

**ICANN**

**Moderator: Brenda Brewer  
April 11, 2016  
2:00 pm CT**

Leon Sanchez: CCWG on account of the accountability review of draft bylaws speaking Number 11 (unintelligible). And, well actually it's the meeting of April 11 - so our April 11th meeting on this. So it's good to see (Niels), but I was saying I can see for a couple of (unintelligible) who is joining this effort now. And welcome Alberto Soto -- welcome to new faces and new voices in this group and you'll find this quite entertaining and amusing. So welcome -- just don't run away too soon.

And, well we of course have the following - the efforts on the lawyers and the group with their questions on the different adjustments and persons of the bylaws that we're trying to finalize so that they can be implemented. And one thing that is really important to state at this point is that we'll be going through a number of pieces and questions that have been raised by the group and in different channels.

And what we would like to definitely avoid is to reopen issues that as we have been continuously (obtaining). This is not a place in which we are going to reopen any issues -- but rather to provide clear guidance to our lawyers to

eventually have a finalized version on the bylaws that we wanted to implement.

And I see that Kavouss has request for a statement, so I would definitely call on Kavouss to please take the floor so we can listen to what you have to tell us. Kavouss, you have the floor.

Kavouss Arasteh: Do you hear me?

Leon Sanchez: Yes, we hear you.

Kavouss Arasteh: You have not been heard here the last two calls. So good to have you.

Listen, Leon, -- I have a very difficult task or time during the two hours before your meeting. And it is stated in this statement. We were discussing something and somebody says that the ICANN bylaw is an American document and most recent (unintelligible) to America this time.

I strongly object -- I strongly object to that statement. We are not preparing or drafting an American document. We're preparing ICANN by law as a multi-stakeholder community's -- a global multi-stakeholder community. We are not under a specific style of a specific country. We are under the general agreement, so I don't agree to follow a specific style.

I solely to get that statement that there was group of people harmonizing with each other and making such a statement and one after the other as to support that. This is not correct -- this is totally wrong in a vision. There was a legal lawyer or lawyer from the (city). He took the entire floor and imposed a position to us that insisted and insisted until I support a given - did not allow to talk -- is not allowed to listen.

And the chairman unfortunately (unintelligible) to control the meeting. The meeting is CCWG and CCWG (unintelligible) community working to - is not American. I know 80% are American -- I know 80% are (GFSO), but I don't agree with that. We should listen to each other and we should work with each other quietly, nicely, calmly. Calmly in a healthier environment, so please clarify this issue.

If you are going to draft a document under the American (unintelligible), I cannot agree with that. Thank you.

Leon Sanchez: Thank you very much Kavouss for this statement. I see that Greg Shatan's hand is up. But before I go to Greg, I would like to point out that however inclusive, but first we have been to these many calls and meetings -- we cannot refuse the fact that ICANN is a California (unintelligible) corporation.

So in that sense, any language that we put into the bylaws must comply with California law and of course to its law. With that to US (trial), I am not sure what we could understand by US (trial), but I would definitely please encourage everyone to keep our minds open -- and continue to do our work as we have with the inclusiveness of adversity that we have so far used in this group.

So I will now go to Greg. And Greg, can I ask you to please be as concise as possible.

Greg Shatan: I'll be at least as concise as Kavouss. Thank you, it's Greg Shatan for the record. Kavouss is carrying over a discussion that we had this morning in the CWG meeting. Reviewing the bylaws, I'm sorry to waste your time -- but I feel I need to state my side of the case -- which is was pretty much everybody's side of the case -- but Kavouss on that call.

All that was being said is that since we're drafting a document that is a US law document, it needs to comply with US law. And then when in choosing specific terms and words to put into the document, we should choose words understating their meaning under US law. And choose terms of art such as reasonable efforts that have a meaning that has been tested time and time again in US courts -- and where there is a basis for a common understanding of those words.

This was not some sort of, you know, hijacking by US interests of the document. What we're trying to provide here is a document that says what it means and means what it says -- nothing more than that. And the best way to do that is to use the tools, words, that have settled meanings in drafting documents that are interpreted under US law.

If anybody thinks that sounds crazy, you know, please say so. I think it's not only rationale, but absolutely necessary. Thank you.

Leon Sanchez: Thank you very much Greg. So I would definitely encourage to not continual just grabbing into this philosophical discussion. And I would rather carry out with the agenda and Kavouss if you are interested in continuing the discussion; we definitely encourage you to continue these on the mailing lists.

So with that, I would go back to the opening remarks and state that as I was saying, we should definitely not reopen issues, but rather focus on guiding our lawyers as to how they can best reflect what our - what's the recommendations and of course translated into bylaws that we can finalize and continue to process.

So with that I will turn to my co-chair, Thomas for the next agenda item.

Thomas Rickert: Thank you very much Leon and hello everyone to this call where we're going to hopefully going to resolve most, if not all of the questions that have been brought up by the lawyers, as well as (our) own group.

The second agenda item would hopefully be a short one and that is to confirm the responses that we discussed during the last call. You might remember that (Bernie) had thankfully circulated two documents on Friday. One document containing the summary of the answers that we have worked on and concerned. And the second document was the open issues.

So let me now ask whether any one of you has further comments on the questions that we had agreed during the last call. So the audio has not dropped, let's just wait for another couple of seconds. Okay, no one seems to see the need to speak to the previously agreed answers. So we can take those as adopted.

Let's then focus on the remaining issues. And as the leadership team, we've been thinking about ways to make it as easy as possible for the whole group to follow the discussion and also either confirm answers proposed or comment on those. In order to help with this, we have prepared a couple of slides and I would like to ask staff to bring those up in the Adobe.

We thought that it would be cumbersome for you to work through an 18-page document in the most participation room. And therefore we have tried to summarize the pending issues on a couple of slides. We will walk you through those and you will have the opportunity to speak to the individual issues.

In broad terms, we think that we have three different categories of issues that need to be resolved. The first of which are issues that really need some

discussion. Then we have uncontested comments. Maybe it's too broad or too brave a statement to say that these comments were uncontested. Maybe some of you have just been waiting for a good opportunity to comment. But at these, we haven't seen any traffic on those comments, so maybe we can take those comments and observations by some of you as quick (wins) to get responses to all the items.

And then we have some questions from our group where individuals were uncertain as to what specific areas of the draft bylaws meant and how they should be understood. So during this call, what we would like to do is go through all the issues with you. We have re-grouped them slightly because some of the commenters have spoken to the same issues.

So for example, when it comes to reconsideration requests, as well as the IRP, there were numerous questions on those that have been in different places in the 18-page document. And we've tried to put them all together so that we can talk about different subjects where one after the - so that you don't need to go back and forth.

So let's move to the next slide please. Actually the way this is displayed on my screen is a little bit broken, but it might just be me. So the - now I at least can see Question 1 -- additional Question Number 13 surrounding the words "in the root zone" -- where the root zone on my screen -- so I hope that's the same for you as well.

So let's discuss this now -- actually this -- the slide that brings some gymnastics in my Adobe Room -- that's quite nice to see. So there has been a lot of discussion around the words in the root zone in ICANN's mission. And I would suggest let's not get trapped by these three words. Let's try to agree on

the essence of what we're trying to achieve, which I would like to summarize as follows.

And that is that ICANN is not in charge over all of names in (BDNS). ICANN has part of the authority over what labels go into the root zones. And this is the reason why some of you have argued and many have agreed that we should keep the words "in the root zone" opposite to what we had initially discussed.

And that the fact that ICANN can actually do something about second (unintelligible) names for example would be adequately ushered by conditions that can be included in the Registry and Registrar Agreements within the picket fence. So...

Becky Burr: Yes...

Thomas Rickert: ...many of you have agreed. Yes, Becky, I'll turn to you momentarily. Some of you have agreed with (Andrew) and others and Becky has also confirmed that she would be okay with keeping the words "in the root zone." Becky would like to make a comment on that, please.

Becky Burr: Yes, I (unintelligible), ICANN's point was well taken before we had rearranged the bylaws to bring the picket fence up into the description of the mission respecting names. But now that the picket fence is there, it's clear what is within ICANN's mission. And so I think that going back and reinserting the root zone language is appropriate.

Thomas Rickert: Thanks so much Becky. So unless there are further comments on this one, we would like to pass on the use instruction to the lawyers. And that means that we would infuse the words "in the root zone."

Awesome, let's move to the next slide, then and that is with respect to Question Number 2 and that is the scope of grand-parenting. And I've actually made it gender-neutral following one of the Kavouss' earlier comments.

What we would like to capture here is that again, let's not try to get trapped by the word "grand-parenting." But we had to (tell you) discussed in our report that we would like to ensure that existing Registry and Registrar Agreements can be renewed.

We wanted to ensure that applicants of the common ground of new gTLD's can sign the Registry Agreement and they currently use forms. And the terms and conditions of new forms, gTLD Registry and Registrar Agreements are not grand-fathered.

Since that was a question following to (Becky's) scope as well -- and let me ask Becky whether - if anything to add to that proposed outline of an answer.

Becky Burr: I have nothing to add to that.

Thomas Rickert: Excellent. Would any one of you like to comment on this? There doesn't seem to be the case, so let's capture this is the outcome and we will respond to the lawyers accordingly. Let's move to the next side please.

That relates to Question Number 6 from the original document we received the (unintelligible) team and that related to the right of the ICANN Board to remove colleagues. And as you might remember -- and we discussed this during our previous call -- this part of the board to remove colleagues has not been touched by our report.



And therefore, we want to preserve that right for the board and therefore one of the instructions the lawyers is that the board must be able to remove colleagues. Requirements must be baked into the bylaws so that no former (consent) or approval or any other declarational word is required by the empowered community. And the CCWG recommendations do not suggest that the approval or any other decision from the (EC) is required to exercise that power.

There has been some discussion and some concerns have been raised that we might face a situation where the empowered community tries to place an individual on the board. And the board then immediately removes that director and this could destabilize the organization.

We've then concluded on the list that should something like that occur, there is still the power for the empowered community to remove the board. Because such action by the board would certainly be considered rogue and therefore it might not be appropriate for us to try to doctor the process that the board has to remove colleagues in order to avoid that risk -- but rather than remove the entire board.

Are there any comments on that? That is great. Thanks so much -- the support and Chat for this -- and I see that the slides have been reformatted miraculously by staff -- that's great. Thank you so much for doing this so quickly. So with that we can move to the next slide.

That relates to Question Number 29 and additional Question Number 22. It relates to removing non-(unintelligible) members and there was a question -- a discussion -- around the carve-out whether or not the carve-out should be applicable. And we have asked the lawyers to reframe the question because in

the group's view was - these in some of - in our groups views - reference to the GAC carve-out was not correct.

While we haven't received anything on that so far, we think that the answer is must anyway because the carve-out would not be applicable to individual board member removal anyway. And therefore we would like to suggest to you and we hope that you agree with us that the lawyers should just ensure that no mentioning of the carve-out is made in the bylaws when it comes to individual board member removal.

I see that there is a comment in the Chat from Brett. "Sorry I was away. I disagree firmly that the CCWG recommendations do not suggest that the approval or any other decision from the (EC) is required to exercise that power." That goes back goes back to Question Number 6.

So Brett, maybe you can point us to a place in the report where reference to that power is made. We have not made any recommendations to speak to that power that the board has. And as you know, in this phase of our work it is our job just to ensure whether the bylaw draft is consistent with our report. And since there's no reference to that to offering that board power, we, I think, are not in the position to do it at this stage.

Kavouss, your hand is going up and down, so I trust that you do want to take the floor. Please, Kavouss.

Brett Schaefer: (Mathieu), may I speak about that?

((Crosstalk))

Brett Schaefer: I understand that the - you referenced my name, so I didn't - I thought you were asking me a question.

Thomas Rickert: Brett, if you could just pause for a second. This is Thomas, by the way. I have just given Kavouss the floor -- who had raised his hand -- and I will get back to you momentarily.

Kavouss Arasteh: Can I talk please?

Thomas Rickert: Please do, Kavouss.

Kavouss Arasteh: Yes, Thomas. I think I send (sic) several emails to yourself to all this about the extent of the carve-out. And I hope that you would raise or address that point at some time. Thank you.

Thomas Rickert: Thanks Kavouss, we will have a dedicated slide on the carve-out. So if you just wait for a couple of minutes, you will see it. Brett, you wanted to take the floor as well -- the floor is yours.

Brett Schaefer: Thank you. Okay, if the - if we're going to holding strongly and firmly to the principle that is not included in the report -- that it will not be included in our recommendations or in the bylaws -- I would hope that that standard would also apply to the GAC carve-out because there is no restriction whatsoever on the terms or limits under which the GAC carve-out should apply.

Any kind of effort to impose a standard about substantially based on or any other caveat along those lines should not be included in the bylaws as well. It should apply to every single bit of - board decision that ever replies or relates to GAC consensus advice. So if we're going to apply this standard strictly, I hope that it's applied strictly across the board. Thank you.

Thomas Rickert: Okay, thanks Brett. Becky, would you like to comment on this?

Becky Burr: I'm not really sure what - I just - I think that we have no authority and - well I don't know if we have authority or not. But we did not do anything to alter the board's ability to remove members on its own. And so I'm not sure what that has to do with the GAC carve-out in any case. I just don't think that we had any ability - we didn't have any that was not within our mandate in any way, shape or form that I was aware of.

Brett Schaefer: Well, the relation comes into the fact that we have created a designator model which appoints directors. There is a legal responsibility and empower (sic) those designators to both appoint and remove those directors. We have been arguing over what form that approval and consent should take.

And I've been told in - from (Mathieu) just now that we are not going to affect the board's power even though the designator model does so and goes to the heart of that. We're not going to affect the board's ability to remove another director because that is not specifically stated in the CCWG report.

My connection here is that a number of people over the past couple of days have been making the argument that we need to reinterpret how the GAC carve-out is applied because it is - it should not apply to certain decisions. We also had the suggestion earlier last week that the GAC carve-out should only apply about board decisions that are substantially based or solely based on GAC consensus advice.

Neither of those terms appear in the CCWG report. And if we're going to be a stickler about what is and what is not applied in the bylaws as to whether it is

referenced in the CCWG report or not, I think we should apply that standard absolutely, positively equally across the board. Thank you.

Thomas Rickert: Thanks Brett. Let me just ask you a quick follow-up question. The - I have a hard time understanding what the connection between the carve-out which relates to decisions that are made by the board -- and removing board members by the board is.

Brett Schaefer: I'm not applying the connection as between the removal of board members or the GAC carve-out. Though theoretically in some relation could apply if a GAC consensus decision to remove a board director was made and the board was not able to reject that. But that's not what I'm trying to say here.

I'm trying to say that the argument that has been made that the failure or the unacceptability of requiring affirmative consent from the (EC) for the board to remove a director is unacceptable or out of bounds because no specific reference or recommendation to that was made in the CCWG proposal.

If we're going to apply that strict standard, I believe that we should apply it equally across the entire CCWG report. And that other things that are not put into the report should also not be input into the bylaws. And the connection I'm being - make here (sic) is one of principle that if you're going to have a strict standard for one part of this report, then you should have a strict standard for the other parts of this report.

And that arguments that have been made over the last week in terms of trying to reinterpret or weaker the GAC carve-out should be considered out of boards because no such caveat was included in the CCWG report.

Thomas Rickert: Okay, so...

Brett Schaefer: Am I clear on that? I'm trying to - I - to explain my connection here.

Thomas Rickert: That's what I just said now. So I understand that you don't have an issue with this answer to Question 6 -- you have an issue with a carve-out as such -- with room to discuss the carve-out at a later point in this call. And therefore let's try to...

((Crosstalk))

Brett Schaefer: That's precisely correct -- I do have an issue with this. But I've been told that my issue is irrelevant because it's not contained in the CCWG report. And if that standard's...

Thomas Rickert: Well,...

Brett Schaefer: ...going to apply, I hope it is applied equally. That's the - that's my direction.

Thomas Rickert: Okay, fair enough, Brett. Kavouss, if you want to talk about the carve-out...

Kavouss Arasteh: Yes...

((Crosstalk))

Thomas Rickert: I don't want to discuss the carve-out now. We've just had this - that we can move - we can leave the answer to Question 6 as it is. Let's please not be sidetracked by the carve-out question now.

((Crosstalk))

Kavouss Arasteh: Yes, I'm not talking about carve-out. Why this gentleman just talked about the carve-out? We are not dealing with the carve-out. The (unintelligible) GAC sentiment or GAC (unintelligible) sentiment expressed by some people has nothing to do with this question. They want to...

((Crosstalk))

Kavouss Arasteh: So the GAC carve-out later on (unintelligible). I don't think - the comment was totally irrelevant -- totally irrelevant -- and rejected -- poisoning and preparing the ground for something else -- biasing the views of the people. We are not discussing the carve-out, Thomas. Please don't tell all the people...

((Crosstalk))

Kavouss Arasteh: ...to talk about the carve-out. What is the carve-out here? Nothing.

Thomas Rickert: Kavouss, I thank you very much. (Alan), you haven't spoken, so I'm - let's see, yes, please.

Alan Greenberg: Thank you very much. If we had drafted the report with complete preciseness and no omissions, we wouldn't be here today having these discussions. We are because the lawyers have identified things where they need clarity or they need some refinement to draft the bylaws. I believe we have to handle each of them on their own merits and do our best job in each one.

That's the only possible way proceeding forward applying the single rule just does not apply because they - each of these issues we're looking at have different merits and different issues. Thank you.

Thomas Rickert: Thanks very much, Alan. And actually you used - you saw my (unintelligible) sort of is my conclusion as we move to the next question. Certainly we have our report. We are conducting these meetings in order to ensure that the implementation of our report is in the spirit of our deliberations.

And therefore, we have to reflect on what the group's deliberations were and I do have memory of discussions about the carve-out and what it's like -- solidly based on -- and others. So there is some substance that we can go back to while we've never made an (attempt) to change the board procedure for removing board members.

But let's now move to the next slide and that is Question Number 33 -- plus additional Question Number 5 and that goes with mediation community (ROP). We have received -- or we've asked for the question to be re-drafted. We have received feedback from the lawyers. There has been some uncertainties in the leadership team as to how to deal with these additional qualifications and I would like to hand it over to Becky at this stage to guide us through that.

Becky Burr: Yes, sorry I'm in a noisy place, but I'll try to be clear. I think we have to go back to the lawyers again. I am confused because I think that the mediation issues arises - part of an (unintelligible) review process. In other words, once you decide to go to bring an independent review, you go to mediation first.

And I think the GAC carve-out applies wherever the GAC carve-out applies -- which is to say if the issue being either that if the subject of the independent review were being mediated -- was the product of the board's implementation of GAC advice from the carve-out applies.



So I don't think the lawyer have quite answered our questions. And I also don't understand what the (TDP) issue -- how that arises in this context.

Thomas Rickert: Okay, so we're waiting for further clarification from the lawyers. There was one additional question by the group and that was with the escalation procedure should automatically lead to mediation. Is that something that we can settle on today, Becky?

Becky Burr: I think that the way the IRP is drafted is that once you invoke IRP you would go to something called constructive - you would, you know, you would have the ability to go into a formal constructive engagement -- or just lift it into mediation. So again, I don't think we can resolve it. I think I need to have a conversation with the lawyers to understand what they were attempting to clarify.

Thomas Rickert: Okay, thanks Becky. I saw that Holly's hand was raised. In the meantime, Holly, did you wish to speak?

Holly Gregory: Yes, I just - I think why don't I try to have a call (with that) - I can clarify it. I think generally that if we have a principle that says if the underlying matter is subject to the GAC carve-out to proceed within that - or are subject to the same carve-out as applying principle. So I just want to make sure we're all on the same page. So...

Becky Burr: So on that principle, I don't think there's any doubt.

Holly Gregory: Okay.

Becky Burr: You know, if...

Holly Gregory: So, Becky, let me just - if that principle's - okay, let me just go back and make sure that I understood - stand what the question was because it's been a few days since we looked at it and make sure that there was no other question embedded in it. But I think we're good for moment because I understand...

Thomas Rickert: Awesome.

Holly Gregory: ...giving us.

Thomas Rickert: Great, so I would suggest that you sort it out -- take it offline and get back to the group with any outcome of your discussion. And I mentioned earlier -- and I should have spoken to that -- that we haven't yet received an answer on the specific issues that we had asked the lawyers about. But it looks like, you know, you were (not delivering).

And let me just go on record that the opposite is the case -- you guys are superstars in this phase, you know, the workload that you've taken and the quality of the work is just outstanding. So let me join those again that have (unintelligible) for all your hard work and for the excellent support of the problems that - have been working in your teams -- so please convey that to your colleagues as well.

So...

((Crosstalk))

Woman: The legal team appreciates that -- thank you.

Thomas Rickert: Thank you so much. And let's now move to the next slide and Leon is going to guide you through the next couple of slides.

Leon Sanchez: Thank you very much Thomas. So can we please move to Slide Number 9?  
These are (unintelligible) and I might have a little bit of background noise, so my apologies for that. And the first additional question is from the selection of IRP panels. And in these we have (signals) that the lawyers (unintelligible) that the (unintelligible) with the community and is not strong enough.

So (unintelligible) so much of process must be totally community-driven and the role of (unintelligible) is only to confirm (unintelligible) for most panelists. This seems to be inconsistent, so it is - if there are no comments or questions on these issue (sic), we could of course provide the lawyers with very clear guidance so they can do their work.

I see that first hand is asking what is the procedure for (mediate) selection and this is something that I believe that the lawyers will of course develop to (unintelligible). So I...

((Crosstalk))

Woman: The (IRSG) working group is developing...

Leon Sanchez: Thanks, and we had solution or feedback.

Woman: The (IRS key) working group will develop that.

Leon Sanchez: Okay, perfect. Thank you. So that's work in progress for (unintelligible) and of course when we have more authority on how this will happen, we will come back and - okay so can we go for next slide please.

So the next slide is the IRP rules and procedures. And here the lawyers...

Becky Burr: Yes, Leon...

Leon Sanchez: Yes, Becky.

Becky Burr: (Unintelligible).

Leon Sanchez: I'm sorry, Becky I couldn't hear you well.

Becky Burr: I am going through airport security now, so I wonder if you want to (unintelligible) and come back to it later.

Leon Sanchez: Okay, yes we'll definitely skip this question and come back when you have come through airport security. So can we please turn to the next slide? And these are questions from our group. We have additional Question Number 8 on (fix). (Horkay) rose question why (fix) (sic) are not mentioned in Section 1.1B4.

And here the lawyers will respond to (Horkay) on (unintelligible) on April 5 was satisfactory. And I'm not sure we have (Horkay) on this call, but if we do - yes we do have (Horkay). So (Horkay) could you please confirm whether this - okay, so we do learn that he would appreciate a response by the lawyers.

So we'll ask the lawyers to kindly respond to (Horkay's) question -- not at this point -- but for his - on the list. So can we move to - I think that we have a grand out of (unintelligible) at this point, but we nevertheless need to go back to the question on IRP rules to procedure. But I'm sure if Becky has already crossed for security, so if we may - we could go back to Thomas or the next slide.

And I see...

((Crosstalk))

Leon Sanchez: I'm sorry Thomas, I just saw (T Janis') hand is up. So Tijani, would you like to make some comment? Tijani might be on Mute -- we cannot hear you.

Tijani Ben Jemaa: Yes, Leon, do you hear me now? Do you hear me?

Leon Sanchez: Yes we do hear you.

Tijani Ben Jemaa: Thank you very much. As for the IRP, I thought that we have a group that has to address the IRP issues. That's why I didn't raise any point. But I have at least two important point (sic) to address as for the real procedure of the IRP and also about the configuration period.

So if - we can - if we have to speak about that here now, or if we have to address it in the group related to the IRPs.

Leon Sanchez: Thanks Tijani. I think that the right place to raise these issues would be with the IRP working group. So - but I mean I am waiting for Becky to cross airport security, so if we could please wait for her to be back and then we could of course raise any issues (unintelligible) we're all here already.

So if you kindly could wait for Becky to signal us once she comes back, we'll go back to this point. And of course any issues that you need to raise will be welcome at this point.

Tijani Ben Jemaa: Okay, thank you.

Leon Sanchez: Thank you Tijani. Now going back to Thomas. Thomas.

Thomas Rickert: Thanks so much Leon and just a quick note to Tijani. The IRP working group -- we'll discuss details of the IRP. So if you want to chime in when it comes to the rules and procedures that this group will develop, then certainly this group will be the right place to make those comments.

We need all the comments that this group might have with respect to the bylaw drafting -- and ideally we would have them already. As you know, we had discussed and set a deadline 2359 on the 9th of April, so when it comes to what's in the current draft bylaws, by all means please do speak up so that we have a comprehensive view on - of your group's comments of this.

I'm not even sure whether we need Becky to come back on question - the question that you find on Slide 10. I think we need to get back to Becky when it comes to IRP or other IRP questions. This one maybe we can do very quickly. It basically just says that - of the current bylaws - say that the panelists themselves can discuss and agree on changes to the rules of procedure.

And we - I think you will agree with me -- the changes of - the rules of procedure should not be decided upon by the panelists, but that should be a community process. And therefore, our proposed answer is that the community-driven nature of the establishment of the rules of procedure should be reinforced in the bylaws -- i.e. no decision making on the rules of procedure by the panelists themselves.

Are there any in opposition to that?

Greg Shatan: No opposition per se, but I think it is appropriate for the panelists to have a place in the process and possibility the ability to at least initiate suggested changes in the rules of procedure. You know, but in the end, I support 100% that the approval of any changes should be a community-driven process and that the ability to initiate that should also be shared with the community.  
Thank you.

Thomas Rickert: Thanks so much Greg. And if - as if Kavouss had read your mind, he's - he has made a comment along the same lines. So I would suggest that we take note of your additional comment and to comment that has already been made by Kavouss that rules of procedure changes can be discussed and proposed by the panelists. But the ultimate decision should be made by the community after public consultation process.

So thanks very much for that. I think with that, we can move on. So can we please go to the next slide? We need to go to Slide Number 13 actually. Can we check if Becky is back with us because these are a lot of questions on the reconsideration process and the IRP? Becky, are you back with us?

Becky Burr: I am back.

Thomas Rickert: Excellent. So what you see on this slide looks quite frightening because there are a lot of words and a lot figures on it. But this is basically the extract of the questions that relate to the reconsideration process, as well as the IRP from the 18-page document.

So the first question to be answered is whether that's a question that was raised by David McAuley whether the RR and the IRP should be available for human rights-related concerns or complaints before the (FOI) is adopted.

So Becky, would you like to suggest an answer to that?

Becky Burr: So my understanding is that the report was clear that cases relating to the bylaw change that would include human rights would not be rights - would not - could not be brought to reconsideration or IRP before the framework interpretation was in place.

Thomas Rickert: Tijani's hand is up -- Tijani would you like to comment on this? Tijani, you might be on Mute and I see that David - it just says that his question has not been adequately presented, so we'll get back to that in - momentarily.

Tijani Ben Jemaa: Yes Thomas, I'd like to say that if you read the bylaws proposal, it says very clearly that nothing would be applicable for the human rights before the adoption of the FOI. So I think the response for this question is no. Thank you.

Thomas Rickert: So that seems to be in line with what's been mentioned by David and supported by Tatiana, so Ed and Tatiana's hands are up. If you have raised your hand to confirm this, you may pass. Ed?

Ed Morris: Yes, thanks Thomas. The problem I have is that some of us would argue that ICANN already has human rights' obligations (that are) Article 4 -- the Association. And that's been confirmed by the (Dr. Kovack's) decision where due process was stated to be imputed into ICANN's obligation to respect international law -- international agreements under Article 4.

So the question I have is can we word this in a way that says that specific human rights' obligations as a result of what we're doing in the framework of interpretation cannot be relied upon in appeals to IRPs, but allow us to maintain those rights that we technically already have under the Articles of



Association? I don't think it's the intent of anyone to lessen ICANN's obligation to respect human rights through the Work Stream 2 process. But if we're going to say you can't rely upon human rights right now, that's actually what we're doing in the interim period and I don't think that's right.

Thomas Rickert: Thanks so much (Ed). We have Holly and Rosemary on the call. I'm not sure whether they have the right ones in their teams to respond to that - this, but actually you asked me a new question, so let's capture that and try to get answered. Tatiana?

Tatiana Tropina: Thanks a lot. Tatiana Tropina speaking for the record. I kind of agree with Ed, but the point that we discussed Article 4 of Articles of Interpretation -- at the Working Party Forum, Human Rights. And of course many of us told that Article 4 actually includes obligation to respect human rights. But some of the members of the Working Party 4 to that then we will need individual and independent leader assessment of the Section 4 -- refers to the international law and standards.

And this means that the process would be quite lengthy. And I believe that in this case, the prohibition of reviews and requests before the framework of interpretation will be implemented does not actually include the Application of the Articles of Interpretation. There are not exclusive things, so I believe that we are not creating any conflicts here.

When we are referring to specific human rights' obligations to respect human rights, of course we need framework of implementation. But if someone wants to challenge the fact that ICANN is not following some international standards or whatever, of course they can do it under the Article 4 of the Articles of Interpretation.

I don't see any conflicts here. Thanks

Thomas Rickert: Thanks very much Tatiana. We have Kavouss, David and then I'd like to end the queue. Kavouss? Kavouss, we can't hear you.

Kavouss Arasteh: Consist and report we have written that everything is subject to the approval of this (FOI). Perhaps it should say something not to the standing if the present either (practice) or present articles or something that we are not going - that whatever they do, equals (unintelligible). They should forget about that and waiting for (FOI).

Perhaps we should try to (unintelligible) I would say (unintelligible). So we add something at the beginning to explain that. Thank you.

Thomas Rickert: Thanks so much Kavouss. David?

David McAuley: Thank you Thomas. My apologies -- it took me a while to dial in. But I just wanted to make a statement that I think the question misunderstood my comments. And so I probably wasn't as clear as I should have been. My comment was that in Annex 6, there's bylaws text which basically prohibits claims.

And then there's explanatory text which has an implication and it's only an implication that HR -- Human Rights claims would be viable at IRP after the FO - after the framework of interpretation. My point is that whether human rights' claims are a proper subject for IRP itself.

That fundamental question is itself an issue for the FOI to determine. I think there are a number of reasons why that should not be the case. Courts are better able to handle it -- it's a complex matter. But there are other points --

both pro and con – Ed and Niels came-on list over the weekend -- and I respect their points of view -- and they have positions con. I think it should be a full (sort) of debate in WS -- Work Stream 2 though -- and that was my point.

I think giving bylaws language to an implication in this respect where this particular implication wasn't debated very much in the HR subgroup of which I was a part -- or the CCWG -- would be a mistake. So thank you Thomas for this opportunity to speak.

Thomas Rickert: Thanks David and I apologize for not having reflected your question adequately here -- that's certainly my fault. I think you've been very clear. I have closed the queue, but I see that Niels and Greg want to speak to this reframed or now finally correctly -- this great question from David. But let's hear the two of them -- I would like to ask you to be brief so that - because we have a lot more questions on our plate.

Niels?

Niels ten Oever: I guess then I will start and I'll be brief. Thank you very much Thomas. I - I'm a bit surprised by David's remarks -- especially because it has been discussed extensively in the preparation -- in Working Party 4 and also in the CCWG at large. I do not think we should reopen it.

The text, as I mentioned during the last call, makes it really clear that ICANN does not have the obligation to protect or to respect human rights. So when we make a commitment in the framework of interpretation, then that should definitely be under the process - be possible to get (unintelligible) and IRP because it also doesn't really make any sense to make a commitment at all.

And I think we have reached consensus on this and I think reopening the negotiations on this moment -- on this point -- would be a - would be unwise.  
Thank you.

Thomas Rickert: Thanks very much Niels. Greg?

Greg Shatan: Thanks. A couple of points. Greg Shatan -- I'll try to make them quickly. First, I think we shouldn't confuse human rights conceptually with the human rights bylaw specifically. The human rights bylaw -- as we all know -- will be essentially not effective until the framework of interpretation is completed and adopted. So, you know, at this point it can't be relied on for a bylaws' related IRP claim.

That's not to say that is somebody wants to find - or try to find a human rights' issues under other standards and sections of the bylaws of the articles that they would be stopped from doing that. We're not trying to take away any claims that could be made today.

Whether due process could identify nearly as a human writer or as a rule of law issue -- or other things, you know, it's kind of beside the point. You know, I think about due process in the legal context without needing to, you know, go to the issue of human rights.

So I think the point here is that, you know, an IRP, you know, can't be based on a bylaw that's not yet effective. But other than that, current standards, you know, should be unchanged. And when we get to the end of Work Stream 2 and the end of getting the framework of interpretation in place, you know, I think by that time we will have already also had a robust discussion about issues like this related to the bylaw once it is effective. Thank you.

Thomas Rickert: Thanks very much Greg. And I understand that Mathieu Weill would like to chime in on this.

Mathieu Weill: Thank you Thomas and hello everyone. This is Mathieu Weill speaking. Just to read what I think was the core recommendation of the Annex 6 of our supplementary report, it's Progress 23 which states that within its core values - - so within its core values ICANN will commit to respect (unintelligible) nationally recognized human rights as required by (unintelligible).

This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request or demand seeking the enforcement of human rights by ICANN. And its title provision will not enter into force until FOI - the FOI is given (off) and the FOI is approved by the ICANN Board.

I think that is what drove us towards the suggestion that Thomas described and not putting it as a transitional article as this point. Thank you.

Thomas Rickert: Thanks for much Mathieu. With that, I'd like to move on to the next question. So Tatiana, I guess that's an old hand? Kavouss, I have closed the conversation on this. Is there any new aspect on this?

Kavouss Arasteh: Yes, thank you. Yes, I'm second-handing what - the question is that the FOI issue was they - is because ICANN did not want that anyone involved IRP. And that ICANN has not implemented the human rights and but whatever they're doing today is valid and should be continued. Thank you.

Thomas Rickert: Thanks very much Kavouss. Let's then move to the next question, which related to Andrew. We had an exclusion of applicability of the IRP for results -- is for possible parameters in the draft bylaws. And Andrew suggested that it

should be (defused) relating to product or parameters. So he was not sure what results as far as protocol on parameters would mean in this sense -- or he would prefer to have (defused) relating to product or parameters excluded from the applicability of the IRP.

This is because the (ICF) has its own - appears (secondism) for these cases. So I would suggest that we go with Andrew's recommendation on this unless we hear from anyone in the group disputing this. You can get back to - back on this while you're thinking about it.

But let me just introduce the next question which was the - that the definition of (stats) was said to be ambiguous. I guess that's also a comment being made by Andrew -- the bylaws read that those that are agreed by a board or a staff (action) can use the IRP -- and that was ambiguous.

I understand, Becky, that there has been some work on that? Becky, can I ask you to help us with this?

Becky Burr: Yes, and I believe that Holly and Rosemary has (unintelligible) some language for clearing of that ambiguity in another section. So that could just be transported here.

Thomas Rickert: Awesome, so let's take that off the list as well. Becky, would you like to speak to the next point as well regarding cross (tracing)?

Becky Burr: Oh. Yes. I think that Andrew's correct. We should add the (some kind of FR).

Thomas Rickert: Okay. So unless - so that seems to be a drafting glitch. Malcolm's hand is up. Malcolm, welcome.

Malcolm Hutty: Just a quick clarification on the staff issue. IRP cases aren't cases brought against the Board. They're cases brought against ICANN for ICANN having (x'ed) it out in a way that's contrary to the bylaws.

So whether that's done by - normally it would be the Board that would have the opportunity to do that. But if there is a case that shows that staff was acting in a way that's inconsistent with bylaws and that the Board ought to restrain, then the IRP action would lie in the case of that. It is - the mechanism is there against the company, not against a part of the company.

Becky Burr: That's correct Malcolm.

Thomas Rickert: Thanks for that clarification, which we have on record now so that - that's helpful. Then there was a question whether decisions shall be suspended pending resolution. I guess that was a point mentioned by (Brett). Becky.

Becky Burr: We have provided...

((Crosstalk))

Becky Burr: But we've specifically provided core injunctive relief in specified circumstances for the IRP.

Thomas Rickert: Thanks Becky. So it looks like (Brett) there is a provision of that. You would select to comment on that so the floor is yours.

Brett Schaefer: Very briefly. This - what I noticed in there that there was relief offered in the case where the EC was doing an IRP. But it wasn't clear to me where that was also provided for individuals or actions less than the EC. And this isn't so

much of a - as a argument but just a question of where that is and should it be made clear that that is the case?

Becky Burr: So it definitely should apply to both. And we'll ask the lawyers to go back and make sure it's clear that it applies to both.

Thomas Rickert: So let's just make sure that in the note to clarify that for the lawyers as well. We have the issues that we've identified here. It should apply to both.

Brett Schaefer: (No). One other clarification was that it not only applies to the IRP but to the request for reconsideration as well. That was also unclear to me. So if we could provide...

Becky Burr: Well that...

Brett Schaefer: Clarification on either...

Becky Burr: ...there's no...

Brett Schaefer: ...or both.

Becky Burr: So there's no mechanism in the request for reconsideration other than for asking the Board to stay its decision. So the proposal doesn't contain the possibility of injunctive relief unless the committee considering the reconsideration request besides the fact that it makes sense to do it.

Brett Schaefer: So there's no - I mean it seems to be that potential damage could result from a Board decision even in the situation for a request for reconsideration and there's no provision currently there to allow for a decision to be pending until that request is resolved and should there be?



Becky Burr: Well, I think - I mean I think it's an interesting question. It is not something that was contemplated in the report at all and it doesn't (unintelligible). We especially talked about, you know, restraining order kind of or injunction - it's really in the context of the IRP. We didn't discuss it at all in the context of reconsideration. So that would be a change from (from the report) and from current practices.

Thomas Rickert: Thanks Becky and (Brett). So it looks like the report does speak to suspending decisions for the IRP but the report has been silent on reconsideration requests. Kavouss.

Kavouss Arasteh: Thomas, are you discussing the last but one indent please?

Thomas Rickert: We are now discussing the third but last question. Shall decisions be suspended pending resolution? And we're now...

Kavouss Arasteh: Okay. I have no comment. Thank you. Thanks.

Thomas Rickert: Thank you Kavouss. We're now moving to the question where the court action can be started by the empowered community or by everyone. So Becky, you want to speak to that too, right?

Becky Burr: Whether what can be started? I'm sorry.

Thomas Rickert: Can anyone or just the empowered community start a court action to enforce an IRP decision if the Board rejects it? Should that be made clear?

Becky Burr: Anyone who is a party to the arbitration can commence Board action to enforce the arbitration. That will be clear from the rules of the arbitration and I think it's clear in the report.

Thomas Rickert: So I guess that was a question from (Brett). (Brett), does that answer the question sufficiently so that we can take it off the list?

Brett Schaefer: Yes. I think that - I just wanted to make sure that anybody could take a court action. The only place that it's specifically stated is in the EC section again. It wasn't stated in the IRP section, at least not that I saw. So as long as everybody has that option, then that - and that is made clear, then that's fine.

Becky Burr: So we should just note that for the lawyers.

Thomas Rickert: Becky, can you please repeat that last sentence?

Becky Burr: We should just ask the lawyers to make sure that is clear in both cases.

Woman: We've got it Becky.

Thomas Rickert: And I see that's currently being written to the notes. So that's good. Kavouss, you had a comment.

Kavouss Arasteh: Yes. I think the essence of this question is if you say anyone could start the court means that we could bypass the EC. Anyone could start that back to the EC. Why could totally bypass the EC? What is the usefulness of the committee power if everyone could go to - take the court directly? So the issue is this. I don't know whether or that's was answered or not. Thank you.

Thomas Rickert: Kavouss, I guess you've misheard this. Any party to an IRP can start a court action. So it's not everyone who wishes to bypass the entire community. We can now move to the last bullet point. That's the point Becky that you've asked me to answer the slide with respect to the need to refine language regarding the interplay of arbitration provisions in the registry and registrar (ones).

Becky Burr: Yes. So there's just a - there's just a funny drafting glitch, which I think could be cleared up very easily. The registrars and registries have binding arbitration solutions in their agreement. Those binding arbitration clauses should be used for disputes related to, you know, contractual disputes interpretations and the like.

And it's only bylaws issues that can be (pursued) through and IRP. It almost looks like registries and registrars couldn't bring IRP claims about violations of the bylaws and that wasn't really intended to be the case. So it's just a clarification that needs to be made to ensure that registries and registrars have the same rights of other parties who are materially affected by ICANN's actions.

Thomas Rickert: Thanks very much Becky. I trust that this request is uncontroversial. If there are (issues with this) please put this up in the queue or make a comment in the chat. (Brett), I guess that was an old hand so we can move to Tijani now.

Tijani Ben Jemaa: Thank you very much Thomas. I would like to add another point, which is Section 4.3 Paragraph S. An IRP panel should complete its - an IRP proceeding expeditiously in issuing an early scheduling (other) and it's written decisions no later than six months after the filing of the claim unless that is not reasonably possible under the circumstances.

This (unintelligible) make it (happen). And an IRP might last three years if we don't make a limitation. When we discuss this point in the CCWG I was told by Becky and the others that this issue would be under rule of procedure and we will discuss it in the rule of procedure.

I do think that it must be in the rule of procedure and not in the bylaws. And I hope that we can discuss it deeply and make it the six month might be extended for another period but we must have a hot stop so that the IRP will not be an endless process, which will open the area for any gaming, et cetera, et cetera. Thank you.

Becky Burr: So let me just respond Thomas that we will definitely address this issue in the IRP implementation.

Thomas Rickert: Okay. So that seemed to...

Tijani Ben Jemaa: I didn't hear Becky.

Thomas Rickert: Becky was saying that this is an issue that will be covered by the IRP Group.

Tijani Ben Jemaa: So it will not be in the bylaw like that. Okay. Thank you.

Thomas Rickert: So Becky, can we ask for your confirmation. Tijani said that (unintelligible).

Becky Burr: No, no. I believe that the - I believe that the bylaws language that will say what, you know, that six months unless that's not possible and then the IRP Group will say what happens when that is not possible and how you determine whether it's not possible. But I believe that the bylaws as currently written (faithfully) reproduces the report.

Thomas Rickert: So let me try to...

Tijani Ben Jemaa: (Unintelligible). If you could just like this, please can you change the wording unless that is not reasonably possible and that will be addressed in the procedure or something like this?

Thomas Rickert: Tijani, I would suggest that we defer to the lawyers to find the right words for this. So let me try to capture this so that notes can be adequately taken. The bylaws language will need to leave a door open in case that the consensus that don't make it possible to conclude the case or to end the case in six months.

But the details are under what circumstances this extension can be used will be specified in the rules of procedure to be worked on by the IRP Working Group.

So if it's appropriate for the lawyers to make reference or if it is required to make particular reference to the terms of procedure, then the lawyers should be doing that. If it's unusual to do that or not required, then I suggest we trust the lawyers' advice in that instance as well.

Tijani Ben Jemaa: Yes.

Thomas Rickert: So thanks everyone for - you know, this has been a challenging slide. I promise this has been the most challenging slide in the slide deck. So you see that there are less words on the next slide. That slide (after Slide 2). (You can) go to that one.

And that is with respect to the carve out. So you might be slightly disappointed that this is not the wording but actually we have asked the

lawyers to reword the carve out to more adequately reflect the essence of the report.

So we should wait for the revised language. But for those who want to speak to the carve out, let us make this instruction to the lawyers very clear that the lawyers are requested to ensure that the applicability of the carve out is not broad. I guess that has been a concern that the carve out is excessively used in places where it shouldn't belong and that the role of government should be marginalized.

And certainly that is not the intention of our drafting exercise. That we want to ensure that the carve out is implemented and operationalized in the way we had it in our report. So Tijani, I guess that was an old hand. Kavouss, your hand is raised.

Kavouss Arasteh: You said that the lawyers are advised to propose a language for carve out. Now if the language for the carve out is in the report, (then) it is not to be reworded.

(Toward the end) of the discussions in CCWG Call 82, 83 one GNSO colleague talked about the innovation. Another person came with the carve out.

And the sentence, which is already in the document that was proposed, said that if the community object the ICANN decision - ICANN Board decision on the GAC consensus advice on the ground that it is not consistent with additional bylaw, then in the process of the community power GAC cannot participate. That's all.

So it should not be extended to anything beyond that. We should not use this session of the discussion to the lawyers about the drafting of the bylaw to try to manage a (unintelligible) or issue that was not (succeeded) in the CCWG and try to just put it here. The exact wording is in the text Recommendation 1 and 2 and nothing should be added to that.

And I wonder why we need to have (modicum) provisions in the bylaw deal with that. We just to - need to make reference or cut and paste those which are already in the Recommendation 1 and 2. That's all.

And I gave one example to you last night or the night before. The change of the fundamental bylaw is not made by community. It is not as a result of the GAC consensus advice. The only entity is ICANN. We change that, that is up to committee to approve that or not approve it. That's all.

But I don't think that any change in - of change of the bylaw by the fundamental bylaw - so fundamental bylaw is - has any (relevance) to the GAC consensus advice - no community - no entity involving that because it was mentioned in the report that for that particular thing is only ICANN proposed changes. Community just approves or not approve that.

So all of those provisions related to (that I'm saying) that if the modification to the fundamental bylaw is a result of the GAC consensus advice, there is no GAC consensus advice. There is no possibility of that. This has been extended and (populated) all through the reports. So why we need to do that? And you...

Thomas Rickert: If that's...

Kavouss Arasteh: ...you mentioned and you committed that you maintain what is in the recommendations, not one word or one letter move and not one letter or one comma less. That is exactly we should cut and paste and we (take that) but not try to (pull away) that and having (those are not) provision and trying to extend that to the earlier, which is totally unacceptable like modification to fundamental bylaw. Thank you.

Thomas Rickert: Thanks very much Kavouss. And just to be perfectly clear, I think our group needs to rely these to a huge extent on the expertise of those that are drafting the bylaws. So they are working on the language, all the concerns that have been raised by both yourself as well as (Brett) to look at the other side of the spectrum.

Those who are concerned about either broadening or narrowing the applicability of the carve out have been heard. And I would suggest that we wait for revised language to be presented to the group.

You mentioned that it only needs to be referenced to one. I'm sure that the drafters have heard that encouragement to keep it very simple. Whether or not that is possible, I cannot tell. But I think we should await the revised language and then look at whether it is truly and accurately reflects the spirit of our report. So thanks very much for that. Let's move to the next slide please.

That is on mission and regulation. That was Question Number 12 or a number of questions asked by Malcolm. There has been an exchange of thoughts on that already. So rather than filling the slides with a lot of words, let us check whether the answers offered by Becky have sufficiently answered Malcolm's concerns. Malcolm, you're on the call so you might want to speak to this.

Becky Burr: Thomas. Thomas. Thomas.



Thomas Rickert: Becky.

Becky Burr: I'm sorry. This is Becky. I don't - I think that my answer did not satisfy Malcolm. I think that was quite clear. And I - we've asked attorneys to go back and look at this particular issue. I submitted a couple of suggestion languages but I don't think it's worth asking whether my answer satisfied Malcolm because I think it's clear they did not.

Thomas Rickert: Okay. I see Bradley's hand is raised. Nonetheless I would like to give Malcolm the opportunity to speak.

Malcolm Hutty: Okay. Well, Becky's reply actually acknowledged the point that I was making and I take it that that is why she's now referred it back to the lawyers. The - it would seem to be implicit within what she'd written that actually she thought that that answer would be sufficient so that there wouldn't need to be a change. Whereas I read what she was writing as being an exception that there did need to be a change.

Since she has now following the further conversation that's gone on said yes, okay, we will take this back and we will have a look at ensuring that this more fully implements the full scope of what the report said, I'm very satisfied with that. That was what I was looking for as a commitment from this call. So I'm - I will be happy with what Becky has just said and look forward to reading what the lawyers come up with next.

Thomas Rickert: Great. Thanks so much. Bradley, (Milton) and then Greg.

Bradley Silver: Thanks. This is Bradley. So I'm also in agreement that, you know, it'd be acceptable to move forward and wait for a response from the lawyers as to

how we might better reflect what was in the report. And I guess I just wanted to clarify that, you know, of course none of us wants to go back and reopen that question about, you know, what the - what we were trying to get at.

But, you know, I would just caution that not trying to specifically describe one of the means by which the inquisition of regulations may take place but rather more faithfully reflect what we meant by the word regulations. And that just seemed to be the only question that's in play here.

Thomas Rickert: Thanks Bradley. (Milton).

Milton Mueller: Yes. I understand that the problem we run into here is that the lawyers did not like the word regulate and not that it had anti-trust implications and I'm wondering if Becky could explain to me what those are.

I know what - how it might be construed to create some kind of competition policy problem but I think that that issue is actually not all that credible. But I'm of course willing to listen to the lawyers on that subject. But if we're getting into this problem simply because of the word regulate, I want to know how serious and substantial that problem is and whether we can simply revert back to the word regulate or some word like control in its place.

Becky Burr: So this is Becky. I am not an anti-trust regulation expert although I do have some experience with it. But all of lawyers around the table in Los Angeles expressed a serious concern with the use of that word in terms of what kinds of exposure it created for ICANN in an anti-trust setting.

And the concern was enhanced by the fact that of course by withdrawing the U.S. Government contract, ICANN was exposed to more risk from anti-trust scrutiny in any (case). I am not qualified to speak to how serious a concern it

was although I can tell you it was a concern of all of the lawyers including some anti-trust experts around the table felt was serious and therefore we were trying to find a way to deal with it.

Milton Mueller: If I could just follow up real quickly. The - keep in mind that we're telling ICANN not to regulate in this provision. We're not telling them to regulate. We're specifically saying you shall not regulate. And we're not telling them the prices of domain names or anything like that. We're talking about content. So again, I'm having trouble...

Becky Burr: I hear you. But it is a highly complex area of legal specialty. And I am not going to overly simplify it by saying it's okay because we're not talking about prices. And I do think we have to defer to our - to legal experts with the appropriate expertise.

But having said that, we've heard loud and clear that concerns with - of the community with construct and we are seeking to address that.

Thomas Rickert: Thanks Becky. Milton, I think we should try to get a (unintelligible) answer to at least the status of what the - what we have now. So while we're hearing Greg, can I ask whether either Holly or Rosemary would like to speak to this then after that. Greg, the floor is yours.

Greg Shatan: Thanks. Greg Shatan for the record. I'd be very interested to hear that answer from Holly and Rosemary. I actually did practice anti-trust law for 12 years. But I'm not going to substitute my off the cuff judgment of what the judgment made in the room was when we have the people who were actually in the room discussing the anti-trust concerns raised by the word regulation.

Two quick points. Malcolm is not the only one - I don't - I'm sure you didn't intend to imply this but yes, Malcolm's not the only one who's concerned with getting this right. I think we all are.

So satisfying Malcolm is not our only goal. And is it satisfying everyone or at least reasonably. And so I know that, you know, Malcolm was the one who kicked off the discussion.

But I think we're all focused on getting this one right. And a number of us if not all of us have concerns, which may not be identically aligned but in the end trying to get to the - something that makes everyone satisfied is where we should be going. So I'll shut up now and hope that - I have my own idea of what they might have said about the anti-trust regulation nexus but I'll be interested to hear if it aligns with what was actually said. Thanks.

Thomas Rickert: So let's do this Greg. Let's hear from Holly and Rosemary and you can reveal after they spoke whether what they say is in line with your 12 year long expertise in anti-trust law. Would that be something? Let's hear either Holly or Rosemary. I don't mean to put you on the spot but Holly has raised her hand. So please Holly.

Holly Gregory: Sure. You've put me - go ahead and put me on the spot on this one. Look. This is a really hard area of the bylaws. And one of the reasons it's difficult I think as Greg just said - while there's agreement that it needs to be addressed in some way, there's not - from what we can tell from the chat, whole alignment on what's trying to be accomplished her.

So we've tried a number of times to come up with language. We've worked closely with Becky and ICANN legal and others to try to address this and clearly we still haven't hit it yet.

We will go back and look at the word regulate and see if somehow that fixes all the problems. We had tried to avoid that term for the very anti-trust issues that were raised. But that doesn't mean it absolutely cannot be used.

And so we will take another look at it. If there is no way to get to the solution that you're looking for without using the word, I don't think any word is so precious that it cannot be used.

So we'll go take another look. You know, I - this one's a difficult one and it's a struggle and it's a struggle because we're not sure that there is as much alignment on this as people think. That's all I've got.

Thomas Rickert: Thanks very much Holly. So I suggest that we wait for your further analysis. And I would suggest that we pause this item for the time being because I think we can't take this much further. Kavouss, your hand was raised.

Kavouss Arasteh: Yes. No problem to wait until Holly comes with some - but I don't agree with her saying that she wants to avoid the use of regulation. That is the essence of this provision. Shall not regulate. How she would like to avoid that to put what (single) word which is so clearly indicate that shall not regulate. That was discussed hours and hours. And I don't know what we are doing now.

All of those discussions of 14 months are now in hands of some few limited people to put it in the way that they believe this is right but what happened to those - this issue was discussed for hours - shall not regulate. This regulate is necessary. It has a meaning. It has a connotation. So Holly, please do not, kindly, avoid to use that word. Thank you.

Thomas Rickert: Thanks Kavouss. Bradley.

Bradley Silver: Thanks. Sorry. I'll be brief. You know, I think one of the things that helps us get to a point where we were able to reach agreement on what the specific word should be was actually moving away from the verb regulate to the word impose regulations. Because that was much more specific action - a much more specific description of what ICANN would be doing and what we would want to prohibit them from doing.

So, you know, I certainly appreciate the questions around what regulate means because that's what we all struggled with when we went through this discussion. And, you know, I'd hoped that by moving away from acting as a regulator to imposing regulations we were much clearer on what we wanted to see happen. So to the extent that's at all helpful in helping the lawyers move us forward, I just wanted to offer that.

Thomas Rickert: Thanks very much Bradley. I think we should leave it with the lawyers now and trust that they found the various interventions that have been made useful to inform their discussions. I would suggest that we move now - move on now to the next slide, Number 16.

And that was a question by Andrew if I'm not mistaken. He mentioned that in various places in the report and in the bylaws mentioning of the global Internet community made that that term has not been defined.

And we've been thinking about that a little bit. And I know that Jordan volunteered to offer a response to that. I see that Andrew's hand is raised. So Andrew, you get the first bite of the apple and after that we're going to hear from Jordan.

Andrew Sullivan: I promise not to take two bites of the apple. The other suggestion that I had is that the places where the global Internet community is supposed to do something could instead be modified such that, you know, it just specifies who it is that's supposed to do something.

And actually the more I thought about this, the more attractive that seems because whatever we come up with as a definition of the global Internet community is bound to be contentious.

And so that might be an alternative. And I see that Kavouss is saying the audio is distorted so I apologize if that didn't - if that wasn't clear. If it wasn't clear, let me know and I'll type it in the chat.

Thomas Rickert: Okay. Thanks very much Andrew. And just to be clear, if you put yourself in the queue again to try to take a second bite, we're going to define an Andrew Sullivan carve out. Next is Jordan.

Jordan Carter: Thanks Thomas. I think I'm agreeing with Andrew actually but I'm just trying to imagine an Andrew carve out at the moment. And, (in other words) we don't need to define the global Internet community if we just say the global Internet community working through an ICANN structures and providing comments to ICANN's public participation processes.

So we just, you know, this is all dealing with things that happen within the ICANN framework. So if we just say it's whoever chooses to participate in the ICANN framework and I think that will work fine for us. So it was my only suggestion.

Thomas Rickert: That looks like good guidance. And maybe we can ask the lawyers to draft something along these lines. Kavouss, your hand is raised.

Kavouss Arasteh: This term global Internet community is in the report. I have seen many reference to global markets (say) all the community. But global Internet community, what does it mean, global internet community? So I hope that we did not invent something. Thank you.

Thomas Rickert: Thanks very much Kavouss. I think we have found a solution to that - that support for the idea that's been presented by Andrew and supported by Jordan. Malcolm.

Malcolm Hutty: Very short point actually. Agreeing with Kavouss (like) rather. Actually I support Jordan's proposed suggestion but when it's implemented, it may be that we should treat global Internet community as actually having been an editorial mistake, which should have read global multi stakeholder community, which we have read - used very many times. If I'm wrong there, please just ignore this but I just throw it out as a suggestion.

Thomas Rickert: Malcolm, we would never ignore your comments. Let's actually give that some thought to make reference to the global multi stakeholder community. There seems to be some - like I don't know what sequence the chat comments came in.

Malcolm Hutty: But for implementing it I would support Jordan's suggested approach.

Thomas Rickert: Okay.

Malcolm Hutty: The global multi stakeholder community acting through (blah de blah) as Jordan said.



Thomas Rickert: Good. Okay. So that looks great. Let's move to the next slide then. That's another point made by Andrew. And that's related to mentioning of both the IETF as well as the IAB in the report. And Andrew found that not a great concern but suggest that we drop either and he said that the IAB (is easier) to consult with in order to smoothen out that language.

So you just typed into the chat that you do not care too much about this. So I will suggest that we try to or that we will actually drop the IAB for the sake of getting this tidied up. And shouldn't we be able to get feedback on time, then we will leave the inconsistency in there. Kavouss, your hand is raised again.

Kavouss Arasteh: No. No. Sorry. Old hand. I'm sorry.

Thomas Rickert: No worries. Good. So Question 19 seems to be uncontroversial and nobody seems to be willing to speak to that. That we should be close to the end of the slide deck. Do we have one more?

Okay. So then we have a point, which if memory fails - if my memory fails me, have been brought up by (Brett). That was a question of whether the current SO/AC structure should be made a fundamental bylaw. So Jordan, I think you wanted to speak to that, right?

Jordan Carter: Yes. Just well briefly. And the question on whether the composition should or otherwise. And we - when we were doing the list in Work Party 1 of what should be fundamental bylaws and what shouldn't, we were trying to juggle the kind of core framework, the constitutional settlement, if you like, of this new structure into fundamental bylaws and leave as much as possible of the detail and as non-fundamentals.

So we think that less critical issues needed to be defined (and some) bylaws. We want to keep the scope of them as limited as possible. And so the internal construction of the SOs and ACs (were there) and the question of new SOs or ACs generally speaking was thought to be outside that scope where the fundamental bylaws do and should regulate it as whether those SOs and ACs participate as decisional participants in the empowered community with the (SME) powers.

And so I don't know if that (went somewhere) about what composition point meant. But my understanding is what are the SOs and ACs? How are they composed internally? And what are their rules in general? And Work Party 1 did consider that and didn't think it was appropriate (extend to) fundamental.

Brett Schaefer: Well I - if I may speak on this Mathieu.

Thomas Rickert: Well it's Thomas (Brett).

Brett Schaefer: Oh Thomas, I'm sorry.

Thomas Rickert: But you're most welcome to speak.

Brett Schaefer: It's I wanted just to bring this to attention because it seemed to me that under the current bylaws the Board could vote to eliminate say ALAC or the GAC or the GNSO or the ccNSO and unless the community specifically rejected that, then that could happen.

And I didn't know if this is something that is objectionable necessarily. But I wanted to make sure that people were aware of - well, if that was indeed the case, whether that people were aware of that and found it to be acceptable.

And if not, that there was an opportunity to address that in this discussion if they thought it needed to be a fundamental bylaw where the community would actually have to affirmably say that that change was acceptable.

And I - and this is just a point I wanted to bring up for discussion because that is the way I read it. And if I read it incorrectly, I apologize.

Thomas Rickert: Thanks very much (Brett). And don't you worry about mistaking me for Mathieu. I think that's a privilege. I see there's a queue forming. And we only have 18 minutes or 17 minutes to the end of the - to the top of the hour.

I think we have presented an exhaustive list of what should be fundamental bylaws with our reports. So I would have concerns to add to that list of fundamental list, which we have promised to be finite.

Certainly the point that you've made (Brett) is an important one but I do have concerns that to change those on the fly during the implementation phase. Alan, Kavouss, Sebastian and after that we will close the queue.

Alan Greenberg: Thank you very much. I would certainly consider it a major problem if the Board could simply decide to eliminate the ALAC or the GNSO for that matter. However, if they did that, there would be a conflict within the bylaws because that organization would be mentioned in the fundamental bylaw defining the empowered community but would not be defined elsewhere.

And that alone I think is going to stop them from doing that because that would end up with a very significant inconsistency within the bylaws. I would have no problem if somewhere along the way it said that the Board cannot eliminate ACs and SOs without, you know, and put that inside a fundamental bylaw.

But I would object very strongly if the details outlining how the group works and all of the other part that is in each bylaw associated with the AC and SO were made a fundamental bylaw. Those are the parts of the bylaws that perhaps change the most often and need to change most often. And we certainly would not want to make those fundamental bylaws. Thank you.

Thomas Rickert: Thanks very much Alan. Kavouss.

Kavouss Arasteh: Sorry. The previous question that Jordan kindly proposed something and all of a sudden (yet) nobody agreed and Holly (unintelligible). So I don't think that there are (just those) situations.

(A mix up within) the global multi stakeholder community and ICANN and the global Internet community is we don't agree with that. It is open and we have to find out what is the best way for that. Thank you.

Thomas Rickert: Thanks very much Kavouss. Sebastian.

Sebastian Bachollet: Yes. Thank you. Sebastian Bachollet. Just very short. It's the discussion about going through the fundamental bylaws, the current composition of this when it shows that this bylaw are really very complicated. And it will be very difficult to move ICANN to new structure.

And then we need to put as less as possible regarding the organization of ICANN in the fundamental bylaw. We need to leave as much as possible to (CBT). Thank you.

Thomas Rickert: Thanks very much Sebastian. The next point on the slide is that there's a copy and paste glitch at the end of 25.2 to E and F where a reference to standard

bylaws was made and it should be fundamental bylaws. So we ask the drafters to check that, to rectify if need be. And I think that is the last slide actually.

Some of the questions mentioned in - mentioned by (Brett) regarding Annex D, that's Page 18 of the document, have been referenced in other places. So I think we've covered everything. At least I do hope so.

And that's good news. So we only have I think two questions where we are - where we need additional input from the lawyers, which we will take back to the group so that we can close the issues.

At this point I would like to thank everyone for their constructive discussion. I think we've made great progress during this call. And I would like to hand over to Mathieu now.

Mathieu Weill: Thank you very much Thomas. And thank you for Chairing along with Leon a lot of this part of the call, which was obviously the main - the core of this meeting.

In terms of next steps, considering the great progress we've made today and that as Thomas was saying, we only have a few. We can hope that the meeting that we have scheduled for tomorrow at 12:00 UTC could be a short one.

It could be useful to of course confirm and ensure we have clarity and then which enables us to submit to the lawyers clarified responses and comments by the agreed 13th of April deadline.

That's the short-term steps. Once that's done, I think that the question will be in the lawyers' hands and in the Board's hands about whether they feel they're in a position to confirm the launch of the public comment by April 20 and

whether a new version of the bylaws will be - will have an opportunity to review any new version of that beforehand. But that's certainly not a necessity.

I don't know Holly or Rosemary if you want to provide an update on what you see as next steps on your side so that everyone's aware. Holly.

Holly Gregory: I think I need to confer with Rosemary. We clearly have a lot of work to do. And I don't want to promise a time for turnaround because we also need to get input from the 4 ICANN lawyers. So we are going to go back into the cave and start revising and drafting and getting in a position to get this back out.

Mathieu Weill: Thank you. Thank you Holly. So I think as you can see that obviously we are - everyone's working hard to meet the deadlines but also need to adjust to the amount of comment that we are receiving. So obviously there's going to be a little bit of some moving targets in the deadlines and we need to remain flexible on that.

And but the short term is a meeting tomorrow at 12:00 UTC and to close the final discussions. Kavouss, I don't know if it's an old hand or new hand.

Kavouss Arasteh: New hand. I think I raised several questions about Annex D. And I raised the different colors. Greg was very kind. And it just clarified what the color means. But I had difficulty on the cut and paste of these colors. The green colors have taken from somewhere. We don't know where it has been taken. We don't know the relevance of cut and pasting those green parts.

The red part has been - either something has been added from the CCWG - from the proposal or added by the notion to the thinking of the lawyers. So we

have lost total control of what is in Annex D. We don't know where it come from.

And I requested that kindly to give the reference of these. Why (for this) some of these green parts (they come in) and they're putting in particular parts of Annex D, where it come from, what is the relevance of that? And about the red one we don't know.

Whatever is on the CCWG report. Okay. If it's an expansion of that by interpretations or by legal definitions, no problem. But if you're not clear of the red part whether it is addition by the lawyers or it is addition from the CCWG.

So I raise this in a very long message and unfortunately have not get the reply. I kindly request of distinguished lawyers to look at that paper and provide information on that for clarity. Thank you.

Mathieu Weill: Thank you Kavouss. I think Greg's answer was actually very correct in characterizing the colors of the text. And in terms of where the additional text was coming from, I would kindly refer you to the document that was circulated that was mapping the various recommendations with the various sections of our report.

And once this has been checked, I think in respect to the work that's been done in actually producing this document if there's anything outstanding, we should know. But I mean our respective reviews I know you've been spending a considerable amount of time reviewing this. I think all the colleagues have been as well.

And these additions provided by the lawyers have been extremely useful to analyze this. And I hope you can agree with me that we should not overburden our lawyers at this point with additional requests. Is that a follow up Kavouss?

Kavouss Arasteh: (Unintelligible) the explanation given in the reference document is not correct. I could not find any addition on that. And I send them email that in some of those things are for this section. Please see this line for (unintelligible). It is not consistent. So it is not - I think we should close our eyes totally and we accept blindly whatever the lawyers giving to us because of the burdening or we have to seek clarification.

A simple ask please can you provide clarification where it come from. That's all. That is our right. And we have to really be responded properly. I don't think that for the matter of the time or burdening and so on so forth. That is not my fault.

This is (here) that you put a lot of things today to the lawyer in a less amount of time but that is not that we should be (ignored); that we should have a tradeoff between totally ignoring the accuracy and having something quite accurate. So we have to be quite able - I once again repeat that I need to have reference where this additional comes from. Thank you.

Mathieu Weill: Thank you Kavouss. I see the - as Rosemary is saying in the chat, all the edits come from the lawyers, no one else did add anything else. We have a mapping document which is certainly not perfect but actually gives us a first attempt. And in no way are we taking everything that's being presented to us as for granted and providing a blank check or anything.

And I think the number of questions we've been discussing today is testimony of that of the careful review we're doing on the text. So I think this is



important. And if there's anything that is odd in this particular aspect in that we cannot relate to any part of the report, then we've been very careful to highlight it.

So with that I'm moving to the next agenda item, which is an update on the ICANN 56. You will remember that we had requested ICANN to host a meeting on the Sunday before this new Format B meeting starts, sort of Format B just Monday through Thursday.

We have - that this request was presented to the Board Finance Committee I think it was Tuesday or no, last Thursday, sorry. And we have received an answer from the Board Finance Committee through Theresa and Xavier Calvez who are confirming that the rooms will be available for this meeting.

And regarding travel support their response is that they will - they would encourage us to consider relying on those members of the group who would - who were planning to come to Helsinki and encourage others to rely on remote participation, which I do understand as not providing extra travel support for the benefit of this meeting for members but relying on the other existing travel support mechanisms within ICANN to participate to the meeting.

I think this is the answer we've received from the Board Finance Committee. And I think it should be welcomed in their flexibility in putting in place a meeting room for our Work Stream 2 kickoff discussions.

We've also had some very useful alignment about how the request would have to be placed in the future or future potential meetings. And I hope we can - this will set the tone for constructive exchanges in the future.

So that's the update we can give on the ICANN 56 Helsinki meeting. I'm not sure whether there are - we will forward this to the email list as well. And if there are any comments at this point about Helsinki, we have about a minute or two.

So the meeting will take place - Milton, I'm seeing your question in the chat. The meeting will take place on the Sunday, which is Sunday - I have to look at my schedule.

Woman: Twenty-sixth.

Mathieu Weill: Twenty-sixth indeed. Twenty-sixth. So Sunday, June the 26th. And Sebastian, please you raise your question.

Sebastian Bachollet: Yes. Sebastian Bachollet. Thank you Mathieu. Just a short one. Maybe it would be good if all the leadership team from the CCWG are one way or another taking care ICANN is not already taking (care and) one other group (where) they are not coming by themselves. But it's important that at least this core team be in Helsinki to help the group to work. Thank you very much.

Mathieu Weill: Thank you Sebastian. Very kind attention from you. Grateful for that. Certainly that would be also useful to relay that expectations with the chartering organizations. But I think - and Rosemary to confirm, yes, it's assumed that we would not meet Council at that meeting. It's just going to be a kickoff scoping meeting for the Work Stream 2 items. So we don't believe Council is going to be required.

Okay. Taking into account Sebastian's comment, I think we will clarify this on the mailing list in the coming days to make sure everyone is aware even if

they were not attending this call. And with that, I can now turn at the top of the hour to the any other business if any.

Okay. I'm seeing none. And so for a change I think we will try and close right on time. And I thank you again for the great progress we've made today in the comment and review of the draft bylaws. And talk to you tomorrow 12:00 UTC to conclude this review with the last remaining questions and hopefully for a call that will not be using the full two hours.

Thank you very much everyone. Great work accomplished today. Thank you to our lawyers. And especially to our support staff who have been working tremendously and to providing the documentation that's been useful to get clarity on those questions. Thanks everyone and have a good day or good night wherever you are. Cheers.

Woman: Thanks everyone. Bye.

Thomas Rickert: Thanks everyone.

END