

**ICANN**

**Moderator: Brenda Brewer  
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1:00 pm CT**

Coordinator: Recordings are started.

Grace Abuhamad: Thank you. So this is a special CWG call just to review the bylaws. And we have Sharon Flanagan from Sidley here to present to us today. But before we do that I will pass it over to Lise, our chair, so she can do some opening remarks.

Lise Fuhr: Thank you, Grace. And thank you all for joining this call which is, as Grace said, mainly going to be about the ICANN bylaws or to be more specific actually the ICANN bylaws that relates to the CWG requirements.

As you all know, the draft was sent out Sunday and Mathieu Weill, one of the co-chairs of the CCWG was so kind to actually forward it to the CWG because I was unable to do so but he helped us. And together with the actual bylaws – the drafting team also sent us a list of issues that we need to respond to as the CWG. And Sharon will be going through both the IANA related bylaws and the issues list with us.

Later we will actually discuss a process moving forward in this call. But – I'd like to stress already now that we have a lot of time pressure and we have nine days to actually do the review. So we don't have – we don't have as much time as would be ideal but we've all been looking at some of these issues before and I think it's really important that we meet the deadline that's been set by the CCWG.

And also before we start the presentation I'd like to recall that Friday we sent out an email regarding three issues which were the final objectives for the PTI budget. It was the second one was the recommendation to ensure that the PTI budget guarantees a multiyear funding. And the third one was a proposal that Jonathan Robinson and I to serve as interim PTI board directors until a procedure has been established for these.

And so far there's only been one response to the list and this is Kavouss, who has also joined this call. And he expressed some concerns in relation to the guarantees on the multiyear funding. As I read it, it's not the funding itself but it is that the funding is not to be too specific mentioned in the bylaws like the amount of years.

We would discuss this later and we should discuss it at the next call when we've all looked into the actual wording of the bylaws. And with this opening I will actually hand it over to Sharon to do the presentation and also take questions. And, Sharon, I don't know if you will handle the questions yourself and actually do the chairing of that part and I can get in afterwards and discuss the way forward. Is that fine with you, Sharon?

Sharon Flanagan: Yeah, that sounds great.

Lise Fuhr: Okay.

Sharon Flanagan: Well why don't I go ahead then? So hopefully you've now all received the revised bylaws. It's a very large document, over 200 pages. So I thought it would be first helpful to just orient you in terms of the sections and table of contents and then, you know, what are the areas that, for CWG, it's the primary focus.

So if you look at the table of contents, or even if you don't have it in front of you, the real heart of the CWG portion of the bylaws is in Articles 16, 17, 18, 19 and then also Annex D and Annex E.

Other areas, if you're looking at the document and you're not able to get through the whole document because it is so lengthy, the other areas you might be interested in would include in Article 4, Section 4.3, which is where you have the IRP for PTI actions.

And then also Article 22 specifically 22.4 where you have discussion of budget. You may notice in looking at this draft that there is one piece that is missing from Articles 16-19 and that is the section that relates to the IANA function contract. We did agree on language with ICANN on that over the weekend. It just inadvertently was dropped when it was all compiled Sunday as, you know, the teams were literally working, you know, through the night, through the weekend and so that piece was just omitted but that will be in a revised draft so I will highlight that when we get to it.

So okay so that's the - that's sort of the orientation for those of you who want to dive into the language of the bylaws. But I'm going to focus on the pieces that are really core to CWG and the pieces that the CWG had taken responsibility on doing the primary drafting on. And that starts with Article 16.

So what I'm going to go through, starting with Article 16, the first topic is PTI governance. Then it's CSC. Then it's IFR. Next special IFR and then last is the SCWG slash separation process.

So first starting with Article 16 – and by the way, I'll pause between articles that way people – I think it's probably best if we kind of queue up questions by article and then I can stop and go back and respond to questions or you all can give feedback on questions that we have. So starting with Article 16 that is the PTI governance section. There's not a lot that's worth noting on that section. It basically tracks the language that you all have looked at in our draft bylaws.

I should also note we'll send a redline of these sections against the last version of the CWG bylaws that you would have looked at so you can see the exact wording change. But in PTI governance there's nothing I don't think worth noting really in that section. It basically tracks.

You'll see though in the redline right after that PTI governance section where we had the IANA functions contract, that's the piece that just got dropped so you'll see that as looking like a strikeout as if it were taken out but that is going back in so not to worry about that.

There was one question that was raised in the IANA functions contract section, which is, you know, this is the section that deals with if ICANN initiates an amendment to the contract, so this is not an amendment that's initiated through a periodic review or otherwise, this is if ICANN initiates an amendment – there is a need for the community to be able to reject that change.

And so the concept there is that that would go to ccNSO and GNSO to act by a super-majority. That's not something that the proposal was specific on. And I think we had put in our draft bylaws reference to the empowered community but the thought in discussions through the drafting process there was some thought that the empowered community is probably not the right place. That's probably too broad for just, you know, dealing with contract amendments and that the, you know, customer group, ccNSO, GNSO, would be the right forum.

Okay so that's Article 16. As I said, that one's not – there's not a lot really to talk about there. And I don't know if anyone wants to say anything on this, I'll just take a quick look at the queue and see if there's anyone. Kavouss, I see your hand is up.

Kavouss Arasteh: Yes. Good time to everyone. And perhaps you have read some of the comments that I have made to the entire group, CWG and CCWG and ICG. And I refer to the mapping plan. It would be difficult to map the draft with the supplemental proposal for CCWG and proposal of ICG which includes the CWG.

And I have seen that there has been some promise or maybe actions that this mapping – sorry – is available so we have not had time to do that one. And the difficult – we don't want to express any doubt of what you say but for us is important to check the accuracy and consistency of the CWG outcome or ICG in part totally with what has been drafted. This is something very important, that is number one point.

And number two point, there has been some questions or some issues raised in Sidley draft second of April, some of them relates to the CWG – I don't know whether you raised that point or not. But the third issue addressed to these

every time everybody push that we have no time and we are in hurry. Distinguished colleagues, this is a very, very critical issue. And I don't think that we should hurry up to do something in five days or six days and so on so forth. I come back again to what I told in CCWG 10 times, (unintelligible) quickly done and badly done.

Why people are worrying about the time so much; I know there is deadline but we should have time sufficiently. I have now time to go through that. I start Article 1 and 2. I saw a lot of qualifiers has been added by the drafting people. I see a lot of changes has been made. And I don't know where this change is coming from. All of the issue was discussed in CWG and CCWG 10 times even by adding one small qualifier, for instance, if appropriate or where appropriate.

But no, all of the sudden so many qualifier has been added. So I don't know how we do that. Either we don't have any comment at all, we leave it to the lawyers and to the drafter to draft the bylaw for themselves and people should do that or we have to have time to carefully read and see the accuracy and consistency with what has been approved. So I am at the disposal of the chair and the people and I am not in favor of hurrying up and I'm not in favor of rushing the matter. Thank you.

Sharon Flanagan: Thank you, Kavouss. I don't know, Lise, if there's anything you want to say in response to that. Otherwise I can keep going through the review.

Lise Fuhr: Just very quickly, thank you Sharon. I'd like to say I think we can actually do both. We have designated it to the lawyers to actually write and review the bylaws. And I believe that we also will have not the ideal amount of time but sufficient amount of time to actually review the bylaws. So we need to meet

the deadlines and we – the CWG will not be the one delaying the process.

Thank you.

Sharon Flanagan: Okay I will keep going through the review then. So the next article is Article 17, the customer standing committee, the CSC. Just a reminder there that the bulk of the CSC detail is in the charter document. And I think it was agreed by CWG that that would be a document that would exist outside of the bylaws. So really for the ICANN bylaws what's important is that the bylaws acknowledge that standing body and we talk about the membership and, you know, basic structure but that the details about the CSC and its functioning are part of its charter.

So for CSC, which is in Article 17, there are a handful of points of clarification or questions. And I will flag them as we go. The first question is in Section 17.1 of the bylaws. And that relates to some language about the CSC mission that came straight from the CWG proposal. And that language refers to that the mission is to ensure the performance of the IANA naming function for the direct customers of the naming services.

And then it says, "The primary customers of the naming services are," and then it goes on. So the question there is, was a distinction intended between direct customers and primary customers? And if no distinction was intended which term would people want to use? So that's one question.

I will keep moving then. If that – if that gets answered through the chat that's great, otherwise I'll come back.

Okay, Section 17.2 of the CSC piece of this is the composition appointment term and removal. And there is a note there that clarification in Section 17.2b which is that there is – it's contemplated that there could be an additional

member of CSC if ccNSO and GNSO determined. And that would be a TLD representative that is not a ccTLD or a gTLD registry operator.

And point of clarification there is to note that that person would be appointed by ccNSO and GNSO. The proposal was silent, it just spoke on passive voice and so we need to clarify who it is who has that appointment authority and we thought the intention was likely ccNSO and GNSO since the whole concept here has to be initiated by those two bodies.

Okay, next point of clarification is in 17.2c and this – if you're looking...

Grace Abuhamad: Sharon?

Sharon Flanagan: Yes.

Grace Abuhamad: I'm sorry to interrupt you. Donna had her hand up.

Sharon Flanagan: Oh okay. Donna, go ahead. Donna, can you go ahead?

Donna Austin: Yeah sorry, Sharon, I was trying to get off mute. Look, I think it might just be best if you run through the questions and then we'll respond to them in writing. I think that'd be the easiest way rather than hold up this call kind of argue back and forth about what's – who said what and where stuff is. So I think I'll just let you go through the questions and then we can respond offline. I think that'd be best. Thanks.

Sharon Flanagan: Okay, that sounds sensible. There are a large number of questions. I think that probably is the most efficient given time. Okay so let me keep going then. 17.2c is just another point of clarification which is that there is contemplated



than one liaison to the CSC could be appointed from GNSO. And the language of the proposal said paren, non-registry, close paren.

And so there was a request to clarify what non-registry meant. And the proposed language to substitute there is from the Registrar Stakeholder Group or the Non-Contracted Parties' House. So we're seeking confirmation that that is an accurate reflection of the intent.

Okay next point to note is in 17.2h. There there was just added a vacancy provision. This is more I think administrative but there was a suggestion that we add explanation of what happens when there's a vacancy. And then also a note that the organization responsible for filling the vacancy would use its reasonable efforts to fill the vacancy within one month and then also to clarify that ccNSO and GNSO have to approve the appointment of the replacement person.

Milton, you had a question?

Milton Mueller: Yes, just about C. The question about – from the Registrar Stakeholder Group or the Non-Contracted Parties' House is still a bit ambiguous to me because those are in effect separate voting entities and are we talking about the GNSO essentially making a decision as a whole while not allowing the selected person to be from the Registry Stakeholder Group?

Or are we talking about a vote within the Registrar Stakeholder Group or a vote of the entire GNSO minus the Registry Stakeholder Group? Or are we talking about alternating times when the Registrars do it and the Non-Contracted do it? It's still a bit unclear to me.

Sharon Flanagan: Okay but I understand that these responses will come back in writing so good to flag the question but we'll – I think we'll just wait for all of that. Okay so then...

Milton Mueller: Yeah, the answer might just be that the GNSO itself would make the decision as to how to operationalize this but I just need to know whether that was what was contemplated or whether the bylaws are actually supposed to tell us how to do this.

Sharon Flanagan: Okay. Well I think, you know, greater clarity wherever possible is a good thing rather than just leaving it ambiguous or open to discretion so if we can get more specific I think that's probably a good thing.

Let me do this, let me finish. I only have just a couple more notes on CSC and I see there's a couple hands in the queue. Why don't I just finish the next two things and then that'll be a good stopping point for questions.

Okay so 17.3 is the CSC charter and review. There is just a note in 17.3c and, Grace, I think you're uploading the Q&A document. The question is Number 11 of the question document, which is there was, again, sort of a passive voice issue. It said, "The CSC charter will be reviewed by a committee of representatives from the ccNSO and the Registry Stakeholder Group selected by," and then the confirmation point there is selected by such organization the question is just to confirm that's the intent.

And then in the last sentence of C there is a note that the CSC charter will be reviewed at the request of CSC, ccNSO and/or the GNSO. And that's consistent with the CWG proposal.

There is a question Number 12 was a question raised by ICANN which is whether the board could also be one of the entities that could call for a charter review.

Okay so that is the – that’s the end of the key points in CSC. So let me go back to the queue. Kavouss.

Kavouss Arasteh: Yes, some of the questions that you raised may require an answer, for instance, the last one whether ICANN could also call for that – that group. That is – but there are some other issues that do we need to go to that level of detail in the structure of the GNSO, which is a most complex structure in the entire ICANN who should be part of what or really to the GNSO to decide on the matter. Do we need to go to that level of detail in the bylaw? Bylaw is the high level text or procedures, it should be very general and not go to the level of detail.

The problem is that once we have the bylaw and then we found it difficulty so detail we tied up our hands and then to change that bylaw there is a very rigid procedure and we may be in problems. Wouldn’t it be better that we remain general and leave the matter, the details of the issue, in hand of the concerned constituencies like GNSO and so on so forth rather than going to the bylaw.

This is different from the existing bylaw and now we have to see the difficulty if you want to change the bylaw how much problem we have and what is the procedure that we have to apply. So my question that do we need that level of detail or not? Thank you.

Sharon Flanagan: Thanks, Kavouss. Well in this – in this particular instance this is language coming straight out of the proposal. So I will I guess defer to Donna and the design team as to what the intent was on that point. Greg, please go ahead.

Greg Shatan: Thanks. Greg Shatan for the record. And I think that this level of detail, which is not extreme, is necessary. And the point here is that the liaison should come from a group other than the Registry Stakeholder Group because they are the direct customer group which is kind of the main spring of the CSC. So the idea is that the liaison should balance that out so whether it's phrased in the – I would actually phrase it the other way around to be a little bit more flexible saying that it should be excluding the Registry Stakeholder Group because what if there is a new non-registry stakeholder group somehow that's created?

But in any event that's, you know, not (unintelligible) problem since obviously we need to amend the bylaws at that point in time anyway. But I think the point is that, you know, there's a reason for this level of detail. And it, you know, does, you know, go to the fact that the GNSO is a multi-stakeholder organization composed of what we're calling customers or direct customers and others. So it's necessary to parse to this level. That's my view at least. So I think we're on the right track here. Thanks.

Sharon Flanagan: Thanks, Greg. Okay then I will keep going. And the next article is Article 18 which is on the IANA function review. One thing to note when you review the redline of these sections, you will note just before Article 18 you'll see a deletion of the reference to the IANA problem resolution process. And that is because that process will be articulated in the contract. And so the thought was that that was right place for it so it's not that it won't exist, it just is going to – it will exist in the contract itself.

Okay so Article 18, as I said, is on the IANA function review. And let's just walk through the key changes or questions for you all there. In the reference to the frequency of the periodic reviews, which is Section 18.2c we talk about what happens if there is a special IFR happening at the same time as a

periodic IFR. So let's say we have a special IFR going but a periodic IFR is due to commence, what would happen then? You may not want both of those to continue at the same time, that might not be a good use of resources.

And so the approach taken here is to reference that the board could delay the periodic review and let the special review continue on if it was approved by a super-majority of the ccNSO Council and the GNSO Council. And that generally speaking if there is a delay it would not exceed 12 months.

Okay the next point to flag is – and I'm just seeing if this is a question. Yes, it's one of the questions, it's Question 13, let's just scroll down there a little bit there. And you'll see there's a question about the IFR responsibilities. So the IFR responsibilities in 18.3c refers to a review of the SOW and the contract to determine whether any amendments are needed to account for the (unintelligible) the language in the original proposal is consumers of the IANA naming functions or the ICANN community at large.

And so the question that you can see there is in 13. And do we have scrolling capabilities? Yeah, we do. Okay so if you look at Number 13 you'll see the question is to clarify whether that should be a reference to gTLD and ccTLD registry operators in lieu of quote, consumers of IANA naming functions.

Okay moving further down, still in 18.3 IFR responsibilities, in F this is just a note of a change relative to the CWG proposal. So the language in the proposal referred to the IFR reviewing the performance of the IANA naming function pre and post transition to see if the SLEs are still, you know, consistent pre and post transition.

And so as we were working through the drafting the question was raised well pre transition, you know, at some point that'll be, you know, 10, 15 years

prior. Is that really what's intended? Are we freezing this baseline at 2016 or can the baseline be constantly updated so meaning you could be looking back at the prior year period so long as you're always getting better and the SLEs are improving would it make more sense to be comparing to the prior year period rather than always referencing back to 2016.

So that was – so the language now reflects a notion that during the periodic review period you would be comparing the current status to the immediately preceding periodic review period. So I guess you're looking at kind of a five year look-back at all points in time.

Okay. Another just note for you all is in 18.3h and that is a reference to what you're looking at the PTI performance as against. So I think the language of the proposal just the proposal just referred to PTI's performance of the IANA naming functions. And the thought was it would be more specific to refer to performance against the naming function contract and also the SOW so that we have a clear standard of what performance is to be measured against.

Moving on into 18.4, it's not a question in the list but it's just something I wanted to flag, which is that when – there's this concept of IFR-required inputs, the things that the IFR will consider. And so one of the things that IFR – the IFR team has to consider is reports provided by PTI on a regular basis. And the comment that was raised during the drafting process we had a couple weeks ago was, you know, there's certain cases where the reports will contain, you know, very confidential information that could be – could create a security risk, for example, to share.

And so we have added language in 18.4a that refers to providing the reports but that these reports could be redacted according to certain guidelines, you know, for example because it has privileged legal advice in it or because

providing the report would breach a binding contract or because providing the report would create a material risk of a negative impact on the security or stability or resiliency of the DNS.

And then moving on to 18.5, and on that section this is the IFR recommendations, the things that the IFR can put forward as a recommendation.

One comment, it's Number 14 in the questions, was that ICANN suggested that the recommendations that are put forward by the review team match up to the way AOC reviews are provided so that it's more specificity around what the proposed remedial procedures are and the description of those and the timelines anticipated and also a prioritization of those recommendations and a rationale for those recommendations. So that was language that was requested to be included to sync up with AOC. So question is whether that is appropriate. This is Number 14.

I should note – and there's not always going to be a question related to the point I'm making. The questions were things where there really was a belief that we didn't have sufficient guidance to draft. But I'm also noting other things just so you understand clarifications that we made and you can look at the redline and see if you agree. But there's not always a question to refer to. But in this question it's Question Number 14. Okay.

All right so then moving – Greg, I see your hand, I will come to you in just a moment as soon as I finish this section. So 18.6 is when the IFRT could recommend an amendment to the IANA functions contract, or the SOW or the CSC charter, who do they need to consult with? And as the CWG proposal was drafted they would consult with PTI as well as a number of other groups.

The request was – from ICANN was to also have a consultation right with ICANN since they're a party to the contract. We thought that made sense. It's not an approval right, it's merely a consultation right. So you will see that language added.

And then as you move further into 18.6 you have the language that deals with the process of approving those recommendations. So if the IFR comes forward with recommendations there is a process for how, you know, who needs to approve that and what happens if the board were to reject those recommendations. And then you – if the board rejects recommendations then you kick into the escalation process that the CCWG has been working on.

One note of clarification that was requested in the drafting process was if the IFRT puts forward a number of recommendations and it's approved by all the groups who have the right to approve it, so the ccNSO, GNSO approve it, you know, board approves it, so if the board approves all the recommendations just as they come in was there still a need to initiate a community mechanism?

And the thought was in that instance there may not be a need because what's been approved is exactly what's been recommended and that really the community would need to come in if the board rejected a recommendation coming from the review team. And so you'll see language that says if the board approves all of the recommendations just as they've been put forward and approved, you know, by the various levels of approval that then there's no need to escalate to the community.

There's one exception on that and that is for a separation process. There was slightly different language in the CWG proposal on separation that made it at least to us, look like the intent was for the community to have a true approval right on separation.



And so in that case it's not enough for the board to just support SCWG's recommendations, the community would still have to weigh in. So that's how it's laid out, if that's not consistent with your all thoughts or intents just do let us know that.

Okay let's see, on – in 18.7, which is the composition of the IFR teams, we go through all of the individuals who will be appointed. There was a request for some greater specificity on what was intended by the numbers operational community and the protocols operational community so that's been clarified to refer to ASO and IAB.

There was also a request that because our proposal acknowledges that there is – that the IFRT is not a standing body, you know, it comes into existence to do the review and then at some point it's dissolved, that we need to say – we need to say when it's dissolved, otherwise it just won't – there won't be a mechanism for that.

And so the thought was that the right time to dissolve that team would be after – so after the IFRT has made its recommendations and those recommendations have run through the entire approval process, when get all the way to the end of that that would be a time that that body could then be dissolved because its work would be done.

And we thought having it continue through the approval process made sense because even after the final report is delivered, you know, there could be questions, clarifications and having the team still exist would probably be helpful to those who are trying to consider the recommendations. So we thought it made sense to keep that body in existence until the full approval process is all completed.

In 18.8 there are two additions that were suggested by ICANN that thought seemed appropriate. The CWG proposal was silent on both of these so this is just – these are just additions. One is a request that a member of the IFRT or a liaison disclose any conflicts of interest it may have in conducting the periodic review. And the second was to clarify or to put in language that said to the extent reasonably possible there would be a goal of seeking diversity on the IFRT in terms of members and liaisons.

Okay. I think that – let me just see if – anything else. Oh I do, I have a couple more things for you. Okay so further down in 18.8 in terms of the operation of the IFRT, we had originally put in some language about quorums. That was not anything that the CWG proposal spoke about, and the suggestion was that quorum is maybe not the right concept to have here since this is a body that is – would act on a consensus basis. So we've removed the concept of quorum from the draft bylaws.

There was also language here that would state that, you know, if there's a vacancy the vacancy can be filled by the organization that originally appointed the member or the liaison. And, again, some language that says, you know, reasonable efforts would be used to ensure that that vacancy was filled within a month of the vacancy occurring.

In 18 point – and this shows up in Number 15 of the questions. Okay.

Lise Fuhr: Sharon, before you move on, Milton had a question regarding the consultation right of ICANN. I don't know if you want to take it now or later. In the chat.

Sharon Flanagan: Oh sure. Yeah, Milton, please go ahead.

Lise Fuhr: I don't know if he's able to...

Milton Mueller: I just put the question in text. I think you can answer it based on that. There's no reason to go any – in more detail.

Sharon Flanagan: Okay so looking at your comments, the consultation right should – this is on – I assume this is on the contract is that right?

Milton Mueller: That is the recommendation of the IFR – change in the contract, yes.

Sharon Flanagan: Yeah, that's right. So change in a contract Milton's point was he didn't see the need for a consultation with ICANN. It should just be the consultation with PTI otherwise that could create concerns on the autonomy of PTI. And that ICANN could participate in a public comment period if it thought that there were issues or had had concerns. Okay. That point is noted.

Kavouss, I see your hand is up.

Kavouss Arasteh: Yes, I think we have carefully listened to your presentation. Do you seek any reply now at this meeting or you just want that we reflect on what you have explained and what is in the paper that this is available and we discuss this at the next call? Thank you.

Lise Fuhr: Sharon, do you want me to answer that one? Because...

Sharon Flanagan: Yeah, please.

Lise Fuhr: Actually, Kavouss, the intention of this meeting and of course all of your participating in it is to have a presentation maybe a brief discussion on some of the main issues. But I know people haven't had enough time to look at

these. And we know the CCWG are going to have meetings too so we'd like after Sharon's presentation to discuss how we move forward from this and how we actually get into a more in depth discussion. So this is only for Sharon to send and actually highlight the main issues in the bylaws and only in relation to the CWG related bylaws. Thank you.

Sharon Flanagan: Thanks, Lise. Okay the last point I wanted to raise is in 18.9. And I know you don't all have these detailed provisions in front of you but it thought if people were reviewing transcripts it might be helpful to have the cross references. So in 18.9b, another addition was made which was to provide that if there were any members of the IFRT who were not in favor of the action that came out of the IFRT that they could record a minority dissent to that action which seemed okay with us.

That is the end of Article 18 as it relates to the periodic IFRs. And then I'm going to talk next about the special IFRs. Are there any questions people have about any of the topics I've covered in that section? Okay, I will note just that Chuck put in a comment on Question 13 that he thought the reference to consumers of the IANA naming functions was overly broad. So that's just another point to consider.

Right okay so moving into the special IFR, that starts in 18.12 of the bylaws. And there you'll see a number of changes. And I'll try to walk through the ones I think are most relevant or of interest to you all. The first is that there's a definition of a PTI performance issue. So special IFR in 18.12a, a special IFR could be initiated outside of the cycle of the periodic IFRs to address a deficiency problem or other issue.

In the CWG proposal it just said any other issue relating to the IANA naming function. And the request was to clarify that we're talking about the

performance under the contract and the SOW. And also that we're talking about, you know, adverse – an adverse effect on the performance so things have gotten better presumably there's no need to be conducting any kind of periodic, you know, review. Or rather a special review.

And then, you know, we had some questions – I think we had raised with you all and you had given us some feedback and we tried to put some language in here, it's in 18.12a, romanette 3. And this was about once you've gone through the initial remediation procedures from CSC and then you've gone through the IANA problem resolution process then it's the ccNSO and the GNSO have to consider the outcomes of those two processes and consult – have a meaningful consultation with the SOs and ACs.

The question there was what's the mechanism for that? In the CWG response – and this is on – this is Question Number 16 if you're looking at the question list, bottom of Page 3, top of Page 4, the question is what exactly is that consultation process?

What we've put in here is a consultation process, we just say consultation with the other SOs and ACs leaving it to the discretion of ccNSO and the GNSO as to precisely how that consultation is done. And that we just wanted to confirm that that works for you all. There was – in the response letter that you had given to us on March 10 there was a reference to community forum mechanism. We didn't think that was intended to pick up the escalation community forum mechanism which is part of the CCWG process.

And – but if that is the case we should know but we didn't think that that was the intention. So instead we just refer to a process that the ccNSO and the GNSO would determine so long as it's meaningful consultation.

Okay. On the Next Question 17 relates to an insertion of some language that appears in the bylaws in the same section, 18.12b, romanette 3. So this is what the recommendations of IFRT relating to a special IFR, what could those recommendations include. And there was a request to include some language that said that those recommendations must be related to remediating whatever it is the PTI performance issue was that launched the special review.

So, you know, the IFRT doesn't have, in a special IFR, wouldn't have the ability to, for example, suggest that the, you know, that ICANN, you know, move to a different country for example, something that's totally beyond the scope of a performance issue. It would be something – it would have to be something related to the scope of the review. So that's the question in 17 is to confirm that that language is acceptable.

All right and the next thing I wanted to note – I think it's more of a minor point but just for completeness is that in the process of approving special IFR recommendations in 18.12c, it was added a reference when the ICANN Board needs to approve there was added reference to after a public comment period since that's the normal practice for ICANN is that they would first have a public comment period.

Okay that is it on special IFRs. Before I move into SCWG and separation are there any questions or comments people want to make? I'm looking, Milton, you've got a question in the chat. Question 17, does that mean the IFRT cannot recommend a new IANA function operator? No, that would not mean that because that would – if there were a performance issue at PTI it was just not performing that would be within the scope of a recommendation.

The point was just that it's not – the IFRT, the special review, wouldn't create opportunities to do something outside of IANA completely, for example,

which you could – arguably that was – you could read our proposal as having indicated that. And I don't think that was the intent.

All right, seeing no other questions or hands I will move on to the separation process. That appears in Article 19 of the bylaws. First I'll talk about the SCWG and then I will talk about the process for approving recommendations of the SCWG.

So first on the – whether to establish an SCWG there is a Question 18. Here the question is – okay so if there is a recommendation coming out of an IFRT to create an SCWG then that has to go to the ccNSO and the GNSO who each have to approve it by super majority.

Then under the CWG proposal that would go through a public comment period and then the ICANN Board would have an approval right. And the approval right would be a 2/3 of the board following the same level of consultation etcetera as in a PDP recommendation from the GNSO.

The question that was raised by ICANN is given that board approval is it still the intent, is it still the case that assuming the board rejects the creation of the SCWG but it does it in a, you know, the required 2/3 veto, at that point does the decision to reject the formation of an SCWG, does the community then have the right to reject that decision? And if it does reject that decision is that a decision that can then be pushed through the escalation mechanism? Meaning the board can't just refuse to form the SCWG and the community has not ability to escalate that.

Sidley's read, our read of the proposal was that the intention was that that – no, that could not happen. The board simply couldn't refuse to approve the formation of the SCWG and then that would be the end. That if the

community rejected that decision that that would go through escalation. But that's the question that's raised in Number 18. Yeah, and I see Milton agreeing that, yes, that is correct. Okay.

Okay, all right now the next point I wanted to raise is in – I'm going to just pause for a moment. I see typing and then, Kavouss, you wanted to come in there?

Kavouss Arasteh: Certainly is yes, thank you.

Sharon Flanagan: And then I see Alan agreeing as well. Okay good. That was our read, we just wanted to confirm that. Okay. In the 19.2, the SCWG responsibility section, we talk about the RFP process and that the SCWG would work to develop the RFP process and the guidelines. ICANN requested that that be – that the RFP guidelines be consistent with the existing ICANN procurement guidelines, which are in effect and intended to make sure there's compliance with laws and those sorts of things.

So there was a request to reference that the RFP guidelines would have to be consistent with the procurement guidelines. We added some language that would say that that would have to be those guidelines in effect immediately before the formation of the SCWG and that way the SCWG knows what it's working with and it's not a moving target, and so that's the language that you'll see reflected here.

There was some additional process added that we all thought – we thought was fine but I wanted to flag it for you because it's not something that was explicit in the proposal. And that shows up in 19.3 of the draft bylaws. And it references, Number 1, that the SCWG could seek community input through one or more public comment periods.



Number 2, that the SCWG would provide a draft of its report, which would be posted on the ICANN Website. And Number 3, that after completing its review SCWG would submit its final report to the ICANN Board who would then post it on the Website. And we thought all of that seemed fine.

Okay. The next point to raise is in 19.4d. and that relates to the language that was in the CWG proposal about the – I’m sorry, let me just pause quickly. Alan, yes, the procurement processes are public, yes.

Okay so back to 19.4d, there was language in the CWG proposal that refers to if there is a new IANA functions operator that’s selected there was language that said that ICANN would not be – would pay the costs, you know, for selecting the new operator, and that ICANN couldn’t raise the fees it charged to any TLD registry operators in order to cover the costs associated with the SCWG recommendations.

The request for clarification was that the intent of that provision, that there’s no cost shifting, was really about the costs associated with the transition to the new operator. So if there’s, you know, some initial kind of startup costs or other administrative costs associated with moving the contract and all the processes over to IANA function operator, that’s got to be covered by ICANN.

But if this new operator just has a higher fee structure or there’s other, you know, just the costs of the operator itself are higher, that that would get passed on. And the thought there is that, you know, the community through the SCWG is the one picking the new operator so presumably it will be looking very closely at the fee structure and everything else. And that to the extent that those costs are incurred because the SCWG thought it was a good idea and

everybody approved it, that those costs would be appropriately reflected in the new costs of the operator.

So that was just a question. And we added some language to clarify that the cost shifting is meant to be about the transition, not about just the ongoing operation.

All right, Number 19 in the question list is – shows up in 19.5a of the bylaws. That relates to the composition of the SCWG. And there was a request made from ICANN that there would be one liaison appointed by the ICANN Board. And the question – that’s not something that was contemplated by the CWG proposal but the request was made in part because ICANN is going to be a party to the new contract if there is a new PTI operator.

All right, Question Number 20 appears in 19.5d, romanette 3. And it relates to language that was in the CWG proposal that said, “to the extent reasonably possible, you would appoint representatives to the SCWG who have experience managing RFP processes.” ICANN had looked at that language and was concerned that it would create this burden of really just finding people with RFP experience and that that, you know, might outweigh people who have other relevant experience.

So did you want to clarify that it’s not everyone on the committee has to have this experience, you’re just looking for some threshold, you know, some two, three, four people who have done an RFP before. So this is a question for – this is a question for the group as to whether you want to make it clear that you’re not asking that every member of SCWG have this RFP process.

And I see a comment – let me just look here at the comments. Okay. So Kavouss is saying on Question 20 the answer would be no, not make a

change. I'm also seeing a response in the chat to a prior point I had raised about the increase in fees, Christopher Wilkinson commenting that he didn't think it was appropriate that the new FO would increase fees. So I think on that I would just suggest you take a look at the language that's in the bylaws draft right now and, you know, see if you guys have any concerns with it. Again, that cross reference is in 19.4d.

And then at the very end of 19.5 in F, similar to what we talked about for the IFRT is some point at which the SCWG dissolves. And we've put it in similarly that once the recommendations have gone through the approval process that would be the appropriate time we thought for the SCWG to dissolve. And that is – I think that's it on that section. Okay.

So moving down to Question 21, this is a corresponding question we've already talked about which is just would it be acceptable that there would be – when there's a vacancy on the SCWG that there would be reasonable efforts to fill that vacancy within a month.

Question Number 22 appears in 19.7 of the bylaws in Subsection A. and in that section we talk about SCWG acting by consensus. And then we had language that said when there's no – a consensus cannot be reached that what would be, you know, what would be required to act.

And the comment there was that should require a majority of all of the members rather than a majority of the members present at the meeting where the issue was being discussed, you know, if there's no consensus it's obviously that's a significant issue. And the thought is that that should be a true majority, not just a majority of those present at the meeting.

And similarly to what we discussed elsewhere there's an ability for in the SCWG there's an ability for someone to record a dissent – a dissenting opinion.

Okay. Kavouss, is that a new hand?

Kavouss Arasteh: Yes, because on the Question 22 my answer was no, we should not have the absolute majority, then I read that somebody says that true majority. I don't know the definition of true majority. They have simple majority, 50% plus 1, and we have super majority which ranges from 66%, 75%, so on. I don't know what is true majority.

Sharon Flanagan: Oh okay, let me clarify – let me clarify that. Let's say there are 11 members on the SCWG. A true majority would mean that you couldn't do anything unless you had the approval of 6. As opposed – so a majority of all of the members as opposed to saying 6 people showed up for the meeting out of the 11, we need 4 of those people to say yes.

So majority of the members versus majority of the people at the meeting. And the thought is true majority meaning now truly a majority of all of the members. Yeah, what Milton says in the chat is accurate.

Okay that is all I have on those key Articles 16, 17, 18, 19. I note that there is a Question 24, if you scroll down there's a Question 24 that is within Section 22.4 of the ICANN bylaws relating to budget. And this is intended I think to address the issue about ongoing funding. So if people can take a look at that and see if that language works for you all.

Okay seeing no direct responses on that let me just go back to the chat on the majority point. It would just be majority of the members as opposed to a

majority of those present at the meeting. And the committee can create its own rules as to what, you know, what they expect in terms of number of members present before they're willing to have the meeting and that can be done just by the committee itself. But for any action that – where there's no consensus it would require a majority of the members as opposed to those at the meeting.

Chuck, did you want to raise a comment?

Chuck Gomes: Yes, thanks Sharon. This is Chuck. The concern from the CWG – I'm talking about 24 – was that – and you'll recall way back when, I can't tell you when because I think you were involved in the discussion then, we were talking about, okay what happens in a bankruptcy situation even if ICANN has provided for funds for future expenses. One of the issues that came up, and it's not the only one, was okay, could those funds that are provided for be tied up in a bankruptcy or some other situation?

I'm not sure, and I probably don't have sufficient expertise to be the judge. But I'm not sure the language proposed there covers a situation like that. And maybe you have some thoughts from a legal point of view in that regard.

Sharon Flanagan: Yeah, thanks Chuck. I think no matter what the contract says if ICANN has a bankruptcy and the money isn't already at PTI, that's an issue because the bankruptcy, you know, the trustee in bankruptcy can void contractual obligations even if there's a commitment, it can't be enforced.

So from a bankruptcy standpoint, I mean, the only way to actually truly address that would be to have the multiyear funding sitting in PTI or at least sitting there, which I don't think is what's intended. So I don't know that there really is a perfect way to address that issue. I mean, you could – if it were really dire you could do a separation process and separate PTI and then find a

new source of funding. But I don't – absent that I'm not sure how else you could address it.

Chuck Gomes: So this is Chuck again. So if I'm understanding you correctly then aside from a full separation there might not be a way of ensuring stable funding in a situation like a bankruptcy.

Sharon Flanagan: Chuck, I think that's right although separation is a – that's a powerful tool and that's why, I mean, that's why we created that separate entity so that it could be bankruptcy-remote from ICANN. So I wouldn't understate that. That would be a powerful tool if – in the, you know, I think probably highly unlikely event of an ICANN bankruptcy there is still some ability to take these assets and, you know, put them in safe hands.

Chuck Gomes: Thanks. Chuck again. So I agree that it's a powerful tool but it takes time to implement it. And so in the meantime there seems to be risk of non-stable funding of the IANA services which are extremely critical. So anyway I'll take this back to Design Team O, we have a meeting tomorrow, and we'll talk about this further. But your responses are helpful. Thanks.

Sharon Flanagan: Let me add one comment. I don't think it's in the question list, but I just wanted to flag it since we're on this topic, it's quite relevant. We have language in the CWG proposal that speaks about a separation process including a new IANA functions operator through an RFP process. And then – but also referring to possibility of a divestiture.

And it was our understanding that the divestiture could truly mean a separation of PTI from ICANN so that ICANN would not be the counter party to an IANA functions contract in that case. And that's probably an extreme corner case but in that case.

And if that understanding is not correct, let us know. But we understood that a separation could involve any type of mechanism that there was no constraints on how that would be undertaken so long as it goes through the SCWG and all the approval processes. So I'll just pause there and if anyone has any different view let me know but that's our understanding.

Okay, Kavouss, I see your hand.

Kavouss Arasteh: Not on this question, this is a very, very difficult question and very, very improbable and also, as you mention, if there's a total separation I don't think that any fund or any reserve account or anything could serve the PTI action because the situation is separated totally unless PTI creates its own reserve account and put every year some amount in some particular way for case of – as mentioned by Chuck.

But I don't think that we could answer this question and I don't expect that the design team could have a miracle to bring something which is a very, very difficult to handle. Thank you.

Sharon Flanagan: Alan.

Alan Greenberg: Yeah, thank you. In terms of protecting funds, my recollection is that if we – since PTI is a separate organization albeit affiliated, if money were actually put in PTI it would probably be safe in a bankruptcy but there's no guaranteeing what a bankruptcy court would decide depending on just how closely the organizations are tied.

In terms of what the separation means, I think you're correct, the concept, the separation, was a word, it could take many, many different forms. It could be

transferring the responsibility to a complete different company. It could be reconstituting PTI in a different form for whatever reason. Thank you.

Sharon Flanagan: Thanks, Alan. Lise, that's all I have so I'll turn it back to you.

Lise Fuhr: Thank you. And I don't – I see Sam is actually having a comment saying within ICANN we didn't understand that divestiture would mean that ICANN would be taken out of the contracting role of the divested entity. Yeah. I've actually would encourage Chuck and his group to have a look at if this fulfills the need of what we actually discussed and if – well come back to the group.

And as we discussed earlier, the intention actually is to, after this, to decide the way forward. And I don't know, if – is there any more questions for Sharon or anything that needs to be discussed now? Because the proposal is actually to – after this, yeah, and I see Cheryl is thanking Sharon in the chat. And, Sharon, that was a really good and thorough walk through of the different bylaws and the questions.

Kavouss, your hand is up, Kavouss, go ahead.

Kavouss Arasteh: Yes, I am not comfortable in Question 22 that we convert the consensus to the majority. I understand now the majority means true majority, that means the majority of members whether they are present or not present including those who are present and those who are not present. But the consensus – and some meaning and the majority in any way means that 50% plus 1 and that would not be appropriate to convert that consensus into majority.

We still believe that we remain a consensus and it is up to the group dealing with that to handle that consensus. There are variety type of consensus; consensus with no formal objection, consensus with very minor minority,



there are many, many things, soft consensus and so on so forth. So I don't think that we should convert the consensus into the true majority. We should leave it consensus and leave it to the group dealing with that to find a way out of that. Thank you.

Lise Fuhr: Thank you, Kavouss. And I would actually ask you to – we're going to decide on a process now and find out the way forward. And I would actually like you to express your concerns to the different bylaws in writing to the list, that would be very helpful. And I can see Chuck disagrees with Kavouss. And I think we should discuss this at our next call.

But the way forward is actually to have the three key DT leads to be in charge of reviewing the bylaws which relates to each one of their design teams. And that's a proposal where we would ask Donna to review it for the CSC and Chuck to review it for the budget and escalation and – and Avri for the reviews and the separation process.

And this actually is a process where we envision that these three design team leads are responsible for drafting a response to the question list and the – or the issue list and actually to the bylaws as such, the text too. So this is not meant as being a legal review but more a review where the bylaws includes the intention of the proposal more because Sidley has been in charge of the more legal parts together With Adler and ICANN legal. But we find that it's important to actually review it in relation to of course the questions that's been put forward to us but also the bylaws such.

Kavouss, is that a new hand?

Kavouss Arasteh: Lise, it is not productive that people that I disagree with the other. This doesn't help if we disagree with each other. We need to provide logic

arguments and convince each other. I don't think that it's as simple that Chuck disagree with me. So I disagree with him as well. So that doesn't help. I should be convinced that why the consensus (unintelligible) meaning in other way is converted by Chuck and his crew to a majority. I don't agree with that, I totally disagree with that. Thank you.

Lise Fuhr: Thank you for that remark, Kavouss. It's actually – I think we should have this discussion but I think we actually need to review the bylaws in a more collective manner and of course you are reacting on the chat. And I see Chuck is having his hand up so he might want to put some of the reasoning into this. But I would actually say that this is not the discussion as such. I hope we'll continue the discussion online. And we'll also have the meeting on Monday.

But, Chuck, go ahead and respond.

Chuck Gomes: Lise, this is Chuck. But if you'd rather I not provide the rationale now I'm happy to defer it.

Lise Fuhr: No, no, no go ahead with the rationale now. I think we still have time. We still have 10 minutes but...

Chuck Gomes: Okay. And this is response to Kavouss's request for that. It's really fairly simple in my head anyway, let's use the example of a group of 11 regular members. If you don't go with a real majority then it's possible in a meeting with 5 people present that 3 people out of 11 could make the decision. I think that's insufficient and not representative enough.

Lise Fuhr: Okay, thank you. Kavouss.

Kavouss Arasteh: I don't want to convert this meeting to ping-pong between me and Chuck. But he misunderstood me totally. I am not discussing the true majority and majority. I'm saying that changing consensus to majority – to majority is not appropriate. I fully agree with him that the member 11 group member if you have 5 only present and the majority of 5 is 3, is not representing the 11. I agree with him. But I'm talking of consensus to be converted to the majority through majority. I don't agree with that. Thank you.

Chuck Gomes: And, Lise, this is Chuck again.

Lise Fuhr: Yes, go ahead.

Chuck Gomes: Then we're in agreement, Kavouss. I'm not suggesting that consensus should be defined as a simple majority, totally agree with you. So I think we're probably on the same page.

Lise Fuhr: Okay.

Chuck Gomes: I don't think anybody was suggesting that consensus be defined as a simple majority. The situation as I understand it was if consensus cannot be reached then resorting to a simple majority was the situation as I understood it. But thanks for the dialogue, it's good dialogue. Keep hitting the wrong button here, sorry.

Lise Fuhr: Yeah, Kavouss, your hand is still up. Is that an old hand or...

Kavouss Arasteh: No, no, no I don't agree with the last part of Chuck. If consensus cannot be reached in any way we directly go to simple majority. I'm sorry, I don't agree. I think it is the duty of the peoples or chairman or convener of that to seek for the consensus if consensus is not reached totally then it can go to the soft

consensus and (unintelligible) the overwhelming majority they agree, and so on so forth.

But I don't want in the bylaw we convert the consensus into the simple majority. This is not correct, and we need not to put such a very dangerous precedence. Thank you.

Lise Fuhr: Okay. Thank you. Thank you, Kavouss. Good, I would actually like – we have 9 minutes left of this call. I would like us to agree on a way forward. I propose that we actually delegate some of the bylaws to the three design team leads which is Donna for the CSC part, Chuck for the budget and escalation, and Avri for the reviews and separation process.

And I think that – and this would include sending and drafting a response to the list and actually it would include sending this to the list by Friday. Others are of course willing to or welcome to volunteer to comment on this. But we just thought it would be a good way to move forward by having the design team leads drafting the first response, send it to the group and you would have the weekend and the Monday to actually review the draft.

And there will be a discussion on the call on Monday. And that call is actually to be chaired by Jonathan Robinson who is on vacation this week so he couldn't participate in this call. I can't be on the other call so he will be chairing that alone.

And I would like to make a short pause and hear if there is any objections to what this – I have asked the design team leads beforehand if there are any issues with this. I see Kavouss, your hand is up. Go ahead.

Kavouss Arasteh: Lise, after some – I would say fairly intensive exchange of email with (unintelligible) colleagues there seems to be the people misunderstood me. I am not against to providing a degree of stability and continuity of the PTI functioning by providing some financial arrangement and so on so forth. What I was objecting is to refer in the bylaw to blocking a three years budget for that particular (unintelligible). But having a general statement referring to the need for the continuity and the stability and providing some credit or budget for that in a general manner I have no difficulty with that and I want to make it quite clear. Thank you.

Lise Fuhr: Okay, thank you Kavouss. Cheryl.

Cheryl Langdon-Orr: Thanks, Lise. Just on what Kavouss is just raising, it's Cheryl Langdon-Orr for the record. I think that's very much the purpose of the relatively light touch draft language which is in – under Question 24 on Page 4 of the document currently being screened in the Adobe Connect room. And I guess it's now up to us to see whether or not that language, which talks about plan for and allocation of sufficient funds for the future expenses and contingencies reasonably related etcetera, etcetera is robust enough. Obviously DTO will be discussing this and we'll come back to the CWG. Thank you.

Lise Fuhr: Thank you.

Cheryl Langdon-Orr: Lise, I think you might be muted because we're not hearing you. Oh, we've lost our lead. Chuck, is there anything anyone else wants to say or can we wrap this call?

Grace Abuhamad: Hi, everyone. So as you may have seen from Brenda in the chat, Lise's line disconnected. And we're going to try to reconnect her but it seems like we have two actions and the – no – and no other business. We have another call

on Monday. We're going to confirm that shortly. And that seems to me it.  
Lots of activity on the mailing list to look forward to.

Cheryl Langdon-Orr: Thanks, Grace. Thanks, everybody. Thanks, Lise in absentia. Bye for now.

Grace Abuhamad: Bye, everyone.

END