

# CCWG ACCT Meeting #78 (19 January @ 12:00 UTC)

## Attendees:

**Members:** Alan Greenberg, Athina Fragkouli, Becky Burr, Fiona Asonga, Izumi Okutani, Jorge Villa, Julia Wolman, Julie Hammer, Leon Sanchez, Mathieu Weill, Pär Brumark, Robin Gross, Roelof Meijer, Samantha Eisner, Steve DelBianco, Suzanne Radell, Sébastien Bachollet, Thomas Rickert, Tijani Ben Jemaa (19)

**Participants:** Aarti Bhavana, Alain Bidron, Allan MacGillivray, Andrew Harris, Andrew Sullivan, Avri Doria, Brett Schaefer, Cherine Chalaby, Chris Disspain, David McAuley, Edward Morris, Erika Mann, Finn Petersen, Gary Hunt, Greg Shatan, James Gannon, Jeff Neuman, Jonathan Zuck, Jorge Cancio, Kavouss Arasteh, Keith Drazek, Louisewies van der Laan, Malcolm Hutty, Marilia Maciel, Mark Carvell, Markus Kummer, Martin Boyle, Matthew Shears, Maura Gambassi, Mike Chartier, Niels ten Oever, Olivier Muron, Paul Szyndler, Pedro Ivo Silva, Peter Van Roste, Philip Corwin, Rafael Perez Galindo, Rinalia Abdul Rahim, Sabine Meyer, Seun Ojedeji, Simon Jansson, Steve Crocker, Suzanne Woolf, Tatiana Tropina, Thomas Schneider, Tom Dale, Tracy Hackshaw, Wolf-Ulrich Knoben (48)

**Legal Counsel:** Edward McNicholas, Holly Gregory, Michael Clark, Rosemary Fei, Steven Chiodini (5)

**Observers and Guests:** Annaliese Williams, Asha Hemrajani, Chris Wilson, Elise Lindeberg, John Poole, Konstantinos Komaitis, Lito Ibarra, Manal Ismail, Michael Niebel, Mike Silber, Navid Heyrani, Nick Shorey (12)

**Staff:** Alice Jansen, Bernie Turcotte, Berry Cobb, Brenda Brewer, Grace Abuhamad, Karen Mulberry, Marika Konings, Nigel Hickson, Tarek Kamel, Theresa Swinehart

**Apologies:** Cheryl Langdon-Orr, Jordan Carter, Eberhard Lisse

*\*\*Please let Brenda know if your name has been left off the list (attendees or apologies).\*\**

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## Transcript

- [Transcript\\_CCWG ACCT\\_19 Jan.doc](#)
- [Transcript\\_CCWG ACCT\\_19 Jan.pdf](#)

## Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p6k4trhis4j/>
- The audio recording is available here: <http://audio.icann.org/gnso/gnso-ccwg-acct-19jan16-en.mp3>

## Agenda

1. Welcome, roll call, Sol (2 min)
2. Rec 7 – Scope of IRP- Second reading (20 min)
3. Rec 6 – Human Rights – Second reading (30 min) - see <http://mm.icann.org/pipermail/accountability-cross-community/2016-January/009642.html>
4. Rec 4 – Board removal liability mitigation – Third reading (10 min) - see <http://mm.icann.org/pipermail/accountability-cross-community/2016-January/009645.html>
5. Rec 9 – AOC reviews - First reading (30 min) – see <http://mm.icann.org/pipermail/accountability-cross-community/2016-January/009644.html>
- Break (10 min)
6. Rec 5 – Mission Statement - Third reading (45 min)
7. Rec 11 – GAC Advice – First reading (45 min) - see <http://mm.icann.org/pipermail/accountability-cross-community/2016-January/009646.html>
8. A.O.B (3 min)

## Notes

*These high-level notes are designed to help you navigate through content of the call and do not substitute in any way the transcript.*

Jeff Neuman, Greg Shatan on the phone.

### Scope of IRP

Overview of conclusions.

In addition - we have carve-out language for IRP challenges to a PDP:

*Notwithstanding the foregoing and notwithstanding any required threshold for launching a community IRP, no community IRP that challenges the result(s) of a supporting organization's policy development process (PDP) may be launched without the support of the supporting organization that developed such PDP or, in the case of joint PDPs, without the support of the supporting organizations that developed such PDP.*

#### Feedback:

- Does this imply IRP can be used to challenge an action of SO/AC rather than ICANN the corporation? Clarify what limits are in terms of SO/AC activities.

--> Clarification will be added.

- Will this clause apply to challenging GAC, ALAC recommendations?

--> This would be after the fact decision. It does not impact ability of Board to respond.

- It will jeopardize the multistakeholder system. Can we re-discuss?

--> Multistakeholder input is part of the process.

#### **ACTION ITEM - Sebastien to signal whether objection sustained in 48 h.**

- Carve-out ensures that the multistakeholder approach is functioning. We should anticipate that each PDP that is adopted is verified by the multistakeholder community. This carve-out should ensure it does not contravene wish of PDP. It preserves the approach more than anything else.

- Drafting note: The term PDP is not used for the ASO in the Bylaws, so the full expression should be used in any Bylaws.

- Without agreement we could not challenge PDP - that is all we are saying.

- Against proposed drafting note.

- We should not use abbreviation PDP because it is not used in ASO environment.

--> We will avoid acronyms.

- What is status of DIDP: are we going to handle it separately or will it be WS2?

---> We need escalation process first.

- Would DIDP be available to individual or SO/ACs?

---> DIDP is available right now. Violation of Bylaws would be appealable to IRP.

- Where will we give consideration to public comments?

---> We have tried to identify in discussion points all the comments with specific attention to COs, Board, constituencies, stakeholder groups. E.g. question of PTI was a CWG-Stewardship comment.

It is intent to capture all comments. Anyone is welcome to challenge these key discussion items - if there is a concern, raise it on the call. e.g. Mike Charter raised an omission on list. A summary of comments per recommendation can be found at: <https://www.icann.org/en/system/files/files/summary-comments-draft-cwg-accountability-proposal-08jan16-en.xlsx>

**CONCLUSION/ACTION ITEM:** Becky to continue work on this scope and to clarify limits on applicability of IRP. This item will be considered closed unless we get objection from Sebastien within 48 hours that gets traction.

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#### **Human Rights**

Review of current options.

#### Feedback:

- Option 2 C is not C reconsidered. It is the dormant Bylaw language that it should not be operational before FoI.

--> 2 C is proposal by lawyers.

- Why do we need a dormant Bylaw? Mention commitment in WS 1 but have all details in WS2.

--> In WP4 commitment to include a transitional Bylaw that would allow commitment for Bylaw to remain dormant and for FoI to be developed.

- Object to 3 c: there is significant confusion. Organization must abide by Bylaws. It has to be stated that it is not effective (i.e. Bylaw) otherwise it is effective (subject to IRP). Is it intended that Bylaw is not enforced as opposed to enforceable until FoI is put in place? A is significant departure from 3rd draft. C is closer to what was suggested.

A does not take into account transitional Bylaw. Intent is to not have effective until FOI put in place. A deletes the transitional Bylaw and make Human Rights Bylaw immediately effective and binding in terms of action/inaction. That is different from proposal. C leaves the Bylaw effective and binds ICANN in actions/inactions - it is internally contradictory. Alternatives need to be well stated so we understand effect.

- Options are not ready-to-go language. These are concepts. Option 3A is not big departure from draft. A is what we had in third draft - B Board/comments suggestions - C is dormant concept.

- 3A is language as proposed in report. No big risks with IRP. 3B was discarded by lawyers (see 2A) - Board needs to give more argumentation to consider that further.

- Go for something general and safe.

- In PC period, strong record of support for that recommendation. Human Rights is an important signal.

- Any implementation needs to come after FOI. Alternate A - there is belief it will be immediately effective. It deletes effect of transitional Bylaw. Will ICANN be immediately bound by IRP? Problems understanding between 3A and 3C.

---> Way forward could be to keep language we have in report and specify that implementation of human rights bylaw would be subject to framework of interpretation and that bylaw would remain dormant until then. This would be in line with what was discussed in WP4 and address Board concern. We have not received GAC feedback on this yet. Let's keep this in mind as we wait for GAC input.

- Have Bylaw not operational until FOI is adopted. Option of dormant Bylaw is going to address comments, including Board.

- We need text to solidify understanding. C cannot be viewed as an option.

#### Board input:

Deferring to WS 2 would be cleanest option. The Board is committed to having a commitment to Human rights. We should not have language in Bylaw before framework is developed. We need to see language before considering in detail.

--> ACTION ITEM: Language to be circulated in second reading conclusions document.

#### Feedback:

- We should all converge towards a single point of agreement.

- Do not wait from external input but translate opinions of this group into language.

CONCLUSION/ACTION ITEM: Use proposal language, add clarification that Bylaw will remain dormant until FOI is still developed. Circulate proposed language and ask for lawyers to confirm language.

#### **Board removal liability mitigation**

We have concluded discussion with request for our legal counsel to work with Jones Day on finding language.

#### **AOC Reviews**

Overview of discussion items.

On 1 & 2

Feedback:

/

Conclusion: We will move forward with these.

On 3 - Any objection to including mid-term review of IRP? This discussion would be deal with IRP IOT

Feedback:

/

Conclusion: No objection

On 4 - increase presence of GNSO in gTLD reviews (consumer trust, WHOIS) -

Changing numbers might lead to change of number of seats on Review Teams. Does it serve the purpose to augment seats?

Feedback:

- ALAC will be vocal if this changes. Political pressure is high. ALAC has diversity as well and we will have no choice but to ensure regions are presented as well.

- Size needs to be manageable and balance unchanged.

Conclusion: No change to proposal.

On 5 & 6

Feedback:

- Member as different connotation as sole member. We should not reopen issue. It should remain standard bylaw.

Conclusion: Our report will stay as it is.

On 7

Conclusion: Support for inclusion of recommendation. On the understanding that specific recommendations in Annex 9 would be respected, such that this text addresses only implementation detail

### **Mission Statement**

Suggesting to break discussion in subparts. We would like to take stock on some of these items and highlight challenges moving forward.

Root server language is pending. We have received comment from lawyers on numbers language. In addition, we have text from Izumi. We are wordsmithing - no disagreement on substance.

Consumer trust: we have received clarification from Fiona Alexander.

### Feedback:

- Reference to MoU is inappropriate. It may change overtime.
- ALAC recommendation on whether market mechanism should remain in Bylaws

### **ACTION ITEM: Add discussion point on market mechanism**

- Commitments are necessary for expansion of new gTLD.

CONCLUSION: We are keeping our Third Draft Proposal language. We are not discarding Consumer Trust per se - although it is not a Core Value, it is part of AoC reviews.

ALAC had comment on preservation and enhancement of DNS which was not properly transposed from NTIA requirements.

There are two large discussions:

- Whether there should be any limitations on scope of ICANN's agreement with contracted parties - to what extent can ICANN enforce commitments. There is a degree of diversion on list. There are fundamental freedom of contract provisions and questions about security and stability of agreement, the extent to which they can rely upon. This debate is still polarized.
- Grandfathering - specific request for provisions including PICs - can be renewed without being subject to questions. This is complicated by many operators proposing individual PICs. It involves freedom of contract as well. Expand the conversation to include people who are not participating.

### Feedback:

- ICANN is enforcing terms under which it agreed to a delegation. We have to be able to permit enforcement.
- We should accept advice from lawyer but Board will decide what is right.
- It raises question of to what extent are applications part of agreement?

Conclusion: We will have call to identify where agree on the list in next few days to we may move to constructive phase to close on this discussion. We will reconvene on this discussion with language based on fruitful mailing-list discussions.

### **GAC Advice**

Overview of key discussions. In addition we could add:

- notion of rationale
- add clarification that all ACs, not just GAC.

On two suggestions:

### Feedback:

- Agree with these two suggestions
- OK with notion of rationale but is there a process if others think it is not a rationale?
- Board should decide whether they have received a rationale
- We are not singling out GAC.
- At discretion of Board to identify whether rationale is sufficient

Conclusion: These two suggestions will be taken onboard for second reading.

Suggestion to clarify that we cannot restrict AC on advice they offer but that it is clear that ICANN may not take action if inconsistent with its Bylaws. Proposed text: *While the GAC is not restricted as to the advice it can offer to ICANN, it is clear that ICANN may not take action that is inconsistent with its Bylaws. The empowered community will have standing to bring an IRP to challenge any board action or inaction that is inconsistent with its bylaws, even if the board acted on GAC advice.*

### Feedback:

- Uncontroversial. It should be consistent with Bylaws.

- Important to clarify how community IRP. IRP is to bring a finding. Series of consequences flow.

Conclusion: We are moving forward with this for second reading.

Suggestion to add language: *This recommendation is intended to limit the conditions under which the ICANN board must enter a try to find a mutually acceptable solution. This recommendation does not create any new obligations for ICANN board to consider and/or vote on GAC advice, relative to the bylaws in effect prior to the IANA transition. This recommendation does not create any new assumption that ICANN is bound to implement any advice that is not rejected by the board, relative to the bylaws in effect prior to the IANA transition.*

Feedback:

- What are lawyers expected to do?

--> Does the clarification help for clarity in drafting?

- Support this addition. It is in line with IPC comments. There is no new obligation in way Board deals with GAC advice other than 2/3 majority.

Conclusion: We will provide GAC and GNSO time to react on this but this discussion was useful to clarify.

## AOB

We will discuss timeline on Thursday.

## Action Items

- **ACTION ITEM - Sebastien to signal whether objection sustained in 48 h.**
- **CONCLUSION/ACTION ITEM: Becky to continue work on this scope and to clarify limits on applicability of IRP. This item will be considered closed unless we get objection from Sebastien within 48 hours that gets traction.**
- **ACTION ITEM: Language to be circulated in second reading conclusions document.**
- **CONCLUSION/ACTION ITEM: Use proposal language, add clarification that Bylaw will remain dormant until FOI is still developed. Circulate proposed language and ask for lawyers to confirm language.**
- **ACTION ITEM: Add discussion point on market mechanism**

## Documents

- [Rec 7 - Scope of IRP - 1st Reading Conclusions.pdf](#)
- [Rec 7 - Carve out.pdf](#)
- [Rec 6 - Human Rights - 1st reading conclusions.pdf](#)
- [Rec 4 - Board removal liability mitigation - 2nd reading conclusions .pdf](#)
- [Rec 9 - AOC reviews - 1st reading.pdf](#)
- [Rec 11 - GAC Advice.pdf](#)
- [Deck Meeting #75 Mission Statement Discussion.pdf](#)

## Adobe Chat

Brenda Brewer: (1/19/2016 05:27) Welcome to CCWG Accountability Meeting #78 on 19 January 2016 @ 12:00 UTC! Please note that chat sessions are being archived and follow the ICANN Expected Standards of Behavior: <http://www.icann.org/en/news/in-focus/accountability/expected-standards>

Kavouss Araste: (05:57) Dear Co Chairs

Kavouss Araste: (05:57) Good day or good time

Kavouss Araste: (05:57) I hope third reading for each Rec.

FIONA ASONGA (ASO): (05:57) hallo Everyone

Kavouss Araste: (05:57) would be the last reading

Suzanne Radell: (05:58) Hello everyone

Pär Brumark (GAC Niue): (05:58) Hi Everyone!

Pedro Ivo Silva [GAC Brasil]: (05:58) Hello everyone!

Kavouss Araste: (05:58) The Board's reprtsentatives are kindly requested to take account of this fact and raise the remainfng issue that tehy have for each Rec.

Tatiana Tropina: (05:59) hello everyone!

Rosemary Fei (Adler & Colvin): (05:59) Good morning, all.

Holly J. Gregory (Sidley): (05:59) Greetings!

Keith Drazek: (05:59) Hi all

Sabine Meyer (GAC - Germany): (06:00) hello everyone!

Mathieu Weill, ccNSO, co-chair: (06:00) Hello everyone

Kavouss Araste: (06:00) Good day / morning Holley and Rosemary

Markus Kummer: (06:00) Hi everyone

Kavouss Araste: (06:00) Hello allé

nigel hickson: (06:00) Good afternoon

Niels ten Oever: (06:00) Hi all

Steve Crocker: (06:01) Hello, everyone

andrew sullivan: (06:01) Hello

Kavouss Araste: (06:01) Hi Neil, we two have been in e-mail exchange since early this morning

Niels ten Oever: (06:02) Hi Kavouss, indeed :)

Kavouss Araste: (06:03) Hi Greg, one of the most active CCWG MEMEBR

James Gannon: (06:03) Morning/Afternoon/Evening all

cherine chalaby: (06:03) Hi everyone, just joined the call

Becky Burr: (06:03) goodmorning all trying to get into the adobe connect room

Athina Fragkouli (ASO): (06:03) hi all!

Aarti Bhavana: (06:03) Hi All!

Avri Doria: (06:04) maybe they are all being forced to change their passwords. i was and that takes extra time.

Philip Corwin: (06:04) Good morning from Washington DC metro area, where it is a balmy 15F

Chris Disspain: (06:05) when was this IRP document emailed to the list please?

Kavouss Araste: (06:06) Chris ,13 months ago

Bernard Turcotte Staff Support: (06:08) will take a minute

Thomas Rickert, CCWG Co-Chair: (06:09) Notwithstanding the foregoing and notwithstanding any required threshold for launching a community IRP, no community IRP that challenges the result(s) of a supporting organization's policy development process (PDP) may be launched without the support of the supporting organization that developed such PDP or, in the case of joint PDPs, without the support of the supporting organizations that developed such PDP.

Chris Disspain: (06:09) thanks Becky...

Chris Disspain: (06:09) has there been one since?

Kavouss Araste: (06:10) Becky

Kavouss Araste: (06:11) The text that you have concluded with the good help of David MC is satisfactory

David McAuley (RySG): (06:11) Thanks Becky

Steve DelBianco [GNSO - CSG]: (06:12) Greg is right. IRP challenges action/inaction of the corporation

Becky Burr: (06:12) icann's enactment is probably correct

Brenda Brewer: (06:12) all documents can be found on the wiki at: <https://community.icann.org/display/acctcrosscomm/Final+Report>

David McAuley (RySG): (06:12) agreed

Kavouss Araste: (06:13) As I read that ,it does not challenging SO/AC at all

Mathieu Weill, ccNSO, co-chair: (06:13) Good point Greg, thanks !

Matthew Shears: (06:13) + 1 Becky, Greg

Kavouss Araste: (06:14) Cherine, The GAC ADVICE if discussed between Board and GAC is separaetlxy treated.

Kavouss Araste: (06:15) Here we are talking of PDP ONLY

cherine chalaby: (06:15) Kavous, what about ALAC recommendations?

Izumi Okutani (ASO): (06:15) Indeed a good point to clarify Greg - on SOs/ACs actions out of scope of IRP

Thomas Rickert, CCWG Co-Chair: (06:17) Sebastien, can you explain where your discomfort stems from?

Avri Doria: (06:17) I have an issue on this. does this ban include implementation issues?

Kavouss Araste: (06:17) This text only deal with any action by the community which is stems from a PDP could not be further challenged without the agreement of those produced pdp

Edward Morris: (06:20) Excellent point Thomas.

Kavouss Araste: (06:20) Cherine, this does not address the Advice of any Advisory Copmmitte

Becky Burr: (06:21) if it reads "challenges the Board's adoption of the outcomes of a supporting organization's policy development process (PDP) ... without the uspport of the supporting organization ..."

Alan Greenberg: (06:21) Drafting note. The term PDP is not used for the ASO in the Bylaws, so the full expression should be used in any Bylaws.

Alan Greenberg: (06:21) I am not on the bridge, comment above

Becky Burr: (06:21) ok Alan

Avri Doria: (06:22) We are only at the end if we can come to agreement. if we can't the CCWG process goes on. being late in the schedule is not an argument for accepting a substantive postion.

Alan Greenberg: (06:23) On bridge now, but no need to talk at the moment.

David McAuley (RySG): (06:23) Becky, I would be happy to help on drafting revisions, e.g. Greg and Alan comments

Becky Burr: (06:23) thanks David

Greg Shatan: (06:26) This is not final bylaws language, of course. But it is good to clarify this nonetheless.

Kavouss Araste: (06:26) Does Becky work will come back ?

Kavouss Araste: (06:26) Yes Leon that is waht I was looking for

Alan Greenberg: (06:27) The Term Policy Development Process (with upper case PDP) is used in the Bylaws for the GNSO and ccNSO. It is completely silent on the ASO processes, so the PDP (implying a defined term) should not be used in this case (unless the ASO policy recommendations are ALREADY carved out by other language).

Avri Doria: (06:27) has the PTI and IRP issue been dealt with adequately?

Avri Doria: (06:27) before closing all things IRP

Mathieu Weill, ccNSO, co-chair: (06:28) Avri, this seems agreed by all, including Board ?

Kavouss Araste: (06:28) Did we address all points raised by the Board in this regard?

Avri Doria: (06:28) i still tend to thnk of moving issues to WS2 at this pint as sweeping problems under the carpet.

Alan Greenberg: (06:29) I think that the Ombudsman was referenced as a possible escalation path.

Steve DelBianco [GNSO - CSG]: (06:29) IRP can deal with any action or inaction that is inconsistent with Bylaws. That's a broad scope, Brett

Avri Doria: (06:32) i thnk we need more clarity on the PRI issue before we can close. it remain a big question mark.

Avri Doria: (06:32) PTI

Kavouss Araste: (06:33) What is PRI PLS ?

Avri Doria: (06:33) the CWG stated a requirement for an appeals mechansims. we decided that the IRP was going to be the way to do this. but we do not seem to have an IRP for for that purpose yet.

Avri Doria: (06:33) ... fit for that process.

Robin Gross [GNSO - NCSG]: (06:34) it is imperative that we consider the comments filed in recent weeks.

Becky Burr: (06:34) those procedures will be brought to the community for consideration by the IRP implementation working group

Avri Doria: (06:35) I do not understand how one can implement something that is not specifically defined for that purpose.

Keith Drazek: (06:36) I agree it is imperative to consider the latest comments, and I believe it is equally imperaitve that we focus primarily on the comments submitted by the Chartering Organizations.

Alice Jansen: (06:36) <https://www.icann.org/en/system/files/files/summary-comments-draft-ccwg-accountability-proposal-08jan16-en.xlsx>

Avri Doria: (06:36) Well not all SOs have even submitted yet.

Robin Gross [GNSO - NCSG]: (06:36) it would be nice if the agenda of these discussions included more than just board comments.

James Gannon: (06:36) And neither is the GNSO then....

Keith Drazek: (06:37) The GNSO comments will be a summary of the comments submitted by its constituent parts.

Mathieu Weill, ccNSO, co-chair: (06:37) @Robin : there is more than Board comments : such as PTI /IRP for instance (#1 on Rec 7)

Keith Drazek: (06:37) Mathieu did say the comments submitted by the GNSO groups have been part of the primary consideration.

Avri Doria: (06:37) Keith, even where they are contradictory to each other?

Alan Greenberg: (06:37) I can't speak to all of the comments, but ALAC comments have certainly been included in some of these discussions.

Thomas Rickert, CCWG Co-Chair: (06:37) fyi - the GNSO leadership has expressly asked us to look at the comments from its SG/Cs

Avri Doria: (06:38) i will probably log an objection on the PTI issue

Thomas Rickert, CCWG Co-Chair: (06:38) And that is what we did

Alan Greenberg: (06:38) And I will be summarizing those that have not yet been addressed.

Keith Drazek: (06:38) @Thomas: Correct

Mathieu Weill, ccNSO, co-chair: (06:38) @Keith : I confirm

Thomas Rickert, CCWG Co-Chair: (06:38) Thanks, Keith.

Becky Burr: (06:38) they were used to develop the annotations that we have been working from

Becky Burr: (06:38) from

Keith Drazek: (06:39) @Avri: The GNSO will have to determine where it can reach a simple majority of each house to support each of the 12 recommendations, and where it can't. That work is still under way and will likely be required at the next phase after the supplemental report is issued.

Tatiana Tropina: (06:40) Sorry but this NOT the option C

Tatiana Tropina: (06:40) Where does this new option C come from?

Mathieu Weill, ccNSO, co-chair: (06:41) Confusion between two paragraph c in the doc. One is 2c the other 3c

Niels ten Oever: (06:41) Very confusing. Let's correct asap.

Tatiana Tropina: (06:41) I am sorry but please then clarify on the call

Tatiana Tropina: (06:41) It's very misleading especially taking into account the sensitivity of the issue

James Gannon: (06:42) Agreed Tatiana

Matthew Shears: (06:43) clarification please of 2c and 3c?

Greg Shatan: (06:43) It seems like we are skating over the public comments (other than the Board's comments), at least as a plenary group (leadership may be having a different "user experience"). This seems to be quite different from our approach in the first two comment periods. I guess this is due to the press of time.

Matthew Shears: (06:43) agree Greg

Robin Gross [GNSO - NCSG]: (06:43) +1

Brett Schaefer: (06:43) Agree Greg

Tatiana Tropina: (06:43) I just want for everyone to be clear what we are discussing :) because I am advocating the option C BUT it's not the C I am standing for

James Gannon: (06:43) We need a clarification on Tatiana's point.

Niels ten Oever: (06:44) Tijani - disagree - as high level commitment to HR in bylaws has been always the proposal

Mathieu Weill, ccNSO, co-chair: (06:44) Greg I think someone mentioned on list that the decision to see everything in plenary may be the root cause.

James Gannon: (06:44) And agree with Greg, this is a huge difference to how we have assessed PC feedback in the past

Robin Gross [GNSO - NCSG]: (06:44) it is a shame we do not have the correct language in the document before us for C.

Tatiana Tropina: (06:44) It's hard to discuss anything when it's not clear which C we are referring to

Tatiana Tropina: (06:44) :)

Mathieu Weill, ccNSO, co-chair: (06:45) The correct "option c" is 3c in the doc, not 2c

Tatiana Tropina: (06:45) Ok cool

Mathieu Weill, ccNSO, co-chair: (06:45) 3c is the "dormant bylaw"

Tatiana Tropina: (06:45) let's say 3C then

Tatiana Tropina: (06:45) thanks!

Tatiana Tropina: (06:45) because Leon said something different and I got frustrated :)

jorge cancio (GAC Switzerland): (06:46) Just to recap on the public comments received: is it not correct that 44 supported the recommendation, 14 were neutral and just 4 opposed?

Thomas Rickert, CCWG Co-Chair: (06:46) Robin, Leon misspoke. A shame - to me - is something different.

Robin Gross [GNSO - NCSG]: (06:47) ?

Niels ten Oever: (06:47) +1 to Greg - significant confusion

Holly J. Gregory (Sidley): (06:49) Accurate description of the law re bylaws as I understand it, Greg. .

Tatiana Tropina: (06:49) Greg, what is your proposal then?

Brett Schaefer: (06:49) Jorge, maybe. I noticed inaccuracies and omissions regarding the summary of our comment. I requested clarification, hopefully others read their summaries to ensure accuracy.

Niels ten Oever: (06:49) Greg, can you summarize why 3A deviates from the 3rd proposal?!

Tatiana Tropina: (06:50) I didn't get the message really. What are you suggesting, Greg?

Tatiana Tropina: (06:51) I don't think we are now working on the language I think we are working on the concept. Operational bylaw/dormant bylaw / no bylaw

Niels ten Oever: (06:51) 3A. Operational Bylaw, 3B No bylaw, 3C Dormant Bylaw

Tatiana Tropina: (06:51) language I mean

Chris Disspain: (06:51) Leon, that may well be true BUT lawyers need CLEAR instructions and as Greg has said...right now there are many layers of confusion

Tatiana Tropina: (06:51) Niels, exactly

Julia Wolman GAC Denmark: (06:52) Just to inform you that in the current discussions in the GAC, there is no consensus on supporting recommendation 6.

Tatiana Tropina: (06:52) I thought it takes into account the transitional bylaw

Niels ten Oever: (06:52) The transitional bylaw is intended as part 3A

Niels ten Oever: (06:52) @Greg - that is not the case

Niels ten Oever: (06:52) 3A transitional bylaw says: there will be work on further framework of FoI

jorge cancio (GAC Switzerland): (06:53) Dear Brett, if the numbers of the public comment period are right, I wonder why we are so ready to substantially change the recommendation

Tatiana Tropina: (06:53) Greg, 3A implies the transitional bylaw since it refers to 3rd draft proposal

Brett Schaefer: (06:54) @Jorge, good question -- because some comments (Board) are more equal than others?

Matthew Shears: (06:54) Good question Jorge

Tatiana Tropina: (06:54) Niels, give me please your turn

Alan Greenberg: (06:55) It says "RECOMMENDED BYLAW LANGUAGE" which I presume means the language in the proposal. No?

Robin Gross [GNSO - NCSG]: (06:55) yes jorge

Matthew Shears: (06:55) I thought so as well Alan

Matthew Shears: (06:56) option 3a is referring to language in 3rd proposal

Brett Schaefer: (06:57) I actually support moving HR to WS2, but this process has not proceeded the way that I understood that it should proceed.

Tatiana Tropina: (06:58) I don't support moving everything to the WS2

Alan Greenberg: (06:58) Greg is correct in that 3c has two different options. Text says Bylaw effective but not enforceable, and parenthetical says not in effect. Unclear that you can have a concept of effective but not operational. That is issue identified in the recent Board comment/

Alan Greenberg: (06:59) Text=Text...

Avri Doria: (07:03) agree with Jorge

Aarti Bhavana: (07:04) +1 Jorge

Niels ten Oever: (07:04) +1 Jorge

Matthew Shears: (07:04) + 1 Jorge

Tatiana Tropina: (07:04) Jorge, thanks a lot - this is a very valuable point

Tatiana Tropina: (07:04) +1

Robin Gross [GNSO - NCSG]: (07:04) +1

James Gannon: (07:04) +1 Jorge

Tatiana Tropina: (07:05) There was no such concept Greg - I agree that it's close but what you are saying now was your minority view at WP4.

Tatiana Tropina: (07:05) but I agree that we could have made it clearer and make it dormant. But that wasn't an idea

Niels ten Oever: (07:05) This was your minority view in WP4 Greg, not the consensus\

Annaliese Williams (GAC Australia): (07:05) I would like to second the comment make by Julia Wolman that the GAC is still considering its position on this issue. Some governments, including the Australian Government, have expressed reservations about this issue being included in work stream 1 before there is agreement on ICANN's role in relation to human rights

Roelof Meijer (SIDN, ccNSO): (07:06) @Staff, @Léon: I'll be leaving the Adobe Room and rejoining through audio bridge in about 10 mins.

Niels ten Oever: (07:07) Greg - not a free for all - we have discussed this. This is a repetition of steps.

Elise Lindeberg, GAC Norway: (07:07) +1, Annaliese

cherine chalaby: (07:07) Greg+1

Avri Doria: (07:07) we are all on the same page if that page is called impasse

Tatiana Tropina: (07:08) What Greg is advocating for I considered as 3c

Greg Shatan: (07:08) Tatiana, what do you think the effect of the transitional bylaw is then?

Chris Disspain: (07:08) we don't have consensus on this...that much is clear

Tatiana Tropina: (07:09) greg I remember our discussion at WP4. The intent was to ensure that the Fol will be developed in timely manner and in one year

Tatiana Tropina: (07:09) but I don't mind the bylaw to be dormant

Tatiana Tropina: (07:09) because it will address all the concerns

Kavouss Araste: (07:09) Leon

Greg Shatan: (07:09) That is not what the transitional bylaw says.

Kavouss Araste: (07:09) Do you consensus on 3c pls?

Greg Shatan: (07:10) That is only what the chapeau text says.

Matthew Shears: (07:10) I agree Leon as a way forward - but again we will need to see the language

Chris Disspain: (07:10) I'm not sure I understand Leon's proposal

Kavouss Araste: (07:10) Should you not have consensus on 3c you need to take option 3b

Niels ten Oever: (07:10) Leon, did you just suggest we would wait for GAC consensus on HR ?

Tatiana Tropina: (07:10) I am also not sure I understand

Paul Szyndler: (07:10) Leon - could you please clarify your proposed way forward?

Mathieu Weill, ccNSO, co-chair: (07:11) @Niels : Leon mentioned the general 3rd report feedback from the GAC

Thomas Schneider: (07:11) FYI: the GAC is currently working on this issue...

Greg Shatan: (07:11) I'm sorry I did not follow what Leon proposed.

Greg Shatan: (07:11) And I don't think we are all "on the same page".

Chris Disspain: (07:12) if we are on the same page then it's a big page and we are all lined up along the edges

Avri Doria: (07:12) if we need a Fol in order to implement respect for HR at ICANN, then perhaps the transition should wait for us to complete that Fol.

Matthew Shears: (07:12) 3rd proposal language noting bylaw is dormant until Fol agreed?

Niels ten Oever: (07:13) @Matt no

Greg Shatan: (07:13) Matt, that's the way I read it.

Avri Doria: (07:13) I do not beleive that the tansition should go forward with having reached consensus on this issue.

Niels ten Oever: (07:13) That would be a compromise position

Greg Shatan: (07:13) But others see it differently.

Avri Doria: (07:13) ... without having ...

Niels ten Oever: (07:13) @Greg - so your minority position was the same as the consensus?

Matthew Shears: (07:13) then clearly did not follow...

James Gannon: (07:13) Yeah I read it the same as Matt

jorge cancio (GAC Switzerland): (07:13) Let's focus on the direction given by the public comment period results...

Tatiana Tropina: (07:14) Can we I don't think we are on the same page because I don't think "talking options as 3c 3b etc" help

Greg Shatan: (07:14) Niels, I do not have a minority position.

Niels ten Oever: (07:14) In the WP4 report

Edward Morris: (07:14) Thank you Alan.

Chris Disspain: (07:14) can someone explain to me what the puspose of a dormant by-law is?

Tatiana Tropina: (07:14) Greg lol you had it when we discussed the transitional bylaw

Chris Disspain: (07:14) what does it achieve/guarantee?

Mathieu Weill, ccNSO, co-chair: (07:15) @Chris: the purpose is that, once the FoI is approved, there is no need to launch a bylaw process to support it. It is automatically turned on.

Niels ten Oever: (07:15) @Chris - that ICANN will respect HR once the FoI is developed. Adding a bylaw at the end of WS2 is far less likely.

Thomas Rickert, CCWG Co-Chair: (07:15) Chris - no bylaw change needed to enact if and when the framework is developed

Tatiana Tropina: (07:15) Dear co-chairs, is it possible next time to provide us with the language before the call so we can all comment and not get confused during the call

Avri Doria: (07:15) and it is a commitmtnet to develop that FoI in a timely manner.

Avri Doria: (07:16) though i agree that a doormant bylaw is less than satisfactory.

Matthew Shears: (07:16) @ Avri - yes, that is critical

Chris Disspain: (07:16) really Niels? What makes you say that?

Tatiana Tropina: (07:16) I am sorry but what the board is proposing is fairly exclusive and top-down

Tatiana Tropina: (07:16) at least from what I saw in the email or in comments

Greg Shatan: (07:16) The transitional bylaw begins "Bylaw xx willl be implemented in accordance with the" FOI. This is not just a timing bylaw.

Kavouss Araste: (07:17) My suggestion would be the following; ADOPT THE TEXT AS CONTAINED IN 3RD PROPOSAL AND INDICATE THAT the date of its implementation would postponed until the Fo IN on the matter is is apaproved

Avri Doria: (07:17) transtion today for human rights tomorrow is not a satisfactory repsonse.

Niels ten Oever: (07:17) @Chris - because now the attention and priority for HR seems much higher than in any other situation thusfar. There is significant fear that attention and priority will fade after transition.

Kavouss Araste: (07:17) Leon

Kavouss Araste: (07:17) pls look at my suggestion

Tatiana Tropina: (07:17) It's a community exercise to develop the Foi and bylaw, and it shall be lead by the community. The board's approach to hire expert and report to the community is a parallel process that can be very welcome but only as a parallel process

Chris Disspain: (07:17) @ Mathieu and @ Thomas...why is HR being singled out for this special treatment? Especially as it is a new topic not currently covered by the AoC etc and not 'necessary' for transiton just like a number of other WS2 items?

Avri Doria: (07:18) it is necessary for transtion. that is the point

Niels ten Oever: (07:18) @Chris HR is a backstop for accountability when NTIA is gone

Alan Greenberg: (07:18) We were earlier told that the Board members of WP4 agreed to a way forward that included a Bylaw change in WS1. Board comments and those of Marcus imply that is not the case. Clarity would be nice.

Niels ten Oever: (07:18) @Chris and will also show the world that ICANN adheres to international standards, as being part of a global community.

Avri Doria: (07:18) loss of NTIA, our overnment oversight, creates this necessity.

Mathieu Weill, ccNSO, co-chair: (07:18) @Chris: you asked what benefit is. The "why" is "because it's been discussed and requested for a long time now" and it's supported by the community. In a word : it's the process

Niels ten Oever: (07:19) Markus was part of the consensus on WP4, Bruce agreed on list to option 3C, both their personal opinion but....

Matthew Shears: (07:19) we have had much of this discussion already and the result was the language in the 3rd proposal

Mathieu Weill, ccNSO, co-chair: (07:19) @Chris and I understand the Board supports the opportunity of the topic

Matthew Shears: (07:19) which was largely supported

jorge cancio (GAC Switzerland): (07:20) +1 Mathew

Niels ten Oever: (07:20) +1 matt

Edward Morris: (07:20) I agree with Marilia. We are not here to re-do the work done in WP4 and largely supported in the public comments..

Alan Greenberg: (07:20) ATRT1 tried (unsuccessfully) to introduce the concept of a reply period in comments. If the ALAC had known of the Board concerns with risk associated with the 3rd draft proposed change, it \*might\* have concurred. We had previously expressed concern over unknown implications of such a Bylaw.

Edward Morris: (07:20) Clarity is needed, however.

Mathieu Weill, ccNSO, co-chair: (07:20) Just to confirm Chris, did Thomas answer (and mine) address your question so that you better understand why many are pushing for that bylaw ? It would be great if you could confirm

Chris Disspain: (07:21) No Mathieu -

Tatiana Tropina: (07:22) Ok I agree with this way forward

Tatiana Tropina: (07:22) Probably we have to thank Greg though I got so lost after he talk - I need aspirin to kill my headache

Thomas Rickert, CCWG Co-Chair: (07:22) Chris, you do not understand what we said?

Greg Shatan: (07:22) Leon, it's not just a matter of "enforcement." It's a matter of effectiveness.

Thomas Rickert, CCWG Co-Chair: (07:22) Mathieu did not ask whether you agree...

Mathieu Weill, ccNSO, co-chair: (07:22) ok Chris, I'll leave it to others to explain then.

Greg Shatan: (07:23) Tatiana, sorry if my "native New Yawk Tawk" was hard to follow. I should remember to pace myself better....

Tatiana Tropina: (07:23) nope, you are pfect to follow but your legal reasoning got everyone lost - not only me

Alan Greenberg: (07:23) I am hearing that it does not address "everyone's" concern. I think I am hearing Board say that they do not want ANY Bylaw until Fol is done.

Chris Disspain: (07:23) @ Thomas..apologies...yes...I understand the words but I dont believe that they satisfactorily answer the question...

Brett Schaefer: (07:24) Half way point, are taking a break?

jorge cancio (GAC Switzerland): (07:24) and GNSO input... and any other SO/AC input, right?

Tatiana Tropina: (07:24) @Greg so it's not a language issue, after living in Glasgow for several years I can understand even a devil speaking english)

Chris Disspain: (07:24) It's hard to type in this chat room...I'll send an email to the list tomorrow explaining my issues with this

Avri Doria: (07:24) It is clear that Board does not want a bylaw on HR, and any expectation that they would agree to an Fol is pure speculation.

Brett Schaefer: (07:24) Need more coffee

David McAuley (RySG): (07:25) audio quality going bad?

Avri Doria: (07:25) speculation not supported by previous behavior on this topic.

andrew sullivan: (07:25) @Brett it's bad here, yes

Brett Schaefer: (07:26) @Andrew :-)

James Gannon: (07:26) Yup bad audio here too

Chris Disspain: (07:26) @ Avri....sorry but that's simply not true....

Alan Greenberg: (07:27) We are way behind in schedule, could we move break please?

Alan Greenberg: (07:28) Are we skipping agenda item 4?

James Gannon: (07:28) I'll need to take a break soon, otherwise I'm going to get fired for not returning phone calls! =)

Mathieu Weill, ccNSO, co-chair: (07:28) @Alan: as Thomas said, AI was contact between lawyers and did not take place. So postponed

Alan Greenberg: (07:29) ok re 4.

Thomas Rickert, CCWG Co-Chair: (07:29) We will break in a few mins.

Alan Greenberg: (07:29) Had not caught that 4 was subject...

James Gannon: (07:32) Thanks Thomas

Bernard Turcotte Staff Support: (07:32) 10 minute break - back at 42 minutes past the hour

James Gannon: (07:39) Ok Boss is now happy that I do actually come to work, and I procured a cajun sandwich to sustain me a little longer

Sabine Meyer (GAC - Germany): (07:39) CongratsX2 :)

Bernard Turcotte Staff Support: (07:41) 1 minute warning - to start

Kavouss Araste: (07:47) gREED

Kavouss Araste: (07:50) THAT IS MORE OR LESS AN INTERNAL ARRANGEMENT FOR GNSO

Greg Shatan: (07:51) Kavouss, quite the opposite. GNSO is just a container for several disparate stakeholder communities.

Greg Shatan: (07:52) The GNSO is not a single stakeholder community.

Robin Gross [GNSO - NCSG]: (07:53) The selections should be based on SG - 3 per SG for example. Doing selections by constituency gives non-commercial users one less person than comm

FIONA ASONGA (ASO): (07:54) +1 Alan and it will be difficult to get the work completed

FIONA ASONGA (ASO): (07:54) in good time

Greg Shatan: (07:54) We have different perspectives within IPC as well. Not asking for those to all be reflected.

Edward Morris: (07:54) Agreed Robin. As an internal GNSO matter selection needs to respect the House and SG structure.

Keith Drazek: (07:55) Securing a balance of views is more important than restricting size, IMO.

Alan Greenberg: (07:55) It will happen ANYWAY. How could a GNSO Chair NOT honor what their SO Council has told them...

Avri Doria: (07:55) while I think smaller is easier, I do not think 21 is unmanageable.

Marilia Maciel: (07:55) Agree with Robin too. Doing otherwise just increases complexity dramatically

Steve DelBianco [GNSO - CSG]: (07:55) @Robin and Ed -- to accommodate each SG in GNSO, we would need 4 seats on each review team. Not just 3

Malcolm Hutty: (07:55) +1 Kavouss

Alan Greenberg: (07:55) Size is not manageable as it stands now (in our proposal), in my opinion.

Edward Morris: (07:55) Steve. I agree with 4.

Robin Gross [GNSO - NCSG]: (07:55) 4 is good

Alan Greenberg: (07:56) Then the ALAC needs 5

Marilia Maciel: (07:56) As long as the level is the SG level, 4 is fine

Jorge Cancio (GAC Switzerland): (07:56) Could we have the numbers as they are and the proposal on screen? or on an email?

Jonathan Zuck: (07:58) recommendation seems fine

Andrew Sullivan: (07:58) I thought that the policy had been updated to refer to RDS anyway?

Kavouss Araste: (07:58) I SUPPORT THE AMENDMENT

Andrew Sullivan: (07:58) so one doesn't need "future"

Andrew Sullivan: (07:58) but I don't care

Keith Drazek: (07:58) I support the Board's suggested clarification. RDS is a moving target and the language should reflect that accordingly.

Marilia Maciel: (07:58) Good suggestion from the board

andrew sullivan: (07:59) (if we just globally substitute "registry directory service" for "whois", that is, it'd solve it. Again, I don't care.)

Avri Doria: (07:59) agree Andrew

Mathieu Weill, ccNSO, co-chair: (08:00) We have that yes

Mathieu Weill, ccNSO, co-chair: (08:00) That is part of Rec 3

Kavouss Araste: (08:00) bRENDA

Kavouss Araste: (08:01) i am disconnected

Thomas Rickert, CCWG Co-Chair: (08:01) We will get back to you, kavouss, when you are back

Alan Greenberg: (08:02) Please note that is NOT Article XVIII or the AoC. It is an article of the Bylaws.

Steve DelBianco [GNSO - CSG]: (08:03) Articles now say: "9. These Articles may be amended by the affirmative vote of at least two-thirds of the directors of the Corporation. When the Corporation has members, any such amendment must be ratified by a two-thirds (2/3) majority of the members voting on any proposed amendment."

Kavouss Araste: (08:04) Tks Stecve

Rosemary Fei (Adler & Colvin): (08:04) I believe the current proposal is that amendments to the Articles will require the same approval of the community as a Fundamental Bylaw amendment.

Kavouss Araste: (08:04) Steve

Mathieu Weill, ccNSO, co-chair: (08:05) Indeed Rosemary

Jonathan Zuck: (08:06) +1 Rosemary

Kavouss Araste: (08:06) On question 7, I tend to support the Board suggestion

Kavouss Araste: (08:07) Thomas, may you pls ask whether thereis a major difficulties with the Board's suggestion

Keith Drazek: (08:08) No objection.

Steve DelBianco [GNSO - CSG]: (08:08) Staff: please let the notes reflect this on #7: On the understanding that specific recommendations in Annex 9 would be respected, such that this text addresses only implementation detail

Jonathan Zuck: (08:09) certainly not our first rodeo

Kavouss Araste: (08:09) Mathieu, the third and the last reading

jorge cancio (GAC Switzerland): (08:10) third is the charm ;P

Alan Greenberg: (08:12) Do we have a revised document for Article I (Mission, core values and commitments)? We have seen slide decks on particular issues, but not a revised doc. that I can recall.

Izumi Okutani (ASO): (08:12) Thanks Mathieu for this summary. Just for clarity, the post I shared on the CCWG list is not the final position of ASO. We are open to wait for feedback from ICANN Board and consider this, then get back to the CCWG

Avri Doria: (08:12) clarifies it for me.

Kavouss Araste: (08:12) Agree with NTIA CLARIFICATION

andrew sullivan: (08:14) For whatever it's worth, the IETF's counsel disagrees with that interpretation of "Memorandum of Understanding"

Avri Doria: (08:15) one can hear without agreeing.

andrew sullivan: (08:15) (at least, according to what I understood in what Kavouss was saying)

Avri Doria: (08:16) i accept the NTIA statement that it was not included in their minds, and thus is not part of the AOC. I disagree about accepting this as a general principle.

Mark Carvell GAC - UK Govt: (08:17) Agree with NTIA confirmation of limited scope of AOC but i do not think this in any way constrains the GAC's regard for consumer welfare and protection when advising the Board on wider DNS issues. So an alignment with ALAC on this I think.

Avri Doria: (08:17) just because something is not in an MOU does not mean it might not make sense to include something in the bylaws.

Steve DelBianco [GNSO - CSG]: (08:18) In the CCT Review section of Annex 9: we see paragraph 35-36 right next to AoC 3c referring only to "Proposed bylaw requiring AoC review of Promoting Competition, Consumer Trust, and Consumer Choice: ICANN will ensure that as it expands the Top-Level Domain (TLD) space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection."

Mark Carvell GAC - UK Govt: (08:18) Agree with Avri.

jorge cancio (GAC Switzerland): (08:18) agree with Mark

Alan Greenberg: (08:20) Steve, we have agreed to disagree. DO you wish yo REOPEN the issue? I am not that masochistic!

Avri Doria: (08:20) well it is limiting consumer trust to new gTLDs. dont need it anywhere else in the current fomulation. makes it a worthy WS2 discussion.

Avri Doria: (08:21) yes, that is tantamount to sweeping it under the carper, but we might clean up under the capet in the best of all possible ICANNs

Becky Burr: (08:21) no additional language in consumer trust in Mission, Commitment & Core Values

Avri Doria: (08:21) .. under the carpeet ...

Avri Doria: (08:21) not in WS1.

Becky Burr: (08:21) Reviews section will be adjusted to reflect AoC language re new gTLDs

Greg Shatan: (08:31) We also need to clarify which provision are being protected by "grandfathering" (i.e., which provisions, if any, are arguably outside ICANN's mission and are being preserved only by the grandfathering clause).

Kavouss Araste: (08:31) I have no problem for grandfathering old agreements not to be subject to the new one such as Mission Statement.

Steve DelBianco [GNSO - CSG]: (08:32) BC joins IPC in saying that ICANN must enforce promises that are part of a registry contract.

Becky Burr: (08:32) Alan is correct - Article 1 includes Mission, Commitment & Core Values

Steve DelBianco [GNSO - CSG]: (08:32) +1 Alan

Jonathan Zuck: (08:32) +1 Alan

Kavouss Araste: (08:33) I have done in many other entities in which it was decided that providing some sort of stability to the agreement which were in place not to be subject to new provision

Kavouss Araste: (08:33) Who could reply to my question as follows:e

Becky Burr: (08:33) please be clear that we are talking about ICANN's ability to enforce contracts. IMHO, it would be absolutely inappropriate to impose a priori views on HOW ICANN should enforce those contracts (other than in accordance with the terms of the agreement and the Bylaws)

Steve DelBianco [GNSO - CSG]: (08:34) Look at this fom the .BANK registry contract: Content/Use RestrictionsBy registering a .bank domain name you agree to be bound by the terms of this Acceptable Use Policy (AUP). In using your domain, you may not:1. Use your domain for any purposes prohibited by the laws of the jurisdiction(s) in which you do business or any other applicable law. For banking companies specifically, use your domain name for any purposes prohibited by the bank's charter or license.

Kavouss Araste: (08:34) Taking into account the Gender Balance WHY NOT in these cases we should not refer to Grandmothering

Alan Greenberg: (08:34) I was not replaying the discussion. I was pointing out a situation which I do not think is viable given our responsibility to manage the gTLD space (and need I mention the consumer trust issues is we do not enforce our contracts?)

Mathieu Weill, ccNSO, co-chair: (08:35) Apologies Alan, was not what I meant

Kavouss Araste: (08:35) Mathieu , can you reply to my last question?

Mathieu Weill, ccNSO, co-chair: (08:35) Which one Kavouss (sorry)

Becky Burr: (08:35) Any bylaws language that MANDATES that ICANN enforce its contracts creates a third party beneficiary situation that totally undermines the integrity of the agreements themselves. I am certain that would be unacceptable to contracted party houses, and I suspect that ICANN would not want to undermine its own authority to determine when and how it enfoces contracts.

Kavouss Araste: (08:36) Grandmothering instead of Grandfathering tio maintain and respect dgender balance

Becky Burr: (08:36) +1 Kavouss

Mathieu Weill, ccNSO, co-chair: (08:36) I'll defer to lawyers on that

Thomas Rickert, CCWG Co-Chair: (08:36) grangparenting?

Thomas Rickert, CCWG Co-Chair: (08:37) grandparenting that is

Kavouss Araste: (08:37) Tks , I think Holley and Rosemary will certainly agree with thatr

Jonathan Zuck: (08:37) legacy contracts?

Holly J. Gregory (Sidley): (08:37) indeed Kavouss!

Kavouss Araste: (08:37) Grandparenting is more general and gender neutral

Robin Gross [GNSO - NCSG]: (08:39) We need to remove the incentive / opportunity for ICANN to be used to impose conditions on Internet users (via contracts).

Kavouss Araste: (08:39) CCWG PEOPLE ARE TOO SERIOUS, WE NEED TO HAVE SOME SENSE OF HUMER FROM TIME TO TIME

Robin Gross [GNSO - NCSG]: (08:39) Agree, Kavouss

James Gannon: (08:39) <3 Kavouss =)

Avri Doria: (08:39) i almost alwasy view our discussions through the lens of humor

Avri Doria: (08:39) serious but often very funny.

Greg Shatan: (08:40) @Avri, a good survival mechanism....

Kavouss Araste: (08:40) gOOD aVRI, THAT IS WHY YOU REMAINED ALWAYS YOUNG, ACTIVE AND ATTARCTIVE

jorge cancio (GAC Switzerland): (08:40) Dear all, I feel we still lack an impact assesment of the changes we are proposing, and I'll abstain of repeating prior discussions once again

Greg Shatan: (08:41) @jorge, I agree that we have skated on top of that issue (or even around it).

Finn Petersen, GAC - DK: (08:41) + Jorge

Becky Burr: (08:41) Robin, I support the concept that contracts must be enforceable - but i also support your comment re disincentives. That is why i wanted to create a mechanism for registries and registrars to collectively challange so-called "volunt

Becky Burr: (08:42) "voluntary provisions" on the grounds that ICANN was abusing its bargaining position.

jorge cancio (GAC Switzerland): (08:42) Rec11, ST18: couldn't we just eliminate that? :P

Bernard Turcotte Staff Support: (08:42) @Jorge - what would you like to eliminate?

Mathieu Weill, ccNSO, co-chair: (08:42) Make it more gender neutral you mean Jorge ?

Becky Burr: (08:42) this would have to be formal, public, but would permit registries and registrars to sign agreements but reserve disputes regarding those contracts

James Gannon: (08:43) I agree Jorge, Lets just drop it => Go back to normal life sooner => /s

Kavouss Araste: (08:43) sTEVE,

Becky Burr: (08:43) i need to drop out of AC room but will remain on phone

Steve DelBianco [GNSO - CSG]: (08:43) Insert a requirement in ICANN Bylaws Article XI, Section 1 (regarding all Advisory Committees), such that Formal advice of Advisory Committees must be accompanied by rationale for such advice.

jorge cancio (GAC Switzerland): (08:43) @Mathieu: neutralize it completely, take it out, you know what I mean ;D

Kavouss Araste: (08:44) sTEVE, i FULLY AGREE WITH YOUR TWO PROPOSALS for obvious reasons that I explain wheb I given the follorwn

Finn Petersen, GAC - DK: (08:44) Steve - ok

James Gannon: (08:44) In the style of James Bond 0018 style Jorge?

Robin Gross [GNSO - NCSG]: (08:44) It seems obvious that we should require rationales for decisions made.

Brett Schaefer: (08:44) agree

Jonathan Zuck: (08:44) yep

James Gannon: (08:44) And yes agree with Steves proposal

Robin Gross [GNSO - NCSG]: (08:45) right

Keith Drazek: (08:45) Generally speaking, advice without a supporting rationale seems unhelpful and open to broad interpretation. Agree with requiring a rationale in support of all advice.

Jonathan Zuck: (08:46) that might be a bridge too far Chris

Thomas Schneider: (08:46) I think mentioning a "best effort" make sense, as there may be different views about what exactly is enough to be considered "a rationale" ...

Kavouss Araste: (08:46) We do not need to provide a definition for Raionale

Avri Doria: (08:46) a rationale is a reason, does not mean i have to accept that rationale as valid for it to be a rationale.

Kavouss Araste: (08:46) Malcolm 1 1

Kavouss Araste: (08:46) +1

Kavouss Araste: (08:47) YES sTEVE

Julia Wolman GAC Denmark: (08:47) +1 Steve

jorge cancio (GAC Switzerland): (08:48) good point, Steve on not singling out specific ACs

Suzanne Woolf: (08:48) The ACs I'm on provide reasoning behind recommendations because they don't expect to be taken seriously if they don't. But for any AC where the Board has ti provide a rationale for rejecting advice, it might be wise to have some clarity around what rationale came with the advice.

andrew sullivan: (08:48) I think it's entirely right that people can reject a rationale that is badly reasoned

Robin Gross [GNSO - NCSG]: (08:48) All that is needed for a rationale to be a rationale, is for the AC to say "this is our rationale". That is a different question from if it is compelling.

Kavouss Araste: (08:48) I do not think any one could provide advice to anyone else without a valid reason

andrew sullivan: (08:48) One sometimes hears this: "I think we can all agree that ..." offered as a reason

andrew sullivan: (08:48) and of course, the response to that is, "No, that's exactly what I disagree with."

Robin Gross [GNSO - NCSG]: (08:49) Agree, Kavouss, it is a component of good governance, generally

Steve DelBianco [GNSO - CSG]: (08:49) re-chatting this text since it has scrolled off: Insert a requirement in ICANN Bylaws Article XI, Section 1 (regarding all Advisory Committees), such that Formal advice of Advisory Committees must be accompanied by rationale for such advice.

Jonathan Zuck: (08:49) agree

Kavouss Araste: (08:49) Alan + 1

Mark Carvell GAC - UK Govt: (08:49) Agree - it enhances processes of accountability and transparency to provide rationales for advice.

Greg Shatan: (08:49) Fully support a rationale requirement, without conditions.

Brett Schaefer: (08:50) I think we need to be explicit that all Board decisions, including those based on consensus GAC advice, are subject to IRP appeal if they go beyond the scope and mission of ICANN. Comments from various GAC reps in the chats have caused me to question whether they agree with this principle. Earlier in today's chat, for instance, Mark Cavell said: "Agree with NTIA confirmation of limited scope of AOC but i do not think this in any way constrains the GAC's regard for consumer welfare and protection when advising the Board on wider DNS issues." I suggest adding this concluding sentence onto to proposed amended bylaw text on GAC advice: "As with all Board decisions, those based on Governmental Advisory Committee consensus advice shall be subject to appeal through the Independent Review Process."

Jonathan Zuck: (08:50) the simple requirement to provide a rationale will likely lead to a little more rationality

Jonathan Zuck: (08:51) +1 Steve

Steve DelBianco [GNSO - CSG]: (08:51) Add this to supplemental draft, Rec 11 and Annex 11: While the GAC is not restricted as to the advice it can offer to ICANN, it is clear that ICANN may not take action that is inconsistent with its Bylaws. The empowered community will have standing to bring an IRP to challenge any board action or inaction that is inconsistent with its bylaws, even if the board acted on GAC advice.

Finn Petersen, GAC - DK: (08:51) the Board decision must be within the bylaw

jorge cancio (GAC Switzerland): (08:52) +1 Finn

Kavouss Araste: (08:52) sTEVE, WHAT YOU SAYING IS MORE THAN OBVIOUS

Brett Schaefer: (08:52) fully agree

Holly J. Gregory (Sidley): (08:52) Steve D, certainly consistent with legal requirements.

jorge cancio (GAC Switzerland): (08:52) Steve I thought that was understood

Pedro Ivo Silva [GAC Brasil]: (08:52) Similarly to the previous point, couldn't we make this more general and thereby not single out the GAC?

Steve DelBianco [GNSO - CSG]: (08:52) Me too, Jorge. Just responding to public comments!

jorge cancio (GAC Switzerland): (08:53) and as Pedro says, it should generally apply to all SO/AC

Jonathan Zuck: (08:53) We need to address comments. that's the exercise. let's not get worked up about it

Steve DelBianco [GNSO - CSG]: (08:53) @Pedro -- this text would not be in the bylaws. It is merely confirming what our intent is for Rec 11

Kavouss Araste: (08:53) HOW THE BOARD COULD ACCEPT SOMETHING WHICH IS INCONSISTENT

Brett Schaefer: (08:54) Steve, why not put it in the bylaws? I suggest adding this concluding sentence onto to proposed amended bylaw text on GAC advice: "As with all Board decisions, those based on Governmental Advisory Committee consensus advice shall be subject to appeal through the Independent Review Process."

Pedro Ivo Silva [GAC Brasil]: (08:54) @Steve: Even in that case, I think we should clarify it applies to all Board decisions

Steve DelBianco [GNSO - CSG]: (08:54) Agree, Chris

Robin Gross [GNSO - NCSG]: (08:54) Agree, Brett.

James Gannon: (08:55) Even Steve will struggle with 5 mins =)

jorge cancio (GAC Switzerland): (08:55) On item nr 1: Maybe the Board could give its input on the comment raised by the IPC (see "key discussion item" 1). That could be helpful.

Julia Wolman GAC Denmark: (08:55) +1 Pedro

Mathieu Weill, ccNSO, co-chair: (08:56) Agree Pedro

Steve DelBianco [GNSO - CSG]: (08:57) Add this to supplemental draft, Rec 11 and Annex 11: This recommendation is intended to limit the conditions under which the ICANN board must enter a try to find a mutually acceptable solution. This recommendation does not create any new obligations for ICANN board to consider and/or vote on GAC advice, relative to the bylaws in effect prior to the IANA transition. This recommendation does not create any new assumption that ICANN is bound to implement any advice that is not rejected by the board, relative to the bylaws in effect prior to the IANA transition.

James Gannon: (08:57) Sorry all, I have to run to another call, good meeting with some progress made, always good!

jorge cancio (GAC Switzerland): (08:57) wow, very lawyerish

jorge cancio (GAC Switzerland): (08:58) Steve, I thought you were a sensible non-lawyer person

jorge cancio (GAC Switzerland): (08:58) ;-)

Julia Wolman GAC Denmark: (08:58) Agree with jorge that is not easy to read

Keith Drazek: (08:58) I support Steve's suggestion as guidance to lawyers.

Steve DelBianco [GNSO - CSG]: (08:58) Jorge -- this is explanation of Rec 11 intent, which would go to our lawyers to draft the actual bylaw.

Steve DelBianco [GNSO - CSG]: (08:58) I don't actually think we need to change Rec 11 Bylaws language

Greg Shatan: (08:59) The lawyers are expected to draft actual Bylaws language based on our entire recommendation.

Brett Schaefer: (08:59) Steve. in geneal, or on this specific issue?

Kavouss Araste: (08:59) good

Chris Disspain: (09:00) there may be a challenge simply saying somethign is 'not intended to be' outside of the bylaw itself - that doesnt prevent a court or IRP from choosing to place their own interpretation on the by law

Steve DelBianco [GNSO - CSG]: (09:00) Brett -- w/r/t this issue.

andrew sullivan: (09:00) alas, must drop for a 10:00. Thanks all

Chris Disspain: (09:00) that said...as guidance...if the lawyers can see a clear drafting path then it may work

Greg Shatan: (09:01) Chris, it's all guidance -- even our attempts at "bylaw language."

Steve DelBianco [GNSO - CSG]: (09:01) we still need to addres the question of whether 2/3 vote is appropriate tradeoff for requiring GAC to use current method of consensus

Chris Disspain: (09:01) true Greg...true

Chris Disspain: (09:01) bye all

Bernard Turcotte Staff Support: (09:01) bye all

Keith Drazek: (09:02) @Steve: Yes, that's an active topic of discussion in the GNSO.

Aarti Bhavana: (09:02) Bye all!

Greg Shatan: (09:02) @Chris, agree that that construction might be worth deleting...

Avri Doria: (09:02) bye, till next time.

Markus Kummer: (09:02) Bye all

David McAuley (RySG): (09:02) Good bye all

nigel hickson: (09:02) Thanks all

Robin Gross [GNSO - NCSG]: (09:02) Thanks all, bye!

Pedro Ivo Silva [GAC Brasil]: (09:02) bye

Pär Brumark (GAC Niue): (09:02) Thx!

Rosemary Fei (Adler & Colvin): (09:02) Good morning, everyone.

Brett Schaefer: (09:02) bye all

Jonathan Zuck: (09:02) Thanks all!

Greg Shatan: (09:02) Goodbye all!

Alan Greenberg: (09:02) Bye all.

