ICANN

Coordinator: Brenda Brewer
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León Sanchez: Hello everyone. This is León Sanchez. And what we will be doing now - recording has started I believe so can we just have confirmation that we actually have the recording started? Okay. So we have the recording started. And welcome everyone to these CCWG and Accountability Meeting Number 95. We're five short from 100. So if we're still alive we'll make it to the 100th call.

And we're just a few days before our face to face in Helsinki. And as usual we'll be holding the rollcall with those in the Adobe Connect room. And I would like to call now for anyone that is on the phone bridge that hasn't been able to join the Adobe Connect room to please state their names so we can add you to rollcall? Okay so hearing no one on the phone bridge then the rollcall is based on the attendance of the Adobe Connect room.

And by now if you haven't filed your Statement of Interest we definitely urge you and encourage you to file your Statement of Interest. We show (unintelligible) staff member if you need any help compiling your Statement of Interest. And with this I would know turn the call to my co-chair Thomas Rickert for the next agenda item.

Thomas Rickert: Thanks very much León and hello everyone. This is Thomas Rickert speaking. The next item on the agenda is Articles of Incorporation. And as you know with our proposal we primarily address changes that were required to ICANN bylaws but in fact next to the bylaws that there is another document governing ICANN as an organization and those are the Articles of Incorporation. So they've also undergone some changes.

And since there's been some interest in this group we're going to dedicate roughly 20 minutes maybe 15 minutes introduction and then Q&A to the changes that have been administered to the Articles of Incorporation.

So our group number one understands what's been done and number two has the opportunity to ask questions should there be any. Before we dive into substance and before I give the floor to Steve DelBianco who has kindly volunteered to show us through these changes let me go on record once again thanking all of you for the awesome work that all of you did.

And we've now been tested by the US government by NTIA that what we've done was of good quality because they've improved our set of recommendations. So again thanks to all of you. I'm sure that we will have an opportunity to celebrate this accordingly when hopefully this whole process is over.

But at the moment this is just another milestone that our group and the other groups that have been working on the whole proposal have achieved so kudos to all of you for your commitment for the quality of work that you've delivered in the working group with our staff and also the others that have been working with us. So with that let me now turn to Steve. Steve I hope

you're ready. And maybe you can speak to the Articles of Incorporation and the changes a little bit?

Steve DelBianco: Thanks Thomas. It's Steve DelBianco for the transcript. The Articles of Incorporation as you all know were one of these foundational documents that the CCWG discussed several times. Our most important point about the Articles of Incorporation is that we wanted to change the key provision about what ICANN had to do to amend the Articles of Incorporation in other words to treat them as if they were at a higher level even then fundamental. And we were able to do that with one of the key amendments.

But in addition there were multiple other amendments that were made to the articles to make them consistent with mission and core values. And then our council and ICANN Council made a few other adjustments to the Articles of Incorporation that they have explained in a document that I believe (Brenda) circulated earlier today.

There's an ICANN public comment period that is all right now until 6 July which is shortly after we leave the Helsinki meeting. And that is a place where interested parties and stakeholders can put comments in on the restated articles of incorporation. But like the restated bylaws our main objective was to see whether or not the articles faithfully reflect the CCWG's proposal and report.

And it's up to you to make a comment on that individually. Let me ask Thomas so the CCWG co-chairs intend for the CCWG to file a comment on the restated articles like we did on the bylaws that's a question for you Thomas, León and (Matthew).

Thomas Rickert: Thanks very much Steve. I guess that's something for our group to determine. But I think it would be a good idea to do exactly the same as we did for the bylaws to confirm whether or not the Articles of Incorporation are adequately reflected or adequately reflects our proposal. So I think it would be good for our group to go on record with that.

Steve DelBianco: All right, and so thank you Thomas. And I want to clarify that the slide being displayed is incorrect. It's claiming that the public comment period ends the 22 July but the public comment period on the articles ends the 6 July according to ICANN's own Web site. So I think that's an inconsistency that we should remedy. I believe it is the 6 July not the 22nd. Does anyone on staff have any information on the 22nd date?

Brett Schaefer is agreeing with my reading of the Web site but I'm wondering whether staff knows something that the Web site doesn't? All right hearing nothing we'll proceed as if it's 6 July for now. I suppose it would be constructive to bring up the document that (Brenda) circulated today which was a side by side explanation of exactly what changes have been made to the articles.

And the first change in paragraph two was to take out the notion of incorporation having an initial agent. And I can see that that's not necessarily anymore when it was initially filed. So this was something that our council came up with or ICANN's Council. And I think that that's fine. Are there any questions with respect to number two there, the removal of the incorporations initial agent?

All right great seeing no hands why don't we jump to the next paragraph it was Paragraph 2, three becomes paragraph two. Any further they changed it to

future United States tax code future Internal Revenue Service. And I think that's just a correction a typographical correction.

If you'll scroll to the next page you'll see that an entire section of text describing ICANN's mission what it shall do for its purposes and replacing it with a statement that the global public interest may be determined from time to time by the multi-stakeholder community through an inclusive bottom-up multi-stakeholder community process by carrying out the mission set forth in the bylaws of the corporation. So this was added per our proposal in X1. Are there any questions or comments from CCWG participants about the new Paragraph 2?

All right seeing no hands we go to the old Paragraph 4 new Paragraph 3 we restate that the Corporation is going to operate in a manner consistent with the articles. I think that's Christopher Wilkinson CW. Chris you had a question. Go ahead.

Christopher Wilkinson: No complete your presentation of Article 3 and then I have a comment.

Steve DelBianco: Great. So these edits here were to make the articles track to the bylaw Section 1.2. And the quote was followed in our CCWG proposal. And staff has indicated here that the quote from the articles is slightly inaccurate. I'm not actually sure what that means about inaccurate. Would welcome an explanation from council that is on the call but the key here was to complete this language by suggesting that it has to be consistent with the articles and bylaws for the better of the community and it does suggest that we carry out our activities and conformity with relevant principles of international law, and international conventions, and applicable local law through open and

transparent processes, so most of the black text remains. There's only a few things that are changed in that text so Christopher your first and then Kavous.

Christopher Wilkinson: Thank you. Just a quick remark about applicable local law, I'm glad to see that this text has been maintained. Twenty years ago nearly I wrote it but I think it would be helpful if we had legal advice with respect to Sidley and company and from non-US lawyers as to what exactly that means in practice. Because when I wrote that the preface of including the reference to applicable local law was specifically to ensure that ICANN would respect applicable European and national law for example but not exclusively on privacy.

And so for many years we have had an ongoing problem with the staff and with the GNSO who have declined to admit that the reference to applicable local law includes European privacy law. I don't think right of discussion of European private law - privacy law in this context co-chairs but I do - did want to make that point from our point of view. Thank you.

Steve DelBianco: Christopher the discussion of Workstream 2 on jurisdictions would seem to be a place that explanations such as you seek could be worked out because the jurisdiction is the broader topic of which laws have jurisdiction over ICANN's activities. And I'll note that registrars who believe their subject to the privacy restrictions of their own jurisdictions have been routinely applying for waivers of Whois disclosure requirements.

So my guess is that this is an ongoing process as ICANN discovers how it reacts to applicable law and what jurisdictions their under. But I don't believe it requires a change in the text you see on the screen. So I'm not sure if what you've just asked was for further discussions or did you ask for a change to this language?

Christopher Wilkinson: No. I'm not asking for a change in the language I wrote it in 1988. But I do think you're right that the discussion of the - this would be relevant under the discussion of jurisdiction particularly. And as it so happens I've just completed the arrangements to be in Helsinki on Sunday but I think it would be very useful if we discussed under jurisdiction these kinds of tactical implementation issues as I've mentioned in another submission to the mailing list I think it is not helpful at this point in time to open up an international discussion of the jurisdiction applicable to ICANN itself.

Steve DelBianco: Great, appreciate it. And…

Thomas Rickert: And Christopher before Steve before we move on let's just confirm that Christopher doesn't have an issue with the language as you see on the screen. I think that at the moment our task is to check whether we or individuals in our group or our group as a whole have difficulties with the changes made to the Articles of Incorporation. So this…

Steve DelBianco: That's right.

Thomas Rickert: …doesn't seem to be the case. So I'm looking forward to discussing the jurisdiction topic the applicable law topic with Christopher and others more starting in Helsinki. We had a hand from Kavous. Then I note a question Steve I'm not sure whether you've seen that from…

Steve DelBianco: Yes they…

Thomas Rickert: And then we move to Greg.

Steve DelBianco: There's an important one from David McAuley on whether the word applicable should be applying to the words international convention and to local law. It might well be that principles of applicable international law. I'm not sure where applicable belongs in that sentence? I think David McAuley is making the point that it would be all three international law, international conventions and local law.

So Thomas, what would - if you are leaning towards having the CCWG come up with a comment on this that would be an appropriate time for the CCWG as a whole to say that applicable should cover all three but do you on the limited time available want to discuss whether applicable should apply to all three on this call today?

Thomas Rickert: Well I think what we should do is maybe give an opportunity for ICANN leader, or say (Holly) or (Rosemarie) and team to expand on why the word applicable has been relocated in that sentence and what the consequence of that will be. And I guess that will help us understand better whether the comments should be made to ask for a clarification. I hope that is acceptable to you. Greg I see that your hand was - is raised or was raised but I would suggest that we go to Kavouss now and then we'll give Greg the opportunity to speak.

Kavouss Arasteh: Hello. Can you hear me?

Thomas Rickert: Kavouss?

Kavouss Arasteh: Do you hear me?

Thomas Rickert: Yes we can hear you. Yes we can hear you, Welcome Kavouss.

Kavouss Arasteh: Yes. Thank you very much. Good day. I think we could not simply say applicable law. It is better to spell it out what we mean by applicable law at least. This is one question one comment and the reason I raise the hand was not this it was that the further in the number two has been changed for future. We have already future in the first part any reference in these articles to decode that so on so forth. We have (unintelligible) in once so why we change further to the future it is different, further means additional but not necessarily the future. So we should be cautious not to change further to future. Thank you.

Thomas Rickert: Thanks Kavouss. Let's take note of that and lets allow ICANN legal or the legal advisor to speak to that point of well Steve has mentioned in his introduction that this was a, you know, a typo or a language correction. So let's hear more about that and then determine whether we need to file a comment on that. Greg you have meanwhile lowered your hand did do you still want to speak? Steve let's go to Steve and then Greg.

Steve DelBianco: Thank you Thomas. To Kavouss's point the sentences where future appears are different sentences. One which guards the IRS code and the second sentence is a clarification that any reference in the article to the code is more comprehensive and it provides applies to future US code as well. So I believe that the word future could appear twice. That wouldn't be a typo. And those are not redundant but distinct sentences. But we'll wait for ICANN legal to help to clarify that as well. And back to you.

Thomas Rickert: Thanks very much. Greg you have lowered your hand. Did you still want to speak or I suggest that you jump in.

Greg Shatan: I've made – this is Greg I've made some remarks in the chat. And I think things don't need an intervention at this point for me.

Thomas Rickert: Thanks very much Greg.

Steve DelBianco: Thomas.

Thomas Rickert: Go ahead.

Steve DelBianco: Thomas in the chat as well we've had indication from several folks that may have scrolled off of the chat now that the new text that it's in blue under the news Section 2 does have the word may in terms of the public interest may be determined from time to time by multi-stakeholder community. And a few folks have noticed that in other places in the articles we're much more definitive by saying shall. In fact even in the same paragraph there shall is in several places.

So there's been several folks who have said it should be - shall be determined by the multi-stakeholder community as opposed to many, is that something worth the CCWG clarifying?

Thomas Rickert: Okay I suggest that we give ICANN legal and our legal advisor the opportunity to speak to those now three points. But before we ask them to speak Greg you've now raised your hand. So if you want to speak please do so now.

Greg Shatan: Thanks, Greg Shatan. Just to respond to that latest point if we were to change may to shall on that point we would be adding a new requirement into the Articles of Incorporation that the public interest be determined by the multi-stakeholder community from time to time. Right now there is no such commitment. All this is saying is that if it what it says now basically is that if it is determined from time to time then it will be determined by the global

multi-stakeholder community. But I would not add shall because then that adds a commitment that we would actually do this.

And I don't think - I think that's beyond the remit of what we've decided to do. So I think we need to be somewhat conservative in the changes in that regard. And just lastly I would say that the whole from time to time is something that I see all the time in legal documents it's not a colloquialism in terms of this kind of legal drafting. Thanks.

Steve DelBianco: Greg it's Steve. You quite correctly note that the word shall does appear in the same sentence. It's actually in the top of the box there that the corporation shall pursue the charitable purposes on the Internet as such public interest may be determined. So the shall is already part of the sentence as to what ICANN's obligations are. And you're suggesting that public interest is determined if it is determined from time to time by the multi-stakeholder community. So Greg makes an argument that may is the correct word in the second place in that sentence given that shall appears above, back to you Thomas.

Thomas Rickert: Thanks very much. Thanks Steve. I wanted to give the opportunity to someone from the legal side of things to speak to this. Not saying that Greg wasn't speaking to the legal side of things but I had offered ICANN legal to speak as well as (Holly) and (Rosemarie). So please get ready I'm going to ask you after we've heard Brett. Brett?

Brett Schaefer: Oh sorry. I disagree with that to some extent. I agree that the global public interest shouldn't be a habitual thing nor should it be compelled to be determined at any particular point. But when it is determined I think it should be unequivocally clear that, that determination of what is and what is not global public interest as far as ICANN is concerned that it be determined through a bottom-up multi-stakeholder process that was listed in the CCWG

report as a requirement. And I think we need to be crystal clear that there is no alternative to that process in determining global public interest for ICANN's purposes then through a bottom-up multi-stakeholder process. Thank you.

Thomas Rickert: Thanks very much Brett. And now as indicated earlier I'm not sure whether Sam you want to speak or whether (Rosemarie) or (Holly) wants to speak. So if I could kindly ask you to raise your hand if you want to volunteer to speak to those topics. Sam please.

Sam Eisner: Hi. Thanks everyone. This is Sam Eisner from ICANN legal. Starting off with the shall versus may item I think that it's an issue of sentence construction. But as I believe it was Brett who just pointed out or I think in the last intervention there's shall in the earlier part of the sentence. So ICANN has to operate in terms of promoting the global public interest and the operational facility of the Internet as such global public interests may be determined from time to time by the multi-stakeholder community.

That may where it falls right after the global public interest is more of a sentence construction it's not about the permissive versus mandatory language but it's used to describe how it will be determined. And so we can take a look at that sentence construction because I think we were I'm trying to find the reference in the report right now. I can't put my fingers on it.

But I think that this is drafted very closely aligned to the report. And we understand the intention is that it's up to the community to define the global public interest through an inclusive bottom-up multi-stakeholder process and that is the definition the ICANN is to apply. So I think we're saying the same things here it's just the use of may isn't really being used in the same way for - as the may versus shall as the permissive versus mandatory so we can take a look at that.

Steve DelBianco: Sam its Steve. Not being a lawyer I feel it's okay to make the suggestion but neither may nor shall are necessary if you just said as the global public interest as determined from time to time.

Sam Eisner: Yes. I think that, that kind of I think that's exactly what I was thinking of. Something like shall or is or…

Steve DelBianco: Yes as determined.

Sam Eisner: As determined is determined however but I think you're on the exact right mind there Steve.

Thomas Rickert: Great. Now…

Steve DelBianco: We don't create wiggle room then we don't create an obligation.

Thomas Rickert: Great. Sam if you could probably get back to the list on this topic and offer some or offer these thoughts in writing I guess it would be great so that we can then determine whether there is further need to ask for changes to the language. Sam there was another point with respect to the word applicable law.

Sam Eisner: Yes.

Thomas Rickert: Could you please elaborate on that a little bit as well?

Sam Eisner: Sure. So the word applicable was moved from applicable international conventions to in front of applicable local law to read to make the sentence read a little bit more closely with what the reach of the sentence could actually

be. So if you look at the new language it says carrying out its activities and conformity with relevant principles of international law, and international conventions and applicable local law.

So using the word applicable before international convention is a little bit strange to use for ICANN as it exists today because international conventions tend to be by definition definitions between or conventions between states. And so they're not necessarily applicable to ICANN at all because ICANN's a private entity.

And so with the movement of applicable to applicable local law and only modifying that it then brings in that idea that ICANN carries out its activities in conformity with relevant principles of international convention.

So it makes it a bit of a cleaner read because it's hard to actually make the statement today that there are international conventions that are applicable to ICANN. It could be the case in the, you know, if some countries were to make a treaty that are – that is directly applicable to ICANN who knows but that isn't where we are right now. So that was the reason for the move. And then…

Steve DelBianco: Sam should applicable be in front of international law as well? Should applicable be applying to international law not just local law?

Sam Eisner: Well as we've seen in the discussion on the list recently there aren't really international laws per se that are there. It's about principles of international law those types of principles…

Steve DelBianco: Got it.

Sam Eisner: …but they carry over. And so you want to bring the principles in but it - but the concept of a body of international law that you would say it is directly applicable to ICANN or any organization would be really hard to find. So I think that this reading I think that the wording is cleaner and it doesn't actually change the impact of what this means that it doesn't change the meaning of it or the ability of people to rely on this phrase when they go for an example to an IRP or to a court.

Thomas Rickert: Thanks very much Sam. That's very helpful.

Sam Eisner: And then the other one was the further versus future.

Steve DelBianco: That's right.

Thomas Rickert: Yes exactly.

Sam Eisner: Yes. So I think that there's very little distinction between the use of further our future here. If they changed the wording causes concern to people in the group. I don't think that there is a very big legal reason to not change it back. Really it's - we already have reference above if there are future code changes or future laws that we need to…

Man: Hi (unintelligible).

Sam Eisner: …identify we can do that. And if we need to identify further or additional code within the articles that's what it allows us to do. So that one's not it's really not a material change it's a stylistic issue that if the CCWG has concerns of I think we could choose another one.

Thomas Rickert: Thanks very much Sam. Someone is producing some noises. So please mute your microphones when you're not speaking. Kavouss you had another point to make or is it just confirming the point that you've made in the chat?

Kavouss Arasteh: Yes. What I did in the chat is that we should not put applicable before international law and national convention because in that case we have to see which international law and which is a national convention is applicable whereas for local law we have to (unintelligible). So retain objectives and do not change the place and further I suggest to retain it but not change it to future. Thank you.

Thomas Rickert: Thanks very much Kavouss. Actually your intervention on applicable laws or international treaties have received support in the chat. So in the essence of time what I suggest we do is that all of you take the notes of this meeting and let this sit with you for a while step back and think whether you actually need a change or whether in the light of the explanations given by team members as well as by Sam to say that you're okay with the version that you see in the Adobe room now.

And then let's continue the conversation on the list. For the time being I would suggest that we wait for Sam's additional contributions to the list. And I would suggest that Steve now shows us through the remaining paragraph of the draft articles.

Steve DelBianco: Thanks Thomas. We'll move on briskly now. The paragraph old Paragraph 5 new Paragraph 4 references a series of items prohibitions on ICANN subject to -- other than Article 8 which has been stricken -- so other than Article 8 and Article 8 was about the dissolution of the corporation. So legal has suggested that we strike that so that it says notwithstanding any other provision of these articles.

And then it goes on to indicate activities and prohibitions on what it shall do and shall not do. And you get to D on Page 3 the words members is being stricken. And that's consistent with what legal has done in the old Paragraph 6 now Paragraph 5 where we would say the corporation shall be personally liable to the corporation or its members should the corporation elect to have members in the future.

So the rationale given to strike that is that at least our current set of bylaws the ones we've just approved don't add members to ICANN but instead we use the designator facility. And yet it may not be necessary to strike members since we don't have members in the sense of leaving a vestige of members there so that if it should become necessary in some distant future to revert to the member organizations that most California nonprofits use these vestiges would still be there. So I don't see it as necessary to strike members but I do understand why legal is eager to get it out of there.

So the member's discussion is on two places. Its Item D on Page 3 for those of you following along in Adobe but it also appears on the very next page where members is stricken in old Paragraph 6 new Paragraph 5. Kavouss I see your hand up and Brett Schaefer has a question about deleting the old Article 5E which is about disqualified persons. Let's wait on that Brett until we finish this discussion of striking any vestige of members from the bylaws. Kavouss?

Kavouss Arasteh: On talking of members I would suggest that you retain members and put a slash obligate (unintelligible) to see I'll call the circumstances it may be members, or it may be directors or maybe both. Thank you.

Steve DelBianco: Thank you Kavouss. And Brett Schaefer has asked for an explanation on why 5E was deleted. Now Brett before we dive into that there was a pretty

extensive explanation for 5E where it indicates that there is no legal requirement on seeking of the text you see right at the bottom of Page 3. So Kavouss if - I'm sorry Brett Schaefer if you will read that explanation it says part of that, that you need clarification on we'll certainly put it to the counsel who is on the call but they've suggested that there's no legal requirement related to this and they recommend deleting it now.

So Thomas I'm not clear about how the group feels on the retention of the vestige of members in two places or not. Kavouss is the only one to speak up so far and suggested retaining members. I believe I agree with Kavouss on this one. But no one else giving an opinion would indicate that we don't have significant momentum to retain the two vestigial inclusions of a member. I see Brett Schaefer's hand is up. Brett?

Brett Schaefer: Thank you. This is an explanation of basically saying that it doesn't apply to ICANN. It doesn't explain why the requirement was there in the first place. Clearly NTIA had a reason for including this provision in 1998. I would appreciate some kind of explanation or background as to why they thought it was necessary to include it in 1998. The explanation also says that it doesn't apply to ICANN because it is not a private corporation.

But is there a similar provision under the IRS code that would apply to ICANN as a nonprofit corporation and therefore would the original intent or the reason behind NTIA's inclusion of this apply to ICANN going forward? And is there a similar provision in the code for a nonprofit corporation that should be included in here to replace this rather than just deleting it? So that's the kind of explanation analysis I was hoping to get from this. Thank you.

Thomas Rickert: Thanks very much Brett and…

Steve DelBianco: Brett we have the advantage of Becky Burr being with us. And Becky was present at the creation so either Becky or Sam if you have something to say to Brett on this?

Becky Burr: I'll defer to Sam and then follow-up.

Sam Eisner: And I - this is Sam Eisner again from ICANN legal. I was not with the organization in '98 when the initial articles were drafted. So I can't speak to the intent for why ICANN, and its counsel, and the community that was involved in the work then included this provision. However there are some historical facts that help.

So some of the how this follow along because I - there are special - there are different -- and Rosemary, if you're on the phone feel free to interrupt me at any point -- but there are different types of 501©(3) organizations. And so there is difference between a private foundation and a public charity. And at point in time that ICANN was incorporated, ICANN did not have – I don't believe at ICANN's inception it was identified as a public charity but ICANN, has since, achieved public charity status.

And there is a difference between how public charities and private foundations are viewed under the tax code. And so that's why we have – you see this distinction here between private foundations and public charities. And so just thinking back, and again, I was not there so I don't have the legislative history of this in my head, but there's a very clear reason why we would have articles drafted initially that included provisions that relate to a private foundation status because they were drafted before ICANN received the determination from the IRS that it could operate as a public charity instead.

And so that's one reason why this may have needed to be in the articles earlier, which also supports the reason that it doesn't have to be in here now. And private charities – I'm sorry – private foundations have a lot of other things that go around them because private foundations tend to be operated by – or very often are operated by those people who might be qualified as disqualified persons under the – or under the tax code and as the note said, Sidley and Adler put in place here, you know, it's not the same now within ICANN and the leadership structure and everything is very different.

And then add in the fact that we have our conflict of interest policies and other things that would always mitigate against having a disqualified person sitting at the controlling level of ICANN.

Thomas Rickert: Thanks very much…

((Crosstalk))

Thomas Rickert: That's very helpful. I hope that Sam's explanations remove concern so if you could…

Brett Schaefer: Could I have a follow up?

Thomas Rickert: Yes you can, please.

((Crosstalk))

Brett Schaefer: Is there any reason why you could not refer to the provisions in the code talking about conflict of interest and other provisions preventing self-dealing and other matters that were involved in the IRS code Section 4958 that would

apply to a 501(c)(3) that ICANN is now identified as? Why not just replace this provision to apply similar protections and similar requirements?

Why delete it and instead rely on ICANN's conflict of interest policy which don't have the same standing in either the AOI or in terms of the bylaws or in terms of California law? Why wouldn't you want to have the maximum types of protections in place to prevent those types of misgovernance or misconduct?

Thomas Rickert: Sam?

Sam Eisner: So we could surely take a look at that and we'd love to look at that alongside Sidley and Adler with that. But there always is the base item that ICANN being organized under and being subject to laws makes ICANN require to operate in conformity with the laws. And here, clearly, the IRS tax code, as well as California law, are in no way could ever be argued to not be applicable. The articles make them applicable.

And so we don't need to add provisions to our articles that provide those sorts of belts and suspenders but we can clearly – we can also take this back and look to see if there are any other applicable items that are referenced in the public charity sections that might help replace some of the concern that Bret's raising on this one.

Thomas Rickert: So can I suggest, Sam, that maybe you circle back with Holly and Rosemary to see whether we can maybe just keep it because that would likely make it unnecessary for our group to comment because, you know, I see some support for what you said but also some other comments suggesting that we should keep this. So if there were no harm in keeping it then maybe that could be an easy solution.

Sam, or Steve, you asked earlier about the dilution of the work member, and while I haven't put myself in the queue for the discussion, then, reading this as a non-native speaker, if we are the sole designator organization, finding the word "member" in there would likely confuse me. And so I think if we move to a different concept for the organization, then maybe it wouldn't be a good thing to keep language that does not accurately reflect the status of the organization.

And Steve, as you mentioned, it may well be that at some future point in time the organization chooses to change, then I guess that would be going along with another change of the articles and the bylaws anyway so that those tweaks could then be made if so necessary. Bret, I'm not sure whether that's a new hand? If so, please do speak. You've now lowered your hand.

And I would suggest that we now move to the next point and for this point as well, let's wait for some more feedback from Sam after she had the opportunity to consult with our colleagues and then we continue the discussion on list.

Now for the next point, Steve.

Steve DelBianco: Thank you, Thomas. There's only really one point left, and it has to do with the decision making power to either amend these articles, or to dispose – have a series of transactions that would sell all or substantially all of ICANN's assets.

The old Paragraph 9 in the articles required 2/3 of the Board of Directors, and 2/3 of the members of ICANN, voting on it if the corporation were to have members. So pursuant to our report, our recommendations, we've changed

that to 3/4 of ICANN's Board and the consent, the written consent, of the empowered community instead.

So the empowered community language, which was one of the main things we wanted to do to the articles, has been brought in and we've eliminated then in old Paragraph 8 and 9, we've eliminated reference to 2/3 of the Board and 2/3 of members.

So I think that this is a faithful representation of what we had in our report and a lot of us were anxious to have this in the articles before the transition, as opposed to waiting until after because we felt this was particularly important, if the articles were to be changed that the articles needed to let the empowered community have affirmative consent to any change in these articles at all.

Now I will note that the empowered community makes its decision as to whether it's going to give approval according to Article 26 in the bylaws. The articles themselves don't dictate how it is we, as the empowered community, reach the decision on whether we have decided to bless a change to the articles.

So I don't believe that requires much explanation, and it is very consistent with the report we put out. So with that, Thomas, I turn it back over to you.

Thomas Rickert: Thanks very much, Steve. Kavouss, you've raised your hand. Please, Kavouss.

Kavouss Arasteh: Thomas, (unintelligible) strong reason and valid reason to delete the core change for its member. In fact, because the reason is given, should the corporation elect to have members in the future. Why we should have a so

narrow thinking of today's (unintelligible) as member. It is sort of provision for future. And what is the harm to retain that? Thank you.

Thomas Rickert: Thanks, Kavouss. Any further interventions? Okay so then I would suggest that we don't take a decision today on whether or not we're going to file any substantive comments, rather than indicating that we are supportive of the changes without having seen, you know, the minutes of this call, extra information from Sam and a discussion on the list. So I guess, you know, even though we've spent more time on this agenda item than previously planned, I think this was an important and good discussion on an important topic.

But now let's move to the next agenda item. Before we do that let me thank Steve for so ably helping us with this and also Sam from ICANN Legal for offering all the explanations that you gave. So let's now move on to Agenda Item Number 3 and that's going to be led by Mathieu.

Mathieu Weill: Thank you very much, Thomas. This is Mathieu Weill speaking. Hello, everyone. So if you remember our last call we had a discussion about budget for Workstream 2. That was – that led to a number of amendments to the initial proposal which went back to the PCST, the Project Cost Staffing Team, or support team, sorry, led by Bernie.

And there was a lot of background work done to make sure the different stakeholders are on the budget could be aligned around the proposal. And Bernie is going to introduce us on the latest updates on this discussions. And I think Bernie has got a lot of good news. So, Bernie, you have the floor.

Bernie Turcotte: Thank you. Can you hear me?

Mathieu Weill: Yes, Bernie.

Bernie Turcotte: Okay, excellent. All right, so we've got the slide in front of us. After discussions with the CCWG, it was agreed the assumptions should be revised as follows, from what was given in the document. Adobe room support and transcripts should be available for all subgroup calls. Staff support should be available for drafting documents. Given the diversity of participants, translation of final recommendations as per Workstream 1 recommendations and ensure travel support for CCWG members to all face to face meetings.

There were no objections to the assumption that legal fees could not be estimated at that point. And that an amount should be made available to the CCWG to carry on its work. Any additional fees would have to be formally requested and approved.

So basically what the PCST did, was work all of this into the budget. The only minor caveat is that when we're discussing this with the Board Finance Committee on the travel support, it was decided to provide an envelope, which was equivalent to 20 participants per ICANN meeting for the next three ICANN meetings after Helsinki given that from a historical point of view; this is about what the CCWG used.

So basically, all the requirements are included in that budget. And I believe you had all the details in the document that was attached with the agenda. So there's not a lot of complicated explanations or skating around things. I think we tried to get everything in there.

On the legal fees we have to commend ICANN Legal for working with the CCST and the finance group very hard to come up with some reasonable numbers which were in there, because the Board Finance Committee really

did some numbers. So I think that we did our best and it seemed to be reasonable assumptions to put in there.

And that's about my presentation. I'll be glad to take questions if there are any.

Mathieu Weill: Thanks a lot, Bernie. And I want to really stress the outstanding work of the PCST in turning these documents around in the various stakeholders. I think that's demonstrating the value of the small session team at making across a new step in terms of accountability for our group management, which is to actually plan budget earlier and better so that it can be incorporated in the ICANN budget as well. And I think there's been a lot of good spirit as well in everyone trying to accommodate everyone's needs.

Are there any questions for Bernie on this agenda item? I am seeing – and Kavouss is raising a question about the 20 – yes, the 20 – Kavouss, is to my understanding the type of number that was drawn from the past experience during Workstream 1. So I think what we're getting here is ICANN's commitment through the budget to allocate the same type of resources, to the same type of support as we got through Workstream 1. And I think that's a very useful signal.

And the final point I would make before turning to the next agenda item, is that the one thing we still need to review, and there's a little bit of work in progress on that, is that we had agreed to review the process to request independent legal advice on the basis of the experience and the – that we've had during Workstream 1 and obviously the fact that Workstream 2 is slightly different in terms of timing for instance.

And that work in progress and – we'll be in a position I think in the next few days to update the group with the proposal to the refined process for requiring independent legal advice, and obviously it's going to be discussed with you as well at that point.

And with that I'm now turning back to Thomas for Agenda Item Number 4, Thomas.

Thomas Rickert: Thanks very much, Mathieu. Now this might be brief as well. Basically this is about papers that have been produced around the process of being produced by our excellent staff team to support the work of the sub-teams working in Workstream Number 2. And I would like to invite Grace to do that.

Grace Abuhamad: Thanks, Thomas. This is Grace Abuhamad for the transcript. So I'll be very brief regarding the staff papers, or the draft papers that we're pulling together. We're basically pulling together one paper per topic. The idea of the paper is to give the subgroups a – some context to work from. And we've divided the papers right now into three categories.

The first category, you see on the screen, is scope. So what we did for this section is pull the material from the Workstream 1 report. So in the case that you have on screen I'm showing you the Workstream 2 human rights topic. That topic has a little bit more definition than some of the other topics with regard to scope. So these papers vary a little bit across the – depending on the topic in terms of how defined they are with the scope and how many – how much resources we have – how many resources we have for each topic. But so take this again as a sample but I'll still walk you through it.

So for the first section we have scope, human rights, there's a bylaw that we're looking at, there's also a whole section of the Workstream 1 report, a

whole recommendation that was dedicated to human rights. So there's a lot more content to detail the scope with.

The next section of the paper that we have is community discussion section. And this is – this may change a little bit depending on the papers. What we're trying to do here is capture where there has been discussion for what discussion questions may be interesting for the subgroups to consider based on prior conversations in the working group.

So that's something that we're trying to draft as well. Again, different topics have different level of discussion; some topics don't have very much discussion on them.

The third section is a section on sort of resources available to the subgroups to sort of deepen their research a little bit. In this, you know, again, these are developed – some cases we have some best practices that we've included. We've also included links to some mailing lists, archives, things that may provide some more background on community conversations around the topic.

These, again, you know, these are – these papers that we're going to – the idea with these papers is that we would give them to the subgroups and the subgroups would refine them. So in the case of most of these ones, if you have any suggestions that you'd like to add as resources or things like that, you can send them to me now or you can get those ready as part of your subgroup work and we can include them as we refine the papers later on.

For example, Mathieu's new paper on diversity I recently included in the diversity resources section just to kind of give a little bit more resource material there.

So we're working on getting these ready for Helsinki. We're going to present these to the subgroups hopefully in Helsinki or shortly after, just depending on the timing. There's a lot of work going on internally sort of just to make sure that we're coordinating across different departments to make sure the material – we get as much material as possible for the subgroups.

In the case of the SO/AC accountability topic, for example, we've reached out to some people in the policy department to get their feedback and some of the staff in the multi-stakeholder strategy and strategic initiatives department that does the organizational reviews. So we're working with different staff.

The same that you're seeing on screen, this draft was actually developed almost entirely by Elizabeth Andrews, who's on this call. She's a member of the public responsibility team at ICANN and she's been working very closely with some of the human rights working groups and efforts ongoing in the ICANN ecosystem so she's helped out with this quite a bit. And you can look forward to some of different staff members' involvement in helping you sort of refine the discussion later on as we go through the topics.

This is just a sample. We will talk more about these in Helsinki. If you have any questions or suggestions for the draft, please go ahead and send them to me and we'll do our best to incorporate these before presenting them to the subgroups. Thank you.

Thomas Rickert: Thanks ever so much, Grace. Kavouss has his hand raised. Kavouss, you have a question or a comment?

Kavouss Arasteh: Grace, I think it's good to have these section starting from the scope then discussions (unintelligible) but what output? What is outcome? We have a text, we have a subject, scope, discussion, (unintelligible) discussions and so

on forth and then the outcome, output. Should be a section of outcome and output. Thank you.

Grace Abuhamad: Thanks, Kavouss.

((Crosstalk))

Grace Abuhamad: So the outcome is actually the work of the subgroup so what we're hoping is that we did these papers as sort of initial research and initial information but that the subgroups would take this kind of as a – having the intro level work done for them and then they can work and develop the recommendations and further outcomes from those.

So the output is up to the subgroups. That's what we're trying to do. We don't want to lead or give any direction as to the output because it's the community's work there.

Thomas Rickert: Thanks, Grace. I guess it's an excellent opportunity that Kavouss gave us to elaborate on this a little bit more. These are basically meant to be background papers that put the status quo of what we had in our report with the status of our discussions work so far as well as sources of information in one place so that the sub-teams have something to lean on and then produce their own report.

So the report or the recommendations that are going to be produced or proposed by the sub-teams are going to be different documents. So this is just informal to help get things going. Brett.

Brett Schaeffer: Thank you. Just a quick clarification, and I apologize if I missed this. Are these going to be distributed prior to Sunday so that we can look them over or

are they going to be distributed on Sunday to the groups and so we'll be looking at them for the first time then? Thank you.

Thomas Rickert: Grace, I guess that's one for you too.

Grace Abuhamad: Thanks, Thomas. Yes, Bret, we're working really hard to get these ready in time for the meeting on Sunday. I don't think we're going to be able to distribute them before the meeting on Sunday. So it depends on the topics. Some of them are little bit more advanced than others. But I think we'll be presenting the majority on Sunday. And if not shortly after the Sunday meeting.

Thomas Rickert: So thanks, Kavouss, and Brett, for your questions. Are there more questions for Grace or on the approach as such? Kavouss, yes, you mentioned the output again but let me reiterate that these papers are not to be – are not meant to be the report. These are papers that will likely go into the appendix of the report on Workstream 2 items. So these are just backgrounders, if you wish, for the work to be undertaken by the sub-teams.

Kavouss, I think that was an old hand, right?

Kavouss Arasteh: No, it's old hand, sorry.

Thomas Rickert: Thank you. Alan.

Alan Greenberg: Thank you. Grace implied but didn't quite say how things would be handled if a paper is indeed ready before we actually arrive, you know, meet in Helsinki on the Sunday. To the extent that if any of them are ready they'd be sent out by email so we can read them on planes or whatever, that would be useful. Understand that clearly all of them won't be but I'm not sure there's any real

reason to keep them together as a single unit if indeed any are ready. Thank you.

Thomas Rickert: Thanks, Alan. I guess that's not the intention. Rest assured that if and when we get part of the – or a part of the document ready we will make sure that we send them to the list as soon as possible so that everyone has much time as possible to digest them and prepare.

Grace, thanks for that. I don't see any further hands raised so we can now move to further preparation for Helsinki and back to Mathieu. And, Grace, thank you so much for this. And everyone that's been working on these documents. Thank you so much.

Mathieu Weill: So thank you, Thomas and thank you, Grace. Obviously everyone's very busy preparing for a successful Helsinki meeting. We – our agenda will be – will include several slots where each of you – each of us can actually take the floor and speak to one of the Workstream 2 topics. A sign up process had been set up and circulated to the list. You have on the slide the few people who actually volunteered so far with the Workstream 2 topic. I think we – we have, for each of them a very small summary of the talk.

We have more slots available. And although there's a maximum of three persons per topic, in order to not overburden with one single topic the overall agenda, we'd really welcome more of you to speak up. I notice the contribution by NCSG recently on transparency. Maybe someone would be interested in speaking up for a very short presentation.

Basically the message is do sign up, propose to speak up to one of the topics. We'd really appreciate having the broad vision on each of the topics. And obviously welcome the input and the discussion that we'll have around this

talk in Helsinki. That's – that is what we expect is going to be the core of the meeting and also provide some momentum into the subgroup discussions that will take place later.

So, yes, Jorge, I have put in my name for diversity in the list. That's – there was no – unless someone sees a requirement not to have co-chairs in the talks, which I'm comfortable with. So please do speak up on this.

The other survey that was underway was the status of the expressions of interest for the topics. Some statistics are provided on the screen. And I have seen Kavouss hand being raised so, Kavouss, you may have a comment or a question or a proposal. Please.

Kavouss Arasteh: Yes, so one comment is that is good for diversity to have three. And I think that for some topic like the (unintelligible) of human rights we should invite more speakers, more people. We don't want to listen to just one direction, we would like to have a different views from different people from different aspects to enrich the discussion. So you could call for volunteers to add to those which can be there's only one. But not for diversity anymore. Diversity have already three. So could we have that one – thank you.

Mathieu Weill: Thank you, Kavouss. And indeed it's always good to get a balanced view. So in terms of expressions of interest if we can – right from the next slide you'll see that all topics have received some interest, some are tracked up to more than 40 active participants, which is very promising. And some of them would need maybe a little bit of help or maybe they'll be extremely efficient because it goes to six or nine active participants in the last two items.

But it's good to see a good spread over the various items. It's still a survey that opens and certainly we'll review that while in Helsinki to make sure we have everything in place to start the subgroups.

And I note an application by James for the Board standards. Kavouss, is that an old hand?

Kavouss Arasteh: I don't know whether this (unintelligible) is for the entire Workstream 2 or just for the Helsinki. If it is for entire Workstream 2 I think we need to talk about the time management. How much time we allocate for each of these topics. So very topics very, very complex, very difficult. We need to have more time.

There are topics that are also important but (unintelligible) that complex so perhaps we have to think this over the time management for this if it is for entire Workstream 2. Thank you.

Mathieu Weill: Thank you, Kavouss. Maybe we should get to the next slide to look at the agenda which is going to maybe answer some of your question. The proposed agenda hasn't moved since the last meeting is to really talk about the various items through the different talks. We'll definitely not be in a position to have substantive discussions outside the talks on each of the items. But it would be good if the talks could cover a broad variety of items.

So that's the way we are suggesting to structure time in Helsinki. And I'm noticing a question by Anne in the chat whether there's going to be a discussion – any discussion in Helsinki to how to train the community in the procedural aspects of the empowerment community which is, as you say, Anne, an implementation issue for Workstream 1, so that's not on our agenda

right now. But I'm aware of a number of SO and ACs actually working on this.

I know there's a session in the ccNSO, for instance, which should address this item. And I don't know if there's any also comments on this. Okay, and I see a point of clarification from Sam in the chat. "We'll need to be careful about the wording on the Board conduct items. It's a standard of good conduct for community members during the Board removal discussions in order to allow the protections and indemnification to be provided."

So that's – that is certainly something we'll review in the documents to make sure there's no ambiguity raised.

So let's make sure we get the exact wording from the report and then of course the subgroup will take that into account. I see a suggestion by Kavouss to extend the allocated timeframe for the second lightening talk session. That's noted. We'll try to see how we can tweak the agenda. And I see Greg's hand is up. Greg.

Greg Shatan: Just a brief calendar question. Will we know in advance which topics will appear in which lightening talk session? There may be some people who are primarily interested in a subset of the WS 2 topic to – are not gluttons for punishment and may just want to come for part of the meeting, present company accepted. I'm a glutton for punishment.

Mathieu Weill: Thank you very much, Greg. I think that's a reasonable expectation and will do our best to provide more visibility on this. It might be short notice, however, because as mentioned, we are still collecting people signing up so I guess the agenda might be evolving until quite late but we'll try to provide some general idea before the meeting starts.

We know from the Frankfurt experience in the face to face we had in Frankfurt that sometimes people come up with an idea during the meeting and may request a slot at this point, so we'll try to remain flexible for that which obviously for people who do not enjoy our company as much as we do, it might prove difficult. But it's recorded, it's transcribed so I think we'll get the necessary ability for people who miss something to review it later.

And with that, seeing no further questions, I am now turning to Leon for the – any other business and closing of the meeting.

Leon Sanchez: Thank you very much, Mathieu. This is Leon Sanchez again. And at this point I would like to call for anyone that wants to raise any other business, other than the (unintelligible) issue.

So are there any other business that anyone wants to raise for this call? Greg, that hand is an old hand? Thank you.

Okay so having no other business to peek at on this call, we will like to thank everyone for your attendance, for the very fruitful discussion that we have held on the different topics that we spoke on today's call.

And of course wish you a very safe travel to Helsinki to those of you that will be making it to Helsinki. And we'll see you soon there and let's have a fruitful face to face meeting in Helsinki. Thank you very much.

Cheryl Langdon-Orr: Thanks, everyone. Bye.

((Crosstalk))

Thomas Rickert: Thanks, everyone. Bye.

Mathieu Weill: Bye, everyone. See everyone in Helsinki. Safe travels.

Man: Bye.

END