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LORI SCHULMAN:

Thank you, and welcome to the third call of the Work Stream 2 Guidelines for Standard of Conduct Presumed to Be in Good Faith with Exercising Removal of ICANN Board Members. We have a pretty full agenda today. Items #1 and #2 will be handled by ICANN staff and Item #3 is the discussion of a report that I wrote to the Plenary Planning Group in anticipation of a call yesterday that, unfortunately, I could not be on so I decided to submit a written report on behalf of our group.

The next item will be a discussion of the first draft of something that I took a crack at personally based on our telephone conversations of the last few weeks, and hopefully we can discuss to see if I caught the essence if we think we're on the right track, if I should scratch everything off and we should start again and see where we end up.

The fifth item is I'd like to discuss a little bit what requirements we think we might need for legal assistance from ICANN, also what requirements we may need for drafting assistance from staff, and to remind everybody that next week's call is cancelled and then we'll go on to Any Other Business.

Karen, if you wouldn't mind or Yvette – who should I appropriately give this to? Yvette? Please put up the reporter's report and we can talk about that real quickly.

Okay. So this is a copy of an e-mail that I sent to our entire subgroup a few days ago. Actually I think I sent it on Sunday. That was just a quick report to the Plenary Planning Group. The way these subgroups are working is there's a planning group before the full Plenary of the CCWG

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that talks about issues we're confronting, of progress, anything we think we, the smaller group, the subgroup, leaders ought to know before we go into the big Plenary meeting. So this was a report that I wrote for that group and I circulated to people here so you would know what I was saying. And I just wanted to ask if there's any comments about the report, if you've read the report, if you have any questions, and if you're okay with the report that's fine. If there's any revisions you'd like me to make I'll make it in the next Planning Group meeting. And if there are no comments then we can just move on to the rough draft of the guidelines that I had distributed on Sunday as well.

[Inaudible] didn't receive that e-mail. Okay. Did other people receive it? Is this an issue of a message not getting out to the list yet?

CHERYL LANGDON-ORR: Lori, I've got it but that's probably because I'm on the leader team.

LORI SCHULMAN: Is there a way, Karen or Yvette, to confirm that this got out to the list?

KAREN MULBERRY: I will definitely go ahead and check that over, Lori. I do remember seeing on the e-mail that you did e-mail out to the entire list. I'll go ahead and double check that. I can go ahead and try to send it out again while we're here on the call and see if that works.

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LORI SCHULLMAN:

Okay. And, Karen, to your point I may have sent it to the [posted CWG] list as well. That would have made sense because I would have reported to the subgroup but I certainly would have wanted the Plenary to know our progress as well. So it's quite possible I sent it to both lists.

Does anybody want to quickly read it on the screen and it doesn't take very long? Would you like me to read it aloud? It's two paragraphs.

Okay, it went to subgroup and staff support, not the whole list.

Alright, well let me read it aloud if you haven't read it and if you have any comments please let me know.

"Due to religious observance I could not attend the meetings on October 2<sup>nd</sup> or October 3<sup>rd</sup>. However, I would like to report that our subgroup has had two calls and we have made progress toward establishing a framework for Guidelines of Standards of Conduct Presumed to Be in Good Faith with Exercising Removal of ICANN Board Members. We have determined that we will be proposing minimalist set of guidelines that will put the responsibility of putting specific processes in place by each SO/AC. This is because we do not wish to interfere in the decision making process of any particular SO/AC. The SO/ACs may have different expectations and standards for Board members who are chosen to represent them. The guidelines will note each SO/AC has or should have a decision making process and the process must include a means to document the decision made, including verification and the steps taken to reach the decision."

"Our thought is not to be too prescriptive, but establish principles for fair and reasonable conduct for the community even if different internal

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standards apply for different interests. Further guidance from the Work Stream 1 discussions we will not be listing specific causes of action. Each SO/AC could have a different standard for what constitutes a cause of action for the Board removal, but all SO/ACs must follow the same guidelines in order to elevate their concerns to an action for removal in good faith.”

“The proposed action may be subjective but should be able to be explained and accepted by others. The subgroup has determined that this topic should be categorized as less complex and should be able to churn a final or near final report by January, 2017. Having a preliminary report by October 5<sup>th</sup> is not realistic as that is three days away, but we will work with staff to coordinate a reasonable timeline and to have a complete set of information as is reasonable for the Hyderabad meeting.”

“Our next step is to begin drafting the actual guidelines and then compare them to the NTIA criteria and Work Stream 1 proposal and Bylaws. I will note that our subgroup is small and many members are involved in other subgroups, so helping hands may be full. As the rapporteur, I understand that my responsibility is to ensure that the proper drafting of the proposal and will assume most of the drafting work. I will seek assistance from staff as I believe that we will need it. I will reach out to Karen Mulberry to establish a realistic timetable and how to coordinate with the staff given all of their other responsibilities.”

“With regard to legal assistance, we have not discussed this issue yet. However, I do not anticipate the need for heavy assistance. It would be prudent once the guidelines are complete to have a review by a legal

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expert with substantial experience in California non-profit governance to ensure that there are no red flags. Diligence requires process, and as long as we have a clear and documented process, we should be able to meet a good [faith] standard. However, given the course of California law I would not want to assume anything. I would anticipate maybe 8-10 hours of very experienced, independent, attorney time and I will confirm this with my subgroup.”

That’s my report. Does anybody have any questions or comments about the report?

CHERYL LANGDON-ORR: I thought it was a true and accurate record of our discussions, and thought the planning on the role of rapporteur and interaction with support staff was absolutely part of a good plan. So [Inaudible].

LORI SCHULLMAN: Okay. Thank you. I’m going to push the two open questions that are on the agenda up to this point and we’ll look at the guidelines draft, I think.

So the two questions are: “How much legal help do we need?” Do you think my assessment is accurate, or does anybody have different ideas about what we might need?

I’m going to qualify my assessment with the fact that I am an attorney. So I based this on the fact that this group is led by an experienced American attorney, although I’m not a California attorney, but I think with this guidance, although I’m not providing legal advice to the group,

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that's not my role, but I think I do have a sense of as long as we have a good document in process, I think that should meet the requirements.

CHERYL LANGDON-ORR: I actually agree with you [inaudible] but more importantly from the way I viewed that question, I was thinking we're likely to need any advice beyond perhaps reaching out in a final point for a sanity check by ICANN Legal. And I didn't think that would be the case.

LORI SCHULLMAN: Yeah, I said independent counsel. I actually have a bias in that regard. I know there's a real thought to saving money on legal bills. I also know that ICANN Legal, while they may have their strengths and experience, there is this issue of whether or not ICANN Legal has always acted in the community interest, particularly when reviewing a .registry decision. So I would be a little cautious. I wouldn't say I wouldn't trust [them] because they're fine lawyers at ICANN Legal, but I think the eye should be as independent as possible.

CHERYL LANGDON-ORR: My [inaudible] with anything you said there, particularly with the history, but one would always like to think that particularly with our new Empowered Community to improved accountability mechanisms we might have talents able to come through and improvements in some of those historical concerns. That said, I was also aware that from a budget point of view, our first port of call was to be ICANN Legal, and only if we felt there was serious requirement to go through the legal

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subcommittee and get them to review our questions and see that we needed external expert advice would we be going to the budgetary for external advice. But if you feel as a principle, we will need to have external advice, we certainly should put that to the list and warn our staff that that's likely because they're trying to carve up limited resources already even looking at getting the time and staff availability allocated to all of the preparation of the final report.

So if we're going to go down that pathway I certainly have no objection to it, but we would need to say we would be one of those who engaged need a piece of external legal advice budget, as soon as possible I would think. Thanks. Because I know that a couple of others will do [inaudible] a budget very, very, quickly as we all know.

LORI SCHULMAN:

Right. Thank you, Cheryl I recall that too, that ICANN Legal should be the first stop and I don't know that I necessarily object to that because they know ICANN and they know the legal issues confronting ICANN. I'm open to this idea but I wonder if there was a petition to remove a Board member at any point in this process, ICANN Legal is the legal group for the Corporation as the entity and so for a petition to Board removal, are we then putting ourselves adversarial to the [entities] or just to the Board member?

I think that's an interesting question and I don't know. And this is where I was wondering that it might be prudent to have that outside counsel approach simply because again, if we get to a point where we call on the Board Secretary for removal through let's say a NomCom member,

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then is ICANN Legal acting part of the entity in defending a Board member? I don't know. I think that's a good legal question.

I think we should mark it and if the procedures say that we're supposed to go to ICANN Legal first, then we do. We don't want to buck the system. We want to work with the system. But know maybe that we should reserve a little bit of time if there is an issue I guess at that point. I'm not here to start a revolution. We all want to work together within the confines of what the entire community is doing.

CHERYL LANGDON-ORR:

I'm more than happy to start revolutions, don't get me the wrong way. I'm just not sure this is my call for revolutionary act right now. Your legal question is one I wouldn't even contemplate [from] a personal perspective because I am not a lawyer but as I said in the chat – and there may be risk there, and if there is even the slight likelihood of risk of perceived compromise, then we have to deal with that up front. Otherwise, it becomes more expensive at the other end rather than up front.

LORI SCHULMAN:

Right. My nightmare scenario is this, because I am trained to do this, think of the worst case horrors. That's what my whole, unfortunately, my career has been about, the worst case of horrors. So we come up with these guidelines. We think they're pretty good. We pool all our resources. We take them to ICANN Legal. ICANN Legal says, "Yeah, this is a documented process. This should meet the [cap]." Then we rely on that. Then we actually exercise the power and the Board member says,

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“No, this isn’t in good faith and these are all the reasons.” And we say, “Oh, well we have ICANN Legal saying it’s in good faith.” Where does ICANN Legal fit in that hierarchy of the decision? Do we as the independently Empowered Community then rely on a set of legal advice from the entity?

That’s my concern down the road. Not that the lawyers at ICANN don’t know what they’re talking about, but that there could be a potential conflict of interest with in-house staff looking at something like this. That’s where my concern is. Is there a conflict of interest that we should be concerned about if we’re exercising a community power?

CHERYL LANGDON-ORR:

And Lori, that’s what I’m saying. If that is in any way an identifiable risk, then we need to deal with that up front and make sure we get external advice even if it is at this stage defined as probably limited to that very question, to respond to your nightmare scenario, that that question is annotated now as one that we will want the Legal Committee to consider. Because that is one that they can consider now. They don’t have to wait for our recommendations because regardless of our recommendations and regardless of what the CCWG does with our recommendations, whatever is recommended would need to be put to that test. That’s one with my concern about playing catch-up with budget etc. later on in the process is avoided anyway because we can flag that that specific question will be one that we would be recommending that we have the external advice on and then our legal subcommittee can put that in their round two [inaudible].

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LORI SCHULMAN: I think that's a really good idea, Cheryl. I hadn't thought of it quite that way but you're right. That's a legal hurdle we have today, a question we have today, [people] ask it today. I agree. And I'm happy to do that with whatever means they've allowed us to ask those questions of the Legal Committee.

CHERYL LANGDON-ORR: Let's [flag] that now.

LORI SCHULMAN: I think we should put that on the follow up list, Yvette, as something for me to as the rapporteur to ask the question now. That makes a lot of sense because it's the Legal Committee who – I know Greg Shatan's one of the members of the Legal Committee and he's the President of our constituency and a lawyer. Are all those people on the Legal Committee lawyers? Do you know?

CHERYL LANGDON-ORR: To my knowledge, yes. You've got Leon, you've got Robin, you've got David, I think you've got Phil. Yeah.

LORI SCHULMAN: You know what, with that group of minds if we ask them and they say we don't think there's a conflict, I would go with that.

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CHERYL LANGDON-ORR: I think we've passed the buck nicely if that's the case.

LORI SCHULMAN: Yeah, exactly. I agree. No problem.

CHERYL LANGDON-ORR: It's a pleasure doing business with you, Lori.

LORI SCHULMAN: Yeah, because once we become the Empowered Community, and that's always been a question, is the Empowered Community part of the corporate ICANN? And if you listen to Göran speak, he testified at the Senate hearing two weeks ago that that's not the case, that his vision of ICANN is that there's three separate, there's what's the Board is doing; there's what Operations is doing; and there's what the community is doing.

I would certainly argue that what the Board is doing and Operations is doing is the same entity. I actually don't think they're separate. I would disagree with that. But I think the interesting question about the designated [inaudible] where are we in the sphere, I think because we are accounted for in the Bylaws we could make a strong argument that we are a part of Corporate. But there might be different interpretations of this that I'm not thinking about because, as I said, it's the Empowered Community that can then go against the Board member. So maybe it's up to the Board to have its own counsel and then ICANN's counsel is the independent counsel in this case. And I can tell you from my dealing with Boards in the past, when we've had certain contentious Board

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issues, the Board has gone ahead and actually hired independent counsel apart from the Office of General Counsel when there's been questions about a specific Board member. So that's what's in the Board [purview] to do.

CHERYL LANGDON-ORR: That's been my experience as well, and that's fair enough. [Inaudible] is also in agreement with where we're headed on this in chat, Lori, and I would say that we should go by the rule that once there was a risk even identified, one has to deal with it and I think we've got a way forward to do so.

LORI SCHULMAN: Okay, great. I'm glad we... That's check. Does anybody have any comments about this issue now or can I close it out for today? I also noticed we lost [Inaudible]. That's a shame.

I'm going to move on to the next item, and that is drafting support. I do believe based on the low numbers of people we're having on the calls and everybody's been [inaudible] about [inaudible] that we probably need a little more staff support than maybe I had thought initially. As I said, we were told as rapporteurs that our job was to make sure the report gets written. So therefore the [buck that stops with] us. And I don't have a problem leading a drafting team on this because I do believe that that was explained to us. But at the same time I think it's a mistake to rely on a single person, particularly of something of this importance. Sitting from just a basic administrative viewpoint, just

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formatting, proofing, just getting it posting ready, we will need some help.

I was wondering from the people on this call, though it's very few at the moment, so I think I'll have to ask the list. Other than myself, are there people on this list who are willing to be draftors of certain parts? Because we have three different parts. We have the state of play, we have the guidelines, and then we have how they comport with Work Stream 1 Guidance and how they comport with [NTIA] standards. So there's actually four parts to this report.

In an ideal world we would allocate the work as somebody does part one, somebody does part two, somebody does part three, somebody does part four. And I was wondering if anybody on this call – yeah, Cheryl's dance card is full-ish. I get it. What about you, [Yolf]? Had you thought about, contributing to drafting at all? And there's no wrong answer here. I just want to understand what our possible work base is before I start giving out what kind of support we need. We'll move on.

[YOLF]: I would love to help but I think this requires a bit more formal experience with both U.S. law and ICANN procedures.

LORI SCHULMAN: Okay, but I do think though the comparing it against Work Stream 1 advice is probably something somebody could do without understanding U.S. laws too much because it would just be thinking of what we have recommended against what the report says, and I see

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that's not a legal analysis. More of a legal analysis would be if we start referring to the Bylaws and we talk about specific Bylaws and if there's an issue with language or an issue of interpretation, then being somebody outside from the U.S. would be difficult.

Okay, no. Cheryl, I'm not getting you wrong. I expect everybody will comment and offer edit opinions, but there's going to be an initial heavy lift of these four parts and that's all I'm talking about is really just getting the first draft to a point where people are ready to comment and offer edit options.

Okay, we'll keep that as an open question, and staff based on this discussion and I've noticed that we will be requesting some help. I will also share that. [NTIA] has a very active Internet committee, we have an Accountability Subcommittee, and it's very possible that I may be able to recruit draftors from inside my subcommittee to help me with my role.

I wanted to ask people about that, too. If I were to get volunteers that I then serve as the liaison rather than have them actually join the team, would there be any objections to that? They're all lawyers, by the way. Okay.

That's Jennifer, correct. Jennifer is [inaudible] member who's on our Accountability Subcommittee and she's offered to shadow this group with me again, to help out with some of the labor. She is actually joining the group. She's not silent, she's present. Welcome, Jennifer.

Why don't we talk about the draft then that I submitted on Sunday if you've seen it. This is really a rough [draft]. There's a lot more that has

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to be done. But I thought before we write long explanations and before we get into legalities, why don't we at least get some bullet points out, get a rough draft of what we think we need on the table.

So I sent this on Sunday. I hoped to get a little feedback but did not get feedback so why don't we use the next half an hour to get some feedback from this group and then we can make changes and I can redistribute to the work group before our call two weeks from now. It'll give me some time to do a little more drafting.

So based on the two discussions that we've had, I took it upon myself to write a initial set of guidelines, minimalist form. With #1 we started, "For all Board [inaudible] petitions for removal may be for any cause and should be fact-based and sufficient details to verify facts, supply supporting evidence if available, include references to applicable Bylaws and procedures if the assertion is that a specific Bylaw or procedure has been breached, be respectful and professional in tone."

"In addition, for SO/AC nominees, each SO/AC should establish expectations for Board members' effectiveness with regard to representing SO/AC interests, submit the expectations to the Board members within a specified period of time upon taking a seat on the Board, clarify that SO/AC expectations are in addition to any cause that may be brought forth without limiting the cause, develop procedures for consideration of SO/AC direct [inaudible] petition notices that include a reasonable time frame for investigation, written verification of claims, consistent voting methods for accepting or rejecting a petition."

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That's where I am, folks. And I welcome any feedback on this or questions or anything.

CHERYL LANGDON-ORR:

I'm very comfortable with this as a skeleton. I think it's articulate, it follows. If I was a Board member and I got this as a guideline document, I would feel that I had been fairly dealt with, that the lynch mobs are not necessarily out to get me, and know what I would expect if a lynch mob came my way.

I was sufficiently impressed when I read through this that I actually wanted to ask – and I'll just say it now I guess because I started – as an Advisory Committee that is currently going through a relatively formal process that we have in place for the selection of our person to occupy our Seat 15 on the Board for our next term at our Board Candidate Evaluation Committee, I was going to suggest that if there's no objections from you and this group that we could shamelessly steal and refer to these regardless of what happens to them as they're drafted as material and preamble information that we'd actually be pushing out to prospective Board members to say that these are the types of standards which we would be looking at as guidelines with the new Empowered Communities and its rules.

That's just a local thing that an AC can adopt. We already use the basic Bylaw requirements complemented by the Nominating Committee requirements for the complemented by the At-Large Advisory Committee's specific requirements expectations, so we have a three-layered approach to our criteria and expectations which we include in in

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calls for our Expressions of Interest, and I was going to suggest that [inaudible] material as a reference point in even our online Eol document.

I think that's kind of important that Board members do know what they're getting into. Your listing here says, "...within a reasonable period of time after taking a seat on the Board." For me, that's still covered. If it's pre-loaded that's okay. It means that an AC or an SO that doesn't pre-load the way that ALAC and At-Large do, it still can fit within this quite reasonable guideline.

The other thing I wanted to say about it was I wondered after we do a run through now whether when you put it out to the wider group again, if putting it out as a Google Doc as well and invite people to comment not to edit just have it open to comment, you might not get more people with a few minutes of time just responding in the comment column. It takes the pressure off them trying to draft, but they can contribute to our closer drafting in the next round. Thanks.

LORI SCHULMAN:

Yeah, I agree Cheryl. I'm happy. You can share this draft with whomever you want with the caveat that these are words under consideration. I don't have a problem with that. If it helps other groups, I've spent 25 years of my life drafting rules and procedures for others, and if it's considered to be clear, I'm happy to share. I don't mind that at all.

I do have some questions, though. And maybe we can in this draft ask the questions, ask the questions of the group for one. I leave a lot of work here open to interpretation. So are you in favor of that?

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I also want to say welcome to Herb Wayne. Herb Wayne is our new Ombudsman. He in the chat, apologized for being late. No, we don't want you to die by listening to online meetings, Herb so please take your time. But this is important to Herb's function as well as we go through and weigh in on what legalistic procedures that ICANN's going to have moving forward, not just with the Board removal but for complaints and other areas of jurisdiction that the Ombudsman share. So I'm actually quite happy to see Herb on the list and I hope he participates in our calls regularly because I'm sure he has a point of view that could be very helpful to this.

Herb is typing. But while Herb is typing, I want to go back to ask some questions. I leave words here that are very open to interpretation, things like "reasonable," "if available," "as appropriate," words like that. There's two ways you can look at it. It's good to have these open-ended words because it creates flexibility. Each SO/AC could determine what's reasonable and that's a positive. It also could be a positive because it leaves it open for interpretation from a legal perspective. Let's say we adopt these procedures, and let's say hypothetically we would even adopt these as written now – they're not ready but let's say we were – and something happens and a petition to remove a Board member is filed and accepted and then the Board member comes back and says, "But I wasn't notified in a reasonable period of time." And this goes to a mediation or some sort of adjudication. And then we have a legal precedent that says, "Okay, this is what a reasonable period of time is." And that's all good because that's how you develop strong bodies of precedential law. It's based on a common law theory that you see in

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former British colonies like the U.S., Australia, Canada, and it is a way of defining a rule of law within ICANN.

So those are all positives. The negatives are these words are vague. We don't necessarily expect that these petitions to remove Board members are going to come up very frequently or we hope they don't, and perhaps it would be [softer] guidance to actually say what we think is reasonable. Is it 30 days? Is it two weeks? What is it? Should this committee be establishing what we think or creating these sort of notes or records or legislative history to say, "This is what we think is reasonable?"

I'd love it if Herb is listening to get his sense of this, if he's ready to answer.

HERB WAYE: Hi, everybody. Can you hear me okay?

LORI SCHULMAN: Yes.

HERB WAYE: I just had to get my earphones and mic all set up. Sorry about that.

Like I said, I missed the first half of your meeting and I apologize. I sat in on the previous meeting last week as a silent observer. I like the idea – and I just caught the end of it – of having some sort of a committee that can look at Board member removal. There has to be rules of course. It

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has to include probably the primary concern would be offering the Board member an opportunity to defend themselves from the allegations. That would be part of the process of course.

If you are forming some sort of a committee which would potentially be possibly Chairs of the various organizations and committees that are a part of the ALAC structure or any of the other groups in the organization that forward representatives to the Board, I definitely see the opportunity for the Ombuds to be involved as, I guess, probably what I would call an independent observer to ensure that the process is fair, that the allegations – I won't say that the allegations are founded because I wouldn't necessarily want to put the Ombuds into a position of having to determine whether the allegations are factual or – but at least that there is some basis for moving forward and they're not frivolous or vexatious in any way.

And as an outside observer, to merely be sitting in on the process ensuring that there are no potential hidden agendas or ulterior motives for the removal and also as an opportunity to hear and observe the defense and the legitimacy of the defensive side of the argument. So definitely, definitely, a place for the Ombuds in this process.

I think potentially also that in a situation like this where something has happened and we can take it down to the very simple matter, I know last week there was some discussion about what types of examples could possibly lead to this type of action being taken and it could be I think criminal activity was one. But it could be simply something as simple as a physical assault or a verbal abuse by an individual that's on the Board towards a committee or a community member, something

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that's unacceptable to the community that falls in with the expected standards of behavior even.

So there's always a possibility that the case has already passed through or has come to the attention of the Ombudsman, and that's something else that could potentially be in favor of sitting on a committee or attending as an external independent observer but it's also something that conversely could create a conflict of interest that would force myself or any future Ombuds to recuse themselves from this type of process. In that case, potentially it could be either in the future if there's an adjunct Ombudsman or some independent person that could sit in and watch.

But the chances of getting that far hopefully are slim, and it would be settled either when it comes to the Ombudsman's Office or if it goes directly to the community as what we're talking about here then please, please, please, bring me in or my replacement in the future so that we can assist if there's any form of mediation that takes place or any form of alternate dispute resolution that's applied to the situation, you have somebody in the room that can either offer advice or maybe direct you towards proper resources also. Does that make sense?

LORI SCHULMAN:

Yes. Herb, thank you. I wanted to – Herb, is that an old hand or a new hand? I guess an old hand.

HERB WAYE:

That's an old hand, sorry.

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LORI SCHULMAN:

Thank you. I'd like to address some of the points. In terms of establishing a committee per se, my understanding is that's not in the works unless Cheryl or someone else has heard something. But basically the procedures for the Board removal are set out in the new Bylaws that became effective this past Saturday. If you look in the Bylaws – I don't have the reference exactly in front of me, it was in the e-mail I sent to the Secretariat – but there is an Appendix to the Bylaws that talks about the Articles of the Empowered Community per se, and within that Annex, Article 3 talks about Board removal. And there's two ways to go about it. If a Board member is appointed by a NomCom, then it goes one way. And then if it is appointed by an SO/AC member, it goes another way. So there's two different procedures of Board removal.

Then there's a reservation of rights for the Board to remove any member who's been accused of certain things, one of them being criminal activity. Again, we're not planning a committee per se – but where I could see perhaps just your professional eye, less than the eye of an Ombudsman but more in the eye of someone who is adept and experienced in conflict resolution, but as we draft these guidelines if from your perch as the Ombudsman and someone with this level of experience to see and identify any red flags that we might have in our drafting, whether or not you think it's a good idea for us to establish some timelines and guidelines for what we consider as sufficient detail to verify facts or what's a reasonable period of time to let a Board member know what the expectations are.

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I will say and I'll ask you to please put in the notes, I think it's a wonderful idea to maybe put in almost like a handbook or a guideline – these are what we were thinking as we drafted these and put in some direct examples. I think that would be very helpful for the community.

So if someone is accused or arrested in a crime and it is a criminal case, I believe the Bylaws already cover it, but we might talk about does it make a difference if it's an arrest versus a conviction. The scenario to your point is, a Board member that's acting hostilely, using rough language, perhaps physically – although to me any physical touching is a crime – or a civil or a criminal act. What we have been asked to do on this subgroup particularly is to focus on how we would remove a member but not focus on the behaviors per se. Because again, we can remove for any cause so it was determined by this group that it wouldn't be constructive, and this was a subject of a great deal of discussion in Work Stream 1 that if we started to list all the ways a Board member could be removed or all the behaviors that might trigger these processes, that it would obfuscate the problem, that the nominating body of the Board member should really understand what their expectations are from the Board members, share them with the Board members, and then act on that directive.

And then of course there's the common dignity. If you're not treating people with common dignity and respect as a human, that to me is a whole other subject area for removal.

Herb.

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HERB WAYE:

New hand, thank you. Totally. Probably one of the primary focuses I'm going to have over the next year or so is pushing informality. I believe that the Office of the Ombudsman should be something that is available to anybody, not only as a complaint channel but also as a source for information, a resource if you wish, for anything regarding any of the issues and also a channel of communication for anybody who wants to get a message out or promote or champion things like the expected standards of behavior. So I definitely don't want to be limited to spending my entire term in office dealing with complaints.

I would much rather spend it constructively – I'm going to say constructively in that if at any time you feel that it is appropriate to come to the Office for advice or to review your process or to look at it as an objective, independent, outsider, I would be more than happy. It can be either written into your process or policy or it can be just simply something that you do on a one-off basis. I would never refuse to offer assistance in a situation like this. It's right up the alley of what an Ombudsman should do.

LORI SCHULMAN:

Okay. How do you feel about contributing to some of the [words] missing here? Again, this is a participant, we're not asking you to give us your opinion as the Ombudsman per se, but the fact that you're in the position you are to me identifies that you have experience in this area and if you could help with some drafting. I don't think it's against ICANN rules at this point. Maybe Karen could help me with that. But again, if you see red flags here just from [inaudible], we're open.

HERB WAYE:

Yes. And definitely I've been attending as many of these calls as I can, specifically for that – to keep an eye on and my finger on the pulse of what's going on. Red flags will definitely be raised if I see something that is flagrantly unfair or outside of what I feel to be acceptable process. To actually assist with the writing, probably not. I don't mind reviewing things and pointing things out but I think as an independent officer in the community, I would prefer – and I'll tell you even in the Ombuds Subgroup I don't take, and neither does Chris LaHatte the former Ombudsman, an active role in drafting any of the papers or the work that's being done simply because we offer our advice and our expertise, but we do our very best not to intervene and impose. But please do feel free to run things by me, no problem at all. To actually take part in helping out with the drafting of the policy is something that I'm not exactly comfortable with. Not in any of the other subgroups but definitely not even in the Ombuds where potentially I should be a leader but we have a leader and I'm there almost as an observer because it's the community that's deciding what they want.

LORI SCHULMAN:

That's very clear. Thank you, Herb.

HERB WAYE:

Thank you for asking.

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LORI SCHULMAN: I don't [Inaudible] drafting, that's probably broader than I even intended. But yes, just looking at something for feedback –

HERB WAYE: Definite review.

LORI SCHULMAN: Yes, review. Review is the right word.

HERB WAYE: I'm more than happy to review, yes. And if there are any red flags or things that pop up that are either outside the scope of fairness in a process where we're dealing with some sort of a sanction, definitely more than happy to help out.

LORI SCHULMAN: Okay. Because I think at this point, it is a group effort. That's all we're asking for. So I think that's very open-minded and I appreciate whatever you feel comfortable contributing to.

Does anybody have any other questions?

HERB WAYE: Thank you.

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LORI SCHULMAN: You're welcome. I think one of the hardest things on these Adobe calls is we don't see each other so it's hard to take visual cues when people are stopping if they talk over you I apologize. I hear a pause I think somebody's done and maybe they're just taking a breath.

HERB WAYE: I spilled soup all over myself at lunch time so it's probably a good thing that you're not seeing me right now.

LORI SCHULMAN: So based on what we have here, I was going to add is there anything that anybody would like to add right now, any questions you want asked right now, you want me to copy back out to the list with some of the questions and comments we've been discussing, maybe have an annotated version of this for people to look at? It's a yes from Cheryl. [Yolf], what do you think? Okay. Jennifer, do you have anything to add? Okay.

Well, I think we got a lot said on this call. I think we're in a good position. We know we have follow-up for the Legal Team, we know we're going to put some sort of annotated version of this out to the list in the form of a Google Doc, I'll ask the staff to help me set up the Google Doc and send the invite and link to the Google Doc from the [inaudible] Secretariat. I think that would be better. If there was a Google account we could use.

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Anybody else have any questions or comments? I'll remind everybody there's no call next Wednesday, and if there's nothing else, I will wish everybody a really good week.

CHERYL LANGDON-ORR: Thanks, Lori. Thanks, everyone. Bye.

LORI SCHULMAN: Bye. Thank you.

**[END OF TRANSCRIPTION]**