indeed – and I don't think anything that anyone has said, said yes, we're going to redefine the performance metrics. It's just that it can be broader than just, you know, a specific set of numbers and

delivery and times that – and that’s why we referred specifically, I mean, I don’t have it in front of me so I don’t remember but, you know, the list there that had been included. Thanks.

Jonathan Robinson: Thanks, Avri. You made direct reference to responsibilities as listed in Section 18.3 8(k).

Avri Doria: Exactly, and that’s what, you know, we feel. And by one definition of performance that’s all performance, you know, those are all performance issues, how is IANA performing. But it may not be the strict definition of the word as used elsewhere.

Jonathan Robinson: Okay thank you. And noting Jorge’s point in the chat relating to Question 22 and noting some of the concerns that have been raised about that that we’ll get to earlier and he's in support of those concerns. I have a feeling we’ll be able to navigate through that but thanks for putting that on record, Jorge.

Okay, I think that gives us the opportunity to move on to Question 18 which is that on a decision to create an SCWG confirm that the EC functions – the empowered community functions as a reconsideration of the board decision, meaning that if the board rejects the creation of the (unintelligible) that means he can reject that decision and escalate and the confirmation is – on Question 18 explained yes, as we’ll see from that in front of you.

Sharon, your hand is now dropped. So I think these are not complicated unless anyone would like to respond. We have a yes to both 18 and 19. All right, 20 seeks to clarify whether every member of the separation cross community working group should have experience managing an RFP process or whether a minimum number, e.g. 4, should have experience.

This is a little bit of a how long is a piece of string question because it's really what your personal view is and it's not specified specifically in the proposal, although the response to the question (unintelligible) if any one member experience managing an RFP may be 2. I discussed that with Lise this morning and we felt that that given that there are 13 members (unintelligible) to have some qualification or experience in this.

So...

Cheryl Langdon-Orr: Jonathan, your audio is a bit choppy. You're dropping certainly on me.

Avri Doria: Okay, I thought it was just me.

Cheryl Langdon-Orr: No, it's not just you, Avri.

((Crosstalk))

Avri Doria: This is Avri...

((Crosstalk))

Jonathan Robinson: Okay, how is that? Can – Alan, can you confirm you hear me okay now?

Alan Greenberg: Now I can.

Jonathan Robinson: Yes, go ahead, Avri and then...

Avri Doria: Yeah, I missed part of what you were saying and I definitely agree that 2, 4, 5, you know, it really is relatively moot issue. I just – when first reading it 4 seemed large to say that 1/3 of the group needed to have experience in it since

it's such a mix of different skills, I thought at least 1 was enough but Matt argued that, no, it should be at least 2. And – but I think any number is probably fine, it just felt like a big number to me so it really was subjective. And there was nothing in our previous work to try and direct a number so pick a number that everybody is happy with.

Jonathan Robinson: Yeah, so, Avri, just – and for others just to suggest what I discussed with Lise, it doesn't change the mandatory threshold to what you had suggested, in other the mandatory would be 2 but we should seek to have as much experience as possible so the numbers suggested were ideally 4 but at least 2. So the mandatory position remains 2.

Avri Doria: Sounds wonderful.

Jonathan Robinson: Thanks, Avri. And so that's consistent with your suggestion but it just nudges people to get as much experience as possible on the group. Sharon.

Sharon Flanagan: Jonathan, I just wanted to clarify the last point you made, so you had said mandatory 2 and then a goal of 4. The language of the proposal was to the extent possible it's recommended that individuals with experience managing an RFP process be appointed. So are you suggesting or is the proposal to have it be mandatory 2, goal of 4 or just, you know, reasonable efforts to have, you know, between 2 and 4?

Jonathan Robinson: I think – I guess let me try and word it this way. Your wording says to the extent possible it is recommended that individuals with experience managing an RFP process be appointed. So we might say as many – in order to just not get ourselves (unintelligible) it might be as recommended that as many individuals with experience managing an RFP be appointed as possible but in

any event at least 2, that's the intent. So there is a hard requirement to have at least 2. Sharon, go ahead and then others can follow. Sharon.

Sharon Flanagan: That was an old hand. But I think that's clear, Jonathan, what you just said.

Jonathan Robinson: Thank you. Kavouss. Okay, Andrew.

Andrew Sullivan: Thanks. I'm quite nervous about making a minimum requirement here. The proposal didn't say that and we shouldn't say what the proposal said. I think strong recommendations and so on are fine but we really ought to be careful about precisely what that proposal said. And I don't think it implied that there had to be a minimum.

((Crosstalk))

Kavouss Arasteh: Jonathan, do you hear me please?

Jonathan Robinson: Kavouss, I do hear you. Just one moment and I'll come to you. Chuck, I see you support that. Andrew, I mean – Chuck, I see you support that. Andrew, I mean, I'm – and I see Martin agrees. So there seems to be some degree of movement that says actually whilst certain numbers might be desirable we shouldn't make it mandatory. And, frankly, I'm okay with that having heard that argument. I don't feel strongly about that. So, Kavouss, are you coming in on the same point?

Kavouss Arasteh: Yes. I see some difficulty to agree on any figure because I don't know the logic why 2 and why not 3 and why not 4. So I think we should not talk about the number. Leave the issue as general as possible unless it is a US law according to Gregory Shatan. Thank you.

Jonathan Robinson: Okay so that's consistent that view with what Martin and Chuck and Andrew have suggested and Paul Kane is in the same position. So let's stick with that, work with that (unintelligible) reverts to something (unintelligible) the lines of what you already have to the extent possible is recommend that individuals with experience managing an RFP process be appointed.

I think what the spirit of this says, as firmly as possible without specifying a specific number. And to just help out there with Greg, let's not call out any participants by name with respect to issues or discuss, let's, you know, be mindful that – respectful of people's position and ability to make their points without being called out sarcastically or otherwise.

All right so let's move on then to 21 which says, "Confirm that we can add a bylaw that requires appointing organizations to use reasonable efforts to fill vacancies on the separation cross community working group within a month." And the simple is yes. So that is probably not controversial but stop me if there are points to be made on that.

And then point 22 is the one which has attracted quite a lot of discussion on the list. And this talks about whether an absolute majority of a separation cross community working group should be required in cases where consensus cannot be reached, which would ensure at least 50 plus 1%. And then we've had a whole discussion on the list about consensus or majority and so on.

I referred in looking at this – I'm just trying to think where – I looked at Page 391 of the proposal – sorry, Item 391 of the proposal which seems to be directly referring to this. And let me go to that. And in 391 we say specifically in the third sentence, "The separation cross community working group will follow the overall guidelines and procedures for ICANN cross community working groups."

So we're quite specific there about what we expect it to do. And as some of you may know, there is those guidelines for the way in which cross community working groups will work are currently out for public consultation at the moment. And they deal with this – with the issue of consensus quite specifically.

And they talk about CCWG may – shall seek to act by consensus. The chairs may make a call for consensus. In making such a call they should always make reasonable efforts to involve, at a minimum all members of the CWG. The chairs shall be responsible for designating its position as having one of the following: full consensus, a position where no minority disagrees; consensus, a position where a small minority disagrees.

So we have referenced in our proposal to the guidelines for cross community working groups. We have the guidelines for cross community working groups referring to the nature of consensus. So actually it seems like we are – we have something here unless we are to force a specific definition. Alan, go ahead.

Avri Doria: Yeah, okay. Can you put me in the queue please?

Alan Greenberg: Yeah, I'd like – Sharon had said...

((Crosstalk))

Alan Greenberg: Sharon had said she can provide some input. Perhaps I'd like to hear from her first.

Jonathan Robinson: All right, let's hear from Sharon first, if she wants to add to what I said, then we'll go to Avri, then Alan, then Kavouss. So Sharon first.

Sharon Flanagan: Thanks, Jonathan. You gave – you gave some of the background, Jonathan, so I think that's helpful. The only other point I would make is that the CWG did provide language for how consensus would work and what would happen if there was a failure of consensus in the context of the IFR Team. And in that context it's – and that's in the proposal. If consensus can't be reached it's an action by majority of the group members. So this was – we really were just borrowing, you know, from that concept to put it here in SCWG.

I think the challenge with referencing the not yet fully drafted or vetted cross community working group guidelines, I think that would be challenging to have a set of bylaws that we consider to be ready for submission when we don't know what that is, and it's not yet fully defined.

Jonathan Robinson: Okay that's a very good point. So others would like to respond here. And let's go to Avri next then.

Avri Doria: Thank you, yeah. Pretty much what Sharon just said, the only piece that I would add to it is one also within the cross community groups that we're working in now I believe that last resort has been available. And I very much agree that we cannot use a cross community working group's recommendations that are still in review as our anchor point. Thanks.

Jonathan Robinson: Avri, can you just be specific by what you mean by last resort?

Avri Doria: In other words that when – and we've had that in front of us up to now, I believe, in our current CWG is that if we could not reach consensus then it

was possible to send forward a recommendation that was (unintelligible) by a majority.

Jonathan Robinson: Okay. So we'll move on to the remainder of the queue and then see where we go from there. Thanks, Avri. Alan.

Alan Greenberg: Yeah, thank you. In fact in the CCWG, which is probably where we came closest to having to use a majority, when we were really split, it may have been possible to figure out who was on the plus – who was more than 50% or not. We tended not to make a decision based on that but revert to something else. So I'm happy to leave the word "consensus" there. The group, should it ever come into being and have to make a decision, would have to be more specific as to how it will make its decisions and that could be a group thing.

I understand we can't cite documents that don't exist yet but I would feel quite uncomfortable saying this is a majority rule in this particular case. And I'm – we seem to be well staffed in this call with people having good ideas so I'm going to move over to another working group now because I do have a conflict. Thank you.

Jonathan Robinson: Thanks, Alan. And I will note that the concern – just to remind everyone, before we go further down the list, is that the concern that was expressed on the email list was around the fact that a simple majority was an insufficiently threshold so that was the concern was that in the event of consensus not being reached that there was some lack of a sufficient –or height in the test.
Kavouss.

Kavouss Arasteh: Yes, Jonathan, from the moment that I made the statement that was rejected by some distinguished colleagues, my line is totally disrupted, distorted and there is a call coming, and there is a busy line, so on so forth, does not allow

me neither to listen nor to talk. So (there is) some effort perhaps is to block me, not to speak or not to listen. I don't understand, this is the first time after more than 100 calls that this happens. I don't know the source.

However, having said that, I am not in agreement with majority because we don't want according to the number given in that particular group captured entire community. While we do not need to describe or define what is the consensus it is more appropriate this time, US law, reasonably appropriate, again US law, to leave it general that consensus need to be emerge in the group based on the circumstances and environment and we don't need to define what the consensus is.

And having said that, I am totally against the majority because the entire community will be captured by a small group because they would have majority. So please kindly if I am not offended by the people saying that I speak against a particular law, I don't think that we could agree on majority. Leave it as it was, consensus. Thank you.

Jonathan Robinson: Thanks, Kavouss. So we're hearing you loud and clear. And just now – and I'm sorry if there were any other disruptions to your ability to contribute before, but I'm seeing that based on, you know, Martin and others response to you in the chat and Paul Kane, who has said he changed his position on some of this with your intervention, there does seem to have been quite some strong feeling that a simple majority is insufficient, consensus may be insufficiently defined but may be adequate. So let's hear from others. Chuck.

Chuck Gomes: Thanks. And let me qualify the things I'm going to say, that I really have formed my own personal opinion on this whether it stays at consensus or whether there's the fallback to simple majority. But let me share some things. First of all, one thing I am convinced that everybody that's talked about this is

sure of, we should not base a majority or even a super majority on just those present in a meeting. I think everybody agrees with that if we fallback.

Secondly, I want to say that it's not always possible to reach consensus even after years of work. And the goal is to do everything possible to reach consensus. I fully support that. But I also am honest enough to realize that sometimes you can't reach consensus. So if you can't do you just let it go by the wayside? That's an option.

Now with regard to the capture, I – even today was looking at the membership of the special IFR team, and I'm not sure what group has the ability to capture even with just a simple majority, not that I'm just advocating a simple majority, as a fallback. But, for example, the Registries only have three members out of 13. The CCs only have three members out of 13. Registrars have one. Other, you know, where is it that capture is such a big issue with – out of 13? Nobody has more than three. So I'm not clear on that.

And again, I'm not necessarily advocating that there should be a fallback position, although I do recognize that you're not going to always, if you're honest, you will not always be able to achieve consensus. And if we're okay with that then requiring a super majority might be okay. But we at least need to recognize that going in and see the full picture. Thanks.

Jonathan Robinson: Chuck. One unique point you brought in or one of the unique points perhaps is the – which hasn't been discussed here is the nuance of the prospect of a super majority so that's also something to think about or if there is to be a hard definition of consensus that is higher than the threshold of majority.
Andrew.

Andrew Sullivan: Thanks. There – I sent some comments to the list today and I will not go over them in detail but I just wanted to highlight two things. First of all, the – we do have the text, as you pointed out, that’s actually in the proposal. And I’m not (unintelligible) that we can do something that is beyond that without – you know, that is substantively beyond that without saying that we’re actually making changes to the proposal and I think that would be a bad thing.

So from my point of view it’s really important that we come up with something that is at least arguably consistent with what’s in the text. And for that reason I am quite sure that we must – that we must come up with something, you know, some sort of fallback that is consistent with the history of CCWG which is a short one, and not very diverse.

But it does appear to me, and I looked at this very quickly but maybe others could confirm it, that some of the history suggests that there were previous occasions where the membership was arranged in such a way that both, you know, sort of appointing organization and majority of participants or majority of members of the CCWG were both required.

Now that might be an accident because of the way the participants were distributed among the organizations that were appointing. But at least there would be a precedent to lean on there so you could say hey, here’s the thing that we’ve done and that’s what we mean by, you know, a fallback position consistent with CCWG practices.

The last thing I would say is – is that simply allowing things to fall, you know, and just not make a decision in the event that consensus isn’t made, of course is a – is a kind of decision making. That is, the only way that we get to one of these separation CCWG’s is on the case where the review has already said, oh well, you know, we need to do one of these kind of things.

So if you then decide that, you know, without full consensus you don't do something or without consensus, however you define that, you don't do anything, that is a way of saying that there's a default failure in this because it's a deciding body, that's the only thing it can do.

So we can't actually fallback to, you know, consensus or nothing and say well in that case it just didn't reach a conclusion. It did reach a conclusion and it's that it failed. We certainly can't have something that just, you know, continues forever until people make a decision because of course, you know, the conditions would change and the basis for the separation would be bad.

Jonathan Robinson: Thanks, Andrew. And I note that I've got a hard stop from Chuck. So I need to go – dealing with 24 so let's see if we can't – if I could ask the next three speakers to be very brief and then we may have to push us through to 24 and depending on where we get to with this. But so very briefly please, from the next three speakers, Greg, Kavouss and then Paul.

Greg Shatan: Greg Shatan for the record. I support having consensus be the appropriate standard here. And we're, you know, talking about consensus as stated, for instance, in our charter where a large number agree and only a small number disagree. It's not the exact wording but that's the concept.

I think, you know, moving to anything other than that I think would be inconsistent with the history of CCWG, it's inconsistent with the CCWG – or the CWG on Frameworks for CWGs, which also supports, you know, that kind of consensus. And I think that, you know, there's danger especially in the makeup of this group, maybe capture is too strong a word, but if one considers that the Registries, CC and G, have – may tend to have common interests, and the Registrars may or may not have interests in common with them, or any

one other person, then basically then the Registries have it under a simple majority.

Trying to go to something like the GNSO Council and splitting this into houses or something like that I think gets us way, you know, away from standard practice for things. And so I would just, you know, stick with the tried and true consensus for this. Thanks.

Jonathan Robinson: It seems like there's sufficient momentum behind the use of the word consensus. And I think the only question here is is that further defined. That seems to me the case. Is it – is there some further definition of consensus? Go ahead, Kavouss.

Kavouss Arasteh: I wanted to talk that while I agree with what you said, I don't want to put it in the written form. We leave it to the group to define what is a consensus. The maximum would be we do not define consensus as everybody agrees in the absence of a formal disagreement. Leave the consensus open and leave it to the group, perhaps the way that we have mentioned would be the optimal way that we take it. We don't want immediately after any discussion the people go to the majority.

If really a thing exhausted, it is up to the chairman to try or the convener, to try to get the consensus. We have work on this in ICG. I and Martin and Boyle others spend months to have this consensus building and we have not defined and did not define. We leave it to the group to decide but we do not define the consensus.

There are many and variety type of consensus among the ones – the among which the ones that you, Jonathan, mentioned. But leave it to the group that without mentioning in the bylaw. In the bylaw is international bylaw but the

bylaw is specific bylaw and specific countries then you are ready to put it at the mercy of that country. Thank you.

Jonathan Robinson: Thanks. The last word on this to you, Paul.

Paul Kane: Very briefly, I think consensus we can define what consensus is later. But simple majority is one option but having a super majority is not an option. The whole purpose of this is there is an escalation process. ICANN, as the IANA operator or the PTI has the opportunity to fix the problem. Remember, this is only likely to be triggered in the event of failure of the IANA service. And we just want to get it fixed and we want an operator that can deliver the service that the customers require.

So I think consensus fine. We can define the parameters of consensus, but no one has market capture in this. So thanks.

Jonathan Robinson: Okay well it's difficult to know where we go with this because we seem to have – it seems to be pretty clear that no one would like – I don't see support for defining a majority, that's been strongly objected to on list as being a sufficient criterion. There seems to be reasonably strong support, if not strong support, for use of the word "consensus." The only question is, is that further or better defined. And Sharon highlights that the intention – I mean, I just put the shorthand in there on consensus being the minimum threshold.

So seems that we – let's move on to 24. It does seem that that's as far as we can get for the moment on this 22. And we're under a tight schedule, in more ways than one. So let me – let's leave it with that at the moment. Question 22, the notes that is no support for defining a simple majority – it should say a simple majority. There is support for the use of consensus.

And I remind you, again, that our original proposal says that we will follow the overall guidelines and procedures for ICANN cross community working groups. And I acknowledge the earlier points that those are not yet fully defined.

I think we need to go to Question 24 and hear from Chuck on this before he has to go away. Just for the record, this was a – this was scheduled as a 90-minute call. That doesn't mean I don't respect that people have other conflicts and difficulties with time to manage. So let's go to you, Chuck.

Chuck Gomes: Thanks. And thanks for the good discussion on this particular item on the full list. I think that what Design Team O came up with addresses the concerns that I understood that different people who are not on the design team, expressed. But take a look at it, please. I'll read it and I'll point out that the color highlighting were changes that we made to what the previous text had been proposed.

So it says, "To maintain ongoing operational excellence and financial stability of the IANA function so long as they are performed by ICANN or pursuant to contract with ICANN and PTI, ICANN shall be required to plan for and allocate funds to the IANA functions and PTI as applicable that are sufficient to cover the future expenses and contingencies to ensure uninterrupted performance of those IANA functions and PTI in the future."

So we think – we meaning DT-O, obviously this has to be approved legally and by the full CWG, but we think that this achieves what the objective was, which really is financial stability, not only in the current year but in future years and requires the board to make sure that steps are taken to do that. So let me stop there before I have to jump off and see if there are any questions.

Jonathan Robinson: Chuck, it's Jonathan. I have a question. Where is that wording that you've just referred to? Is that the wording that currently exists in the table in front of us or is there some additional wording that...

((Crosstalk))

Jonathan Robinson: ...DT-O has proposed?

Chuck Gomes: That's the wording in the table in front of you. That's in the table in front of you. That's where I read it from.

Jonathan Robinson: Okay so – all right so – I mean, I think my understanding is there's still an open question from Sharon/Sidley on this because this doesn't...

Chuck Gomes: What is the open question?

Jonathan Robinson: ...trying to remind myself – okay, Sharon, you say you're okay on 24. All right so that's – so with the wording as currently stated, you're okay on 24? Questions or comments on this – 24? So to be clear, Chuck, this does not require ICANN to put aside a specific number of years of funding. It simply makes – it makes it that ICANN shall be required to – it doesn't specify the exact mechanism, it leaves that up to the discretion of ICANN.

Chuck Gomes: And that was – and, Jonathan, this is Chuck, that was intentional. A lot of people, not only in DT-O but on the CWG list, pointed out that it shouldn't get that specific that that can be worked out. And Design Team O is going to continue to work on ways that this could be implemented. But we think that this puts in the requirement for multiyear stability of IANA services funding and that was the intent and that's what we thought should be in the bylaws.

How that's done will be – still needs to be worked out but we think that it requires action to be taken to ensure that there's no interruptions in IANA services going forward.

Jonathan Robinson: Chuck. And I note that Cheryl supports that. And my sense is that that's appropriate for the kind of language at a bylaws level providing that there is the further work that you describe ongoing at an implementation level. I'll just make a last call for questions before we release you as we hit the 30 minutes past the hour, Chuck. And I'll let everyone else know that we just need another few minutes to deal with a couple of other points under the – section.

Chuck Gomes: And, Jonathan, before I jump off, and I really have to because I'm leading this call that I'm getting into, the – if some information can be provided to the list to how we're going to deal with other issues that weren't covered by these questions in the table, that are in the bylaws in the next couple days, I would appreciate that. And thanks, everybody, sorry I have to jump off. Talk to you again. Bye.

Jonathan Robinson: Thanks, Chuck.

Paul Kane: If you're speaking to us, Jonathan, you've gone dead.

Jonathan Robinson: Sorry, that's my error. We have a – thank you, Paul. We have a final table, and I'm going to ask Sharon to come in and ask specific questions on that reference article in Section 4 where she has questions in the interest of time to try and deal with this. So, Sharon, can I hand over to you to try and seek clarity on where you need to on the 18.2 through to 19.5 points?

Sharon Flanagan: Thanks, Jonathan. I think for the most part it was clear to us, and we'll make some suggested changes, minor changes to address the comments that are

listed here below the questions. The one thing that was a point for further discussion is in 18.4(a) and that is the – to what extent confidential reports can be redacted by ICANN in the IFR process. So we had language in this draft that came out of another part of the ICANN by laws that basically said that to the extent that there is anything that is trade secrets or where disclosure would breach a confidential obligation of PTI or ICANN or would present a material risk of a negative impact on the security, stability or resiliency of the – then and only then ICANN could redact from those reports being provided to the review team.

The comment that came back is that that it should be treated in the same way as confidential information is treated in the ATRT, i.e. signature of NDA. I don't know if Avri is still on and wants to comment but we just had some – a question about whether that is in lieu of what we had here in the draft or in addition to. Avri, are you still on?

And then, Grace, I see your hand is up too, is that on this point?

Grace Abuhamad: It's not on this point specifically, Sharon. But I just wanted to provide some context for the group and for – well, I mean, it seems like you know where the questions came from. But essentially these were questions that Avri and Matt had come up with in their review of the sections that they were in charge of reviewing.

And they had just posted these in addition to the – sort of the responses that they were working on. So these were not requested by the legal teams, they're simply additions from the group and questions directed at the legal teams or clarifications requested. But we can come back to Avri specifically about 18.4 if you'd like.

Sharon Flanagan: Yeah, I think we're just not clear on what the requested change is, and so we'd just like a little more clarity on that. And then if we do reference what's in 4.6, I believe that is, note that it refers to a confidential disclosure framework set forth in the operating standards. We haven't seen that. I don't know if that exists yet. But that's something I think if we're referencing that I think we'd want to make sure you all were comfortable with whatever that provided for.

Jonathan Robinson: It's Jonathan speaking. It seems to me that phrasing – it would be helpful if you would come back on this, Sharon. I think we needed to come back on this for this specific posting and say, look, here's what we're doing, here's what we have intended. You've come back with a question. And so essentially repeat what you've said to us now so that Avri has the opportunity to respond. I think that would be helpful rather than putting it through staff as an intermediary I think it would be great if you asked the question directly and (unintelligible) the answer to is your current wording sufficient? And if not why not?

Sharon Flanagan: Okay. And, Jonathan, in that email I'll set forth the current wording of the ICANN draft bylaws and then I'll set forth the language of this – the equivalent provision that I think Avri and Matt are pointing to which is the confidential disclosure to review teams in 4.6. I'll put them both in the same email and you all can take a look at that.

Jonathan Robinson: That's very helpful. Thank you. Kavouss.

Kavouss Arasteh: Meeting time was changed. We have changed our schedule and we have another commitment. And your meeting must be finished by 1630. So your time is over. Thank you.

Jonathan Robinson: Kavouss, I appreciate that. And we're just on a very tight schedule for the Wednesday. But, yes, I respect that. So let's hear last from Paul and we can bring things to a close. Paul, go ahead.

Paul Kane: Thank you, Jonathan. My question is really to do with any other business. I've started reading the bylaws in their entirety, I'm on Page (18), for example, which starts the post transition IANA. There are references to sections that don't exist, 16.3(a) does not exist as a section. And the words "coordination" rather than "consultation" are used.

There a number of issues within the bylaws as currently drafted language issues and inconsistencies that need to be addressed. But actually looking at the (unintelligible) of the document and a new annex, Annex G, it seems to be very focused on gTLDs and the distinction between gTLDs and ccTLDs is not coming through.

Remember the distinction between Gs is they obtain their authority from ICANN whereas within the C world ICANN is a service provider and CCs have their own policy development frameworks frequently within country. So I think the whole C part, ccTLDs, are not included in this. And if anything the Cs are getting diluted. So as a matter of AOB for the bylaw team I would welcome certainly making sure that the distinction between CCs and Gs are firmly addressed. Thanks.

Jonathan Robinson: Thanks, Paul. Making that point, Paul, noted and I think that's – that can be – that can be conveyed to the team. We have a meeting – I'm going to wrap up now. We have a meeting scheduled for Thursday, 14th, it's not clear to me at this stage whether or not we need that. The Design Team O currently on some work with respect to comment on the financial '17 budget and operating

plan and we have an implementation update due to us, which may be something we can produce on email.

So I'll talk with Lise, we'll see where we wrap all of this up and we'll come back to you shortly as to whether we need that meeting on Thursday. So I think that puts us in a position where we should wrap up the meeting for now and thank you and I'm sorry to overrun slightly beyond the half hour points but it seems necessary to conclude the work we need to do.

(Unintelligible) we got through the table at least and we will get back to you as to whether we need the Thursday meeting or not. And with that I think we'll call the meeting to a close.

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