

# CCWG ACCT "Review of Draft Bylaws" Meeting (7 April @ 12:00 UTC )

## Attendees:

**Members:** Alan Greenberg, Athina Fragkouli, Becky Burr, Cheryl Langdon-Orr, Jordan Carter, Jorge Villa, Julia Wolman, Julie Hammer, Leon Sanchez, Lyman Chapin, Mathieu Weill, Pär Brumark, Robin Gross, Roelof Meijer, Samantha Eisner, Sébastien Bachollet, Suzanne Radell, Thomas Rickert (18)

**Participants:** Aarti Bhavana, Avri Doria, Brett Schaefer, Cherine Chalaby, David McAuley, Edward Morris, Erika Mann, Farzahan Badii, Finn Petersen, Gary Hunt, Greg Shatan, Harold Arcos, Jeff Neuman, Jorge Cancio, Kavouss Arasteh, Keith Drazek, Khaled Koubaa, Malcolm Huty, Mary Uduma, Matthew Shears, Megan Richards, Mike Chartier, Milton Mueller, Niels ten Oever, Padmini Baruah, Pedro Silva, Phil Buckingham, Philip Corwin, Rafael Perez Galindo, Rinalia Abdul Rahim, Sabine Meyer, Seun Ojedeji, Simon Jansson, Sivasubramanian Muthusamy, Thomas Schneider (35)

**Legal Counsel:** Edward McNicholas, Holly Gregory, Michael Clark, Rebecca Grapsas, Rosemary Fei, Stephanie Petit, Steven Chiodini (7)

**Observers and Guests:** Amy Stathos, Asha Hemrajani, Dierdre Sidjanski, Elizabeth Andrews, John Jeffrey, Julie Hedlund, Mary Wong, Taylor Bentley

**Staff:** Bernie Turcotte, Berry Cobb, Brenda Brewer, Grace Abuhamd, Karen Mulberry, Marika Konings, Theresa Swinehart, Trang Nguyen, Xavier Calvez, Yuko Green

**Apologies:** Andrew Sullivan, Alberto Soto, Giovanni Seppia, Steve DelBianco

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

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## Transcript

- [Transcript\\_CCWG ACCT\\_7 April.doc](#)
- [Transcript\\_CCWG ACCT\\_7 April.pdf](#)

## Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p5uyu1j9t1y/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-acct-07apr16-en.mp3>

## Agenda

1. Opening Remarks
2. Second reading of question responses agreed on previous call
3. Resolution of remaining questions
4. Next Steps
5. ICANN 56 - Helsinki
6. AOB

## 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.*

### 1. Opening Remarks MW

- Working methods - reminder of agreements from past meetings - the top priority is answering the lawyer's questions for drafting.
- A certification that the Bylaws meet our requirements has been delegated to our legal teams and will be completed.
- Principal when reviewing Bylaws - ensure the language meets our requirements in the supplemental report - no more and no less. We need to avoid going away from the requirements or going beyond them.
- The CCWG has until April 9 to raise issues - the lawyers will then produce a new version.
- We will review our procedures going forward at the end of our call today.

### 2. Second reading of question responses agreed on previous call TR (Approved = will be sent to lawyers as the CCWG response to the question, Agreed = the CCWG still needs to confirm).

- Q1 – Agreed.
- Q2 - Agreed - revisit Monday 11<sup>th</sup>.
- Q3 – Approved with Ed Morris point (see email)
- Q4 - Approved
- Q5 – Approved but for ICANN to confirm details.

- Q6 - need to redraft answer to ensure it is clear that this power of the Board has not been addressed by the CCWG and therefore should not be changed (TR)
- Q7 – Approved.
- Q25 – Agreed.
- Q26 – Approved.
- Q27 – Approved.
- Q28 - Add the requirement for the Board to publish a rationale for calling such a community forum. Approved.
- Q29 - Instructions by co-chairs to lawyers to redraft question 29 to properly map to the CCWG report and not refer to the carve out.
- Q30 - Approved.
- Q31 - Approved.
- Q32 - Approved
- Q33 - This question needs to be reframed for consideration by the CCWG.
- Q34 – Approved.

### 3. Resolution of Additional questions (first readings)

- AQ1 -
- AQ2 -
- AQ3 - Linked to Q29 (?)
- AQ4 -
- AQ5 -
- AQ6 -
- AQ7 -
- AQ8 -

### 4. Next Steps

- Monday April 11<sup>th</sup> 19:00 UTC to continue review
- Tuesday April 12<sup>th</sup> (if needed) 12:00 UTC to complete review

### 5. ICANN 56 - Helsinki

- To be discussed on the April 11<sup>th</sup> call.

### 6. AOB

- None

### 7 Adjourned

## Action Items

## Documents

- [CCWG Response-Bylaws-Questions 6Apr16V2.pdf](#)

## Adobe Chat

Brenda Brewer: (4/7/2016 06:30) Welcome all to CCWG Accountability Review of Draft Bylaws Meeting on 7 April @ 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>

Bernard Turcotte Staff Support: (06:53) hELLO ALL

Bernard Turcotte Staff Support: (06:53) Oops dis not mean to scream - hello all

Mathieu Weill, ccNSO, co-chair: (06:54) Hello everyone

Bernard Turcotte Staff Support: (06:55) Reminder to all to mute if you are not speaking - thank you

Mathieu Weill, ccNSO, co-chair: (06:56) Oups thanks you Bernie

Sabine Meyer (GAC - Germany): (06:57) hello everyone

Aarti Bhavana: (06:57) Hi All

Pär Brumark (GAC Niue): (06:58) Hello World:-)

Rosemary Fei (Adler Colvin): (06:58) Good morning, all.

Cherine Chalaby: (06:58) Hi Everyone

Robin Gross [GNSO - NCSG]: (06:58) Good morning from San Francisco!

Erika Mann: (06:59) Hi, I joined now as well but still can't hear you

Gary Hunt - UK Government: (06:59) Good afternoon from London!

Thomas Rickert, CCWG Co-Chair: (07:00) Hello all!

Kavouss Arasteh: (07:00) Working Method as an agenda item pls

Alan Greenberg: (07:00) I will have to leave the meeting early.

Kavouss Arasteh: (07:01) Mathieu

Kavouss Arasteh: (07:01) My addition to agenda item pls

Erika Mann: (07:01) I'm online

David McAuley (RySG): (07:01) Good morning from Washington

Holly J. Gregory (Sidley): (07:01) greetings to all from Montreal!

Malcolm Hutty: (07:01) Good afternoon all

jorge cancio (GAC Switzerland): (07:01) hi all

Farzaneh Badii: (07:02) hi

Seun Ojedeji: (07:03) hello

Khaled Koubaa: (07:04) Hi everyone

Brenda Brewer: (07:06) Seun Ojedeji is on audio only.

Becky Burr: (07:09) it isn't finished yet Kavouss

Asha Hemrajani: (07:10) Good evening

Edward Morris: (07:11) Good morning Asha

Kavouss Arasteh: (07:12) When do you intend to examine the draft paragraph by paragraph pls?

Mathieu Weill, ccNSO, co-chair: (07:14) Not before we have certification by lawyers Kavouss.

Kavouss Arasteh: (07:14) When do you intend to examine the draft paragraph by paragraph pls

Pär Brumark (GAC Niue): (07:16) Does anyone else have a sound problem (or is it this computer)?

Sabine Meyer (GAC - Germany): (07:16) no sound problem, so...

David McAuley (RySG): (07:16) sound seems fine here

Brenda Brewer: (07:16) Sound is good from my side.

Jordan Carter (.nz, WP1 rapporteur): (07:16) now on Adobe

Pär Brumark (GAC Niue): (07:16) Thx, changing computer..

Phil Buckingham: (07:17) Good morning , apologises that I 'm a little late.

Kavouss Arasteh: (07:18) Pls stop at the eand of each question pls

Bernard Turcotte Staff Support: (07:19) Yes every one has scroll control

Kavouss Arasteh: (07:19) I haved a comment before going to 5 pls

Brett Schaefer: (07:20) I am still puzzled in number 6 why the EC would agree to turn its consent into a rubber stamp? The EC is the designator and should have to affirmatively consent to removal of Directors. I have been trying to think of circumstances wherein a Director's presence could be so disruptive that it would require immediate removal action by the Board that are not covered by the bylaws (e.g. feolony conviction) or would not be supported by the EC.

Brett Schaefer: (07:21) I diagree with the answer on 6.

Milton Mueller: (07:21) How does the EC approve ?

Matthew Shears: (07:21) yes, how is consent determined for 6 and what is its value?

Jordan Carter (.nz, WP1 rapporteur): (07:22) It's automatic. Same as when the EC validates e.g. the ccNSO appointing one of its directors.

Jordan Carter (.nz, WP1 rapporteur): (07:22) so the method is already there elsewhere.

Jordan Carter (.nz, WP1 rapporteur): (07:23) as to why it should apply to this - nowhere in our report did we propose subjecting Board removal of directors as can be done today to a community decision process

Jordan Carter (.nz, WP1 rapporteur): (07:23) we would be changing our report's conclusions if we added a new community power of that sort

Jordan Carter (.nz, WP1 rapporteur): (07:23) that's my 7.6 cents :-)

Philip S Corwin: (07:24) If consent is automatic it seems rather meaningless

Jordan Carter (.nz, WP1 rapporteur): (07:24) it's meant to be meaningless.

Becky Burr: (07:24) isn't this really a technical issue? we never said anything about changing the Board's power, but in order to leave that power intact under designator model, we need something like this

Jordan Carter (.nz, WP1 rapporteur): (07:25) Becky: exactly.

Milton Mueller: (07:25) Well is this just meaningless text, or does the EC actually have to approve? If so, how does it vote?

Jorge Cancio (GAC Switzerland): (07:25) Could we have the exact text of the report on screen or in the chat?

Becky Burr: (07:25) you have scroll control Jorge

Becky Burr: (07:26) question 6

Jordan Carter (.nz, WP1 rapporteur): (07:26) Milton: in a model with a designator, they have to authorise changes to the board. BUT we've not argued for any change to the Board's power. So it just has to be pro forma.

Mathieu Weill, ccNSO, co-chair: (07:26) Jorge, the report does not mention it - does not change current situation

Milton Mueller: (07:26) this is my question: what does pro forma mean?

Jordan Carter (.nz, WP1 rapporteur): (07:26) it means the same as how it "approves" the director appointments of e.g. the ccNSO.

Kavouss Arasteh: (07:27) i HAVE A COMMENT ON 6

Jorge Cancio (GAC Switzerland): (07:27) thanks Mathieu: if that is the case, we should not add issues not covered by the ccwg report, right?

Milton Mueller: (07:27) how many ways can you come up with to not answer my question? ;-)

Avri Doria: (07:27) isn't this the same notion of pro forma as we have when the EC passes on the selection of new Board members by the SOs & AC

Milton Mueller: (07:27) Does it vote or not?

Jordan Carter (.nz, WP1 rapporteur): (07:27) Milton, I don't have the text of the bylaws in front. But no, no vote.

Milton Mueller: (07:27) can it vote No?

Jordan Carter (.nz, WP1 rapporteur): (07:27) no, it can't.

Milton Mueller: (07:27) then it does not really approve

Jordan Carter (.nz, WP1 rapporteur): (07:27) indeed.

Avri Doria: (07:27) I think it is necessary because this is not a power we gave the EC in our proposal.

Jordan Carter (.nz, WP1 rapporteur): (07:28) but since it is the legal entity that HAS to approve such changes, there must be a work around.

Milton Mueller: (07:28) so this is all a meaningless feint

Milton Mueller: (07:28) it is not even a rubber stamp

Jordan Carter (.nz, WP1 rapporteur): (07:28) otherwise, the removal would not be lawful.

Brett Schaefer: (07:28) But we have change the legal status of ICANN by creating a designator.

Jordan Carter (.nz, WP1 rapporteur): (07:28) yes, it is a less-than-rubber-stamp-to-meet-legal-requirements.

Milton Mueller: (07:28) Why not just have the EC Vote?

Edward Morris: (07:28) +1 Milton

Jordan Carter (.nz, WP1 rapporteur): (07:28) Because we have no mandate to do that from the proposal that was approved on 10 March.

Milton Mueller: (07:28) It doesn't meet legal requirements if it is not a vote and not an approval

Philip S Corwin: (07:29) So even if the EC believes that the removal of the Board member is unfair and unjustified, it is powerless to block it?

Milton Mueller: (07:29) We have to fill in gaps that were left

Milton Mueller: (07:29) if the original proposal misspelled a word do we have to leave it that way?

Jordan Carter (.nz, WP1 rapporteur): (07:29) that's not a gap. It's a substantive change that Brett is proposing.

Sabine Meyer (GAC - Germany): (07:29) @Milton I recall the explanation from the lawyers on Tuesday's call differently

Brett Schaefer: (07:29) CORRECT, Phil, short of spoliing the entire Board or reappointing the dismissed Director.

Avri Doria: (07:29) +1 Jordan

jorge cancio (GAC Switzerland): (07:30) +1 Jordan

Milton Mueller: (07:30) If the proposal failed to specify how to do something that needs to be done, the gap needs to be filled in

Avri Doria: (07:30) the pass through, as with elections, is what is filling the gap.

Sabine Meyer (GAC - Germany): (07:31) +1 Avri

Philip S Corwin: (07:31) I am uncomfortable with the concept that a "legal requirement" can -- indeed, must -- be totally meaningless

Milton Mueller: (07:31) What is difficult Thomas? You just have them vote

Robin Gross [GNSO - NCSG]: (07:31) Agree, Phhil.

Kavouss Arasteh: (07:31) aLAN+1

Kavouss Arasteh: (07:32) consent of designator is required

Jordan Carter (.nz, WP1 rapporteur): (07:32) On page 41 of the marked up bylaws, it's this sub-clause of 7.2, on page 42: The EC shall designate each person nominated as a Director by the Nominating Committee, the ASO, the ccNSO, the GNSO and the At-Large Community in accordance with this Section 7.2.

Brett Schaefer: (07:32) Edit -- spilling, not spiloing, and reappointing, not reappointing.

Kavouss Arasteh: (07:32) consent of designator is required

Milton Mueller: (07:32) Kavouss, if you believe consent of the designator is required, you don't agree wqith Alan

Avri Doria: (07:32) to do anything else would be a substantive change of our proposal

Milton Mueller: (07:33) Filling a gap is not a substantive change.

Edward Morris: (07:33) Phil has hit on an important legal requirement.

Milton Mueller: (07:33) It's not like we are opening up a new issue

Kavouss Arasteh: (07:33) NOT ec BUT THE DESIGNATING SO/AC is required

Philip S Corwin: (07:34) It seems to me that creating the EC created certain implicit requirements

Milton Mueller: (07:34) it's not a new community power, it's a legal requirement of the designator model

jorge cancio (GAC Switzerland): (07:34) right Jordan

Brett Schaefer: (07:34) This is a legal requirement, we are discussing how to apply it.

Jordan Carter (.nz, WP1 rapporteur): (07:34) you are indeed trying to open up a new issue, if you're saying the EC should be able to void a Board's removal of a director along the lines it can do today.

Kavouss Arasteh: (07:34) I disagree with those that wish to waive the power from the designating authority on the ground that that has not been discussed.

Jordan Carter (.nz, WP1 rapporteur): (07:35) The EC because of what it is has to validate that Board decision

Milton Mueller: (07:35) the CCWG report did not take a position on that, Jordan

Philip S Corwin: (07:35) Agree with Milton

Brett Schaefer: (07:35) In my mind a rubber stamp is not appropriate to fulfill a legal requirement.

Jordan Carter (.nz, WP1 rapporteur): (07:35) the dispute is about whether it has any restriction or not

Milton Mueller: (07:35) which created a legal problem that needs to be resolved

Jordan Carter (.nz, WP1 rapporteur): (07:35) any discretion, that is.

Robin Gross [GNSO - NCSG]: (07:35) this is a legal requirement we need to fill, irrespective of what our report said.

Kavouss Arasteh: (07:35) It is essential that the consent of the designating SO/AC IS EREQUIRED

Milton Mueller: (07:35) Yes, Jordan, you can't solve this problem by defining board removal as automatically approve by the designator, that raises all kinds of potentially dangerous issues

Sabine Meyer (GAC - Germany): (07:35) p 4

Jordan Carter (.nz, WP1 rapporteur): (07:36) Milton: the report did not take a stance, precisely. It was silent on the question. That means we can't invent something that pretends there was anything other than silence.

Jordan Carter (.nz, WP1 rapporteur): (07:36) Milton: how does it do so? How is it any change from today?

Milton Mueller: (07:36) If the silence was an oversight, we can

Jordan Carter (.nz, WP1 rapporteur): (07:36) but it wasn't an oversight. It's perfectly reasonable not to change that situation.

Kavouss Arasteh: (07:36) pARAGRAPH 98 APPLIOES

Milton Mueller: (07:36) You do not deny that the "silence" created a legal inconsistency?

Jordan Carter (.nz, WP1 rapporteur): (07:36) there isn't a legal inconsistency.

Robin Gross [GNSO - NCSG]: (07:37) apparently CCWG doesn't need to follow the law now. only reports.

Avri Doria: (07:37) Question if this is a power that needs to be fulfilled if it the case that the EC also needs to go through a voting approval of an election of a Board member by the SOs or ALAC?

Sabine Meyer (GAC - Germany): (07:37) finding a remedy to a legal inconsistency also includes the automatic consent option. which seems to be the only one which does not deviate from the provisions of the report. correct?

Jordan Carter (.nz, WP1 rapporteur): (07:37) The bylaws can legally either a) grant the EC discretion, or b) apply the same automatic pass-through applied to appointments in the first place.

jorge cancio (GAC Switzerland): (07:37) +1 Sabine

Jordan Carter (.nz, WP1 rapporteur): (07:37) the lawyers proposed a); the proposed response to question6 proposes b).

Avri Doria: (07:38) and could the EC refuse to allow for a Board member elected by an SO or ALAC?

Jordan Carter (.nz, WP1 rapporteur): (07:38) No, Avri - it has no power to do so.

Milton Mueller: (07:38) The SOs and ACs are the designators Avri

Jordan Carter (.nz, WP1 rapporteur): (07:38) Milton: de facto. De jure, the EC is.

Milton Mueller: (07:38) there is no legal inconsistency there

Avri Doria: (07:38) btw: i would also consider that a substantive change of our proposal which took the statutory rights of a designator and constrained them in the bylaws.

Milton Mueller: (07:38) the proposal is very clear that the EC does what the ACs and SOs tell them to do

Milton Mueller: (07:39) stop reaching for bad analogies

Jordan Carter (.nz, WP1 rapporteur): (07:39) yes Milton. And that's what we are saying it should do with the Board on removal.

Avri Doria: (07:39) I am not reaching, it is a natural analogy

Jordan Carter (.nz, WP1 rapporteur): (07:39) The new bylaws are very clear in s 7.2: (a) As of the effective date of these Amended and Restated Bylaws, the EC shall be the sole designator of ICANN and shall designate, within the meaning of Section 5220 of the CCC, all Directors except for the President ex officio.

Milton Mueller: (07:40) And how is the EC composed, my friend?

Milton Mueller: (07:40) what is it composed of?

Kavouss Arasteh: (07:42) jUSTIFICATION FOR THE REQUEST

Brett Schaefer: (07:42) We are discussing 2 and 25 at the end?

Kavouss Arasteh: (07:43) aDD THE FOLLOWING

Jordan Carter (.nz, WP1 rapporteur): (07:43) Milton: the EC consists of ICANN SAs and ACs, some of whom designate, some of whom don't. Not sure where that takes you

Kavouss Arasteh: (07:44) tHE REQUEST FOR THE SECOND COMMUNITY FORUM SHOULD PROVIDE REASONS AND JUSTIFICATION AND ON SPECIAL CIRCUMSTANCES

Matthew Shears: (07:44) I thought the community forum came as a result of a petition

Mathieu Weill, ccNSO, co-chair: (07:45) In the approval, there is no petition.

Mathieu Weill, ccNSO, co-chair: (07:45) \o/

Kavouss Arasteh: (07:46) tHE ANSWER IS no ~\$

Sabine Meyer (GAC - Germany): (07:47) has my email on that point already made it through?

Mathieu Weill, ccNSO, co-chair: (07:47) Yes Sabine

Holly J. Gregory (Sidley): (07:48) Brett, that was our thinking in drafting.

Robin Gross [GNSO - NCSG]: (07:48) I agree with Brett.

Kavouss Arasteh: (07:48) NO IT SHOULD NOT AT ALL

Holly J. Gregory (Sidley): (07:48) Brett, it is directly on target

Pedro Silva - [GAC Brasil]: (07:48) There is nothing in our report about this restriction, Brett. At least I can't recall.

Sabine Meyer (GAC - Germany): (07:48) given the bylaw section quoted earlier by Jordan I would think all directors are in fact appointed by the EC. not sure how that meshes with the NomCom idea.

Kavouss Arasteh: (07:49) tHERE ARE THREE OTHERS WHO AUTOMATICALLY AGREE TO ANY EXTENTION OF CARVE OUT

Kavouss Arasteh: (07:49) tHIS IS NOT CORRECT

Robin Gross [GNSO - NCSG]: (07:49) This is the essence of the "GAC carve out" - its intent

Kavouss Arasteh: (07:49) That does not apply

Jordan Carter (.nz, WP1 rapporteur): (07:49) Sabine: they're all appointed by the EC on the direction of the various appointing bodies. They have to be, because the Designator is the sole authority to appoint a director.

Samantha Eisner: (07:51) From the ICANN drafting side, we were not clear on this point based upon the rationale stated earlier by Thomas/Tijani, and were unclear if there were to be situations where the GAC carve-out were expected to apply here

jorge cancio (GAC Switzerland): (07:51) How would it be determined that a GAC advice is the cause?

Sabine Meyer (GAC - Germany): (07:51) I'm a bit lost here

Sabine Meyer (GAC - Germany): (07:51) Also while looking at the response given in the document

Matthew Shears: (07:51) would it be possible to add the proposal para references for these questions so that we can easily find the text in question

Sabine Meyer (GAC - Germany): (07:52) Which I understood as the carve out shouldnt apply because any removal is "without cause" in the technical sense

Becky Burr: (07:52) I thought the GAC was in fact permitted to participate in the NomCom?

Pedro Silva - [GAC Brasil]: (07:52) Exactly, Alan

Brett Schaefer: (07:52) Alan, it is obviously unclear how we decided to apply it or the lawyers would not have raised the question.

Robin Gross [GNSO - NCSG]: (07:52) there is a distinction between voting board members and non-voting board members.

Samantha Eisner: (07:53) @Becky, there is a GAC liaison to NomCom allowed for in the Bylaws

jorge cancio (GAC Switzerland): (07:54) +1 Alan

Rafael Perez Galindo (GAC SPAIN): (07:54) I think Alan is right

Suzanne Radell (US GAC): (07:54) Becky, the GAC is permitted to participate but has not done so since 2008 due to the confidentiality requirements of the NomCom (e.g. there is no way for a GAC member to consult with the GAC membership, or even its own government)

Alan Greenberg: (07:55) @Brett, the question asked is do we deem the removal a direct result of GAC advice. There question has nothing to do with the wider removal of a NomCom director.

Brett Schaefer: (07:55) Individual appointing SO/ACs have authority over removing their directors because they appoint them. The NOMCOM voting members should have similar exclusive authority to remove their Directors.

jorge cancio (GAC Switzerland): (07:55) We should not be rewriting the report

Kavouss Arasteh: (07:56) This task was not given to the drafter

Kavouss Arasteh: (07:56) The removal has nothing to do with carev-out

Brett Schaefer: (07:56) Jorge, it is not rewriting. It is applying an existing provision consistently.

Philip S Corwin: (07:56) @Brett--in many cases the decision to remove the NomCom Director may occur when the composition of the NomCom has changed and the appointing individuals are no longer there

Kavouss Arasteh: (07:56) Carve-out is totally IRRELEVANT

jorge cancio (GAC Switzerland): (07:57) the only guidance is what is in the report. If there is no basis there we should not include new issues here

Becky Burr: (07:57) I think we are confusing the carve out issue - the question here is that the GAC isn't involved in appointing members of the Board so what's the authority to be involved in removal

Brett Schaefer: (07:58) @Becky, correct.

Sabine Meyer (GAC - Germany): (07:58) Well, the carve out is brought up in the response to q. 29.

Sabine Meyer (GAC - Germany): (07:58) maybe this does need to be refocused

Becky Burr: (07:58) @Sabine, we may have been confused

Sabine Meyer (GAC - Germany): (07:58) I'm perennially confused so I can hardly ever tell with others ;)

Robin Gross [GNSO - NCSG]: (07:59) Agree, Becky.

Alan Greenberg: (07:59) If the ALAC initiates a removal of a director because they wear red pants, how does that invoke the GAC Careout, and without invoking it, the EC powers apply as written, and the GAC participation in the EC should not be altered.

Becky Burr: (07:59) I think we are in radical agreement folks

Holly J. Gregory (Sidley): (07:59) Agree, Becky. That is how we read it.

Becky Burr: (08:00) ok, so we are just fighting about the term carve out, which doesn't apply here

Samantha Eisner: (08:00) @Becky, as I understand the report, the GAC has a role in director removal. The only question that was raised, as we discussed in the carve-out discussions, is what happens when the Board removal is based on acceptance of GAC advice

Greg Shatan: (08:00) I've never been on the NomCom, so I don't know the role the GAC liaison plays. Is the GAC liaison not involved at all in appointing members of the Board?

Brett Schaefer: (08:00) This is our opportunity to vet the changes for consistency, we should do it.

Suzanne Radell (US GAC): (08:01) Greg, there hasn't been a GAC liaison since 2008.

Roelof Meijer (SIDN, ccNSO): (08:01) I am about to give up on this call...

Rosemary Fei (Adler Colvin): (08:01) I think this may be an example where, in the rush to get the report out, ICANN Legal and CCWG counsel didn't necessarily understand each other. We should clarify the question.

Becky Burr: (08:01) yes, agree Rosemary

Mathieu Weill, ccNSO, co-chair: (08:01) Thanks Rosemary.

Rafael Perez Galindo (GAC SPAIN): (08:02) Thanks Rosemary. This needs clarification without re-writing the report nor making up new ideas

Greg Shatan: (08:02) The response does not take into account that the removal of Board members by the EC will be reactive to some event, and that will need to be explained in the decision-making process of the community/EC.

Kavouss Arasteh: (08:06) AHA

Edward Morris: (08:07) I share Brett's confusion.

Robin Gross [GNSO - NCSG]: (08:07) I'm confused by "their voice shall be heard in both processes." Aren't we trying to stop double-dipping?

Kavouss Arasteh: (08:07) ahA

Kavouss Arasteh: (08:08) no CARVE-OUT DOES NOT APPLY

Matthew Shears: (08:09) could someone provide a text reference for this question

Becky Burr: (08:09) happy to clarify

Kavouss Arasteh: (08:09) IAN + 1\$

Kavouss Arasteh: (08:10) Alan+1

Kavouss Arasteh: (08:10) It is not surprising to hear that?

Brett Schaefer: (08:11) pp 193-207 in marke draft -- Articles 4-5 in Appendix D

Matthew Shears: (08:11) + 1 Becky

Greg Shatan: (08:11) I agree with Becky and Brett.

Brett Schaefer: (08:12) Sorry, Article 4 in Appendix D, same pages

Matthew Shears: (08:12) thanks Brett

jorge cancio (GAC Switzerland): (08:12) Again: the report is the only guiding text. If there is no basis there, we cannot introduce new issues here

Robin Gross [GNSO - NCSG]: (08:12) Also agree with Brett, Becky, Greg, and Matt.

Becky Burr: (08:12) And Kavouss, there is no extension. If it applies, as written in the report, the GAC should not be a decisional participant - but ONLY where the carve out applies by its terms

Becky Burr: (08:13) correct Thomas

Alan Greenberg: (08:14) If there are multiple decisions that the EC must make past the initial decision to initiate a IRP (for instance on whether to accept the results of mediation), then the carveout should apply to that secondary decision as well.

Becky Burr: (08:14) that's right Alan, and there is a post-mediation decision

Pedro Silva - [GAC Brasil]: (08:15) We clearly need more clarification on this issue. Which are the steps in which decisions of the EC are required and therefore the carve-out would apply

Philip S Corwin: (08:18) Does the phrase "contained in the existing form agreements" mean exact same language, or is there any room for slight deviations?

Robin Gross [GNSO - NCSG]: (08:20) how will those terms that exist in today's contracts be challenged for out of mission?

Kavouss Arasteh: (08:21) the proposed text does not say that we need to review the proposed text

Greg Shatan: (08:22) Robin, the point of grandfathering is that the terms that exist in today's contracts can't be challenged as being out of mission.

Kavouss Arasteh: (08:22) this is not identical to what is written

Kavouss Arasteh: (08:23) We hear entirely different things

Kavouss Arasteh: (08:23) Pls review the proposed text

Matthew Shears: (08:23) then the new form would or should reflect the mission as it is being narrowed through these bylaw changes?

Jordan Carter (.nz, WP1 rapporteur): (08:23) one would hope so

Mathieu Weill, ccNSO, co-chair: (08:24) Yes Matthew

Kavouss Arasteh: (08:24) the grandfathering will prevail during the life time of the agreement .if it is renewed the grandfathering may be renewed for another term

Kavouss Arasteh: (08:24) Regards

Becky Burr: (08:25) Yes Matthew - and the missing element is that the registries don't have the option to move to the new, all-within-mission registry agreement

Kavouss Arasteh: (08:25) Robin

Becky Burr: (08:25) i can offer a quick answer

Kavouss Arasteh: (08:26) the answer is yes provided that the grandfathering conditions are not renewed

Robin Gross [GNSO - NCSG]: (08:27) thanks, Becky!

Becky Burr: (08:27) apologies, I now have to leave the meeting.

Edward Morris: (08:27) Thanks for the explanation Becky

Kavouss Arasteh: (08:27) plsw

Kavouss Arasteh: (08:27) pls allow me to talk

Jordan Carter (.nz, WP1 rapporteur): (08:27) off adobe now, bye

Alan Greenberg: (08:29) I have to leave now. Will listen to remainder of recording later today.

mike chartier: (08:32) RE 25, I think there was substantial support for Malcolm's "substantial"

Matthew Shears: (08:33) so there would be no qualifier on top of "based on"?

Robin Gross [GNSO - NCSG]: (08:34) Agree with Brett. That sounds like a good approach.

Kavouss Arasteh: (08:35) aha

Brett Schaefer: (08:35) Here it is, based on Article 25.3: The Board shall not combine a decision based on or consistent with consensus GAC advice with any other decision. The Board shall indicate in the applicable Board Notice whether such a decision is based on or is consistent with consensus GAC advice.

Roelof Meijer (SIDN, ccNSO): (08:36) @ co-chairs: please manage this call

Brett Schaefer: (08:36) It is not an extension of the carve-out. It would help clarify when the carve-out would apply.

jorge cancio (GAC Switzerland): (08:36) I feel Brett's proposal does not reflect the normal situation where GAC Advice is just a piece in the pool of elements considered by the Board in making a decision

Roelof Meijer (SIDN, ccNSO): (08:36) @kavouss: you have made your point. Many times already. Please give us room to proceed

Robin Gross [GNSO - NCSG]: (08:37) but jorge, the board must "treat" GAC advice deferentially. That is a big difference.

Kavouss Arasteh: (08:37) I disagree with those suggestions

jorge cancio (GAC Switzerland): (08:38) Robin, every SO/AC is treated specially - but we all (in a ms fashion) make inputs to processes - and the Board finally takes a decision considering all elements at hand

Kavouss Arasteh: (08:39) soory I do not agree with that

Pedro Silva - [GAC Brasil]: (08:39) I am not convinced with Brett's proposal either. If the Board decision is consistent with GAC consensus advice but takes other inpots into account, then clearly the carve-out should not apply

Pedro Silva - [GAC Brasil]: (08:40) inputs\*

jorge cancio (GAC Switzerland): (08:40) It is not simple, because multiple constituencies may provide similar advice - the GAC being one of them - why should then this rule apply?

Robin Gross [GNSO - NCSG]: (08:40) The GNSO's raison d'être is to develop gtd policy. So it is not "just another input" to the board's creation of policy. The policy is created by the GNSO.

Greg Shatan: (08:40) Pedro, I disagree that a "purity test" needs to be applied to Board decisions consistent with GAC Advice.

Kavouss Arasteh: (08:40) I disagree with inclusion of any provision in the bylaws other than that contained in Rec. 1d

Kavouss Arasteh: (08:40) Recommendation 1

Brett Schaefer: (08:41) @Pedro, if the decision is supporte dby otehr SO/ACs, an EC challange would not succeed.

Kavouss Arasteh: (08:41) mATHIEU WE HAVE NOT AGREED AT ALL

Kavouss Arasteh: (08:41) WE AGREE TO DISAGREE WITH EACH OTHERS

jorge cancio (GAC Switzerland): (08:41) We are talking about ICANN as a whole, where gnso is an important constituency, but there are other equally important...

Robin Gross [GNSO - NCSG]: (08:42) That was just an example. The same applies for ccnsso, etc.

Brett Schaefer: (08:42) Perfectly willing to see if edits to the text might find consensus.

jorge cancio (GAC Switzerland): (08:42) or ASO, or ALAC or the GAC...

Greg Shatan: (08:42) GNSO is not a constituency, it is a policy developing body.

Kavouss Arasteh: (08:42) This is an attempt to have another net gain for private sector as mentioned in the rtestimonyt

Robin Gross [GNSO - NCSG]: (08:42) so the GNSO can develop GAC policy?

Kavouss Arasteh: (08:44) why not some people propose GAC cARVE- OUT HERE AS USUALé

Malcolm Hutty: (08:45) I support that answer to the first additional question

Malcolm Hutty: (08:46) And the second :)

Roelof Meijer (SIDN, ccNSO): (08:46) Support 1, doubts about 2

jorge cancio (GAC Switzerland): (08:47) Indeed, the drafting should be clearer

Sabine Meyer (GAC - Germany): (08:47) maybe also seen in conjunction with q. 29

jorge cancio (GAC Switzerland): (08:48) +1 Sabine

Pär Brumark (GAC Niue): (08:48) +1 Sabine

jorge cancio (GAC Switzerland): (08:50) +1 Niels

Avri Doria: (08:50) +1

Brett Schaefer: (08:50) I am confused, the text says it becomes operational (moved to Article 1.2)after WS2 and implimentation. Why prematurely insert it into the operational text?

Holly J. Gregory (Sidley): (08:52) Easy to move -- we were simply trying to keep the provisions together for ease of understandingjg

Greg Shatan: (08:53) Brett, it would need to be clear in 1.2 that it is not operational until 27.3 is satisfied.

Niels ten Oever: (08:53) Disagree

jorge cancio (GAC Switzerland): (08:53) disagree as well

Niels ten Oever: (08:53) with Brett that is

Niels ten Oever: (08:54) Would also not be in line with CCWG report

Sabine Meyer (GAC - Germany): (08:54) exactly

Brett Schaefer: (08:55) Yes, but that would insert a core value that is not the same as the others at the moment. What is the harm in following the process outlined?

jorge cancio (GAC Switzerland): (08:55) @Mathieu: some questions are directed to the lawyers (e.g. question 8 at the very end) - they could provide us with clarifications

Niels ten Oever: (08:55) not following report, this is not the time to change Brett

Brett Schaefer: (08:56) It entirely consistent with the report, Neils.

Brett Schaefer: (08:56) In fact, it exactly outlines the agreed process in WS2.

jorge cancio (GAC Switzerland): (08:57) We should not reopen settled issues - and the architecture of the HR commitment was one of the settled topics (i.e. commitment in normal bylaws text; plus transitional part in transitional section etc)

Niels ten Oever: (08:57) +1

Sabine Meyer (GAC - Germany): (08:57) the agreed process starts in WS 1 to my recollection.

Sabine Meyer (GAC - Germany): (08:57) \*recollection

Greg Shatan: (08:58) No extension of the GAC carveout has been proposed. Thus, no action need be taken to "remove" anything.

Brett Schaefer: (08:58) WS1 only says it will be clarified in WS2. The process says the commitment would be non-binding until the FOI-HR is developed and the final product is implemented.

Kavouss Arasteh: (08:58) DISAGREED DEAR COLLEAGUES

Keith Drazek: (08:59) I support Monday/Tuesday calls.

Gary Hunt - UK Government: (09:00) I am afraid a Saturday call would not be attended very well...

jorge cancio (GAC Switzerland): (09:00) Sunday in Helsinki - sounds like a plan...

Kavouss Arasteh: (09:01) Any extension of application of GAC consensus advice to areas other than those limited circumstances is strongly objected.

Sabine Meyer (GAC - Germany): (09:01) it would also be in line

Robin Gross [GNSO - NCSG]: (09:01) what does "soon" mean? where is the decision being made?

Sabine Meyer (GAC - Germany): (09:01) sorry for the random enter

Sabine Meyer (GAC - Germany): (09:01) flights are probably not getting cheaper if we keep waiting re: F2F

Robin Gross [GNSO - NCSG]: (09:02) staff is making the decision as to whether we meet in Helsinki?

Kavouss Arasteh: (09:02) All relevant drafts to GAC cARVE-OUT must be taken out AND REPLACED BY A SIMPLE CUT AND PASTE OF THE PARAGRAPH AS OBTAINED IN RECOMMENDATION

Holly J. Gregory (Sidley): (09:02) The lawyers need to check calendars if you want us on the call

Mary Wong: (09:03) @Robin, no it will not be a staff decision.

Sabine Meyer (GAC - Germany): (09:03) but then who decides? IIRC an F2F is foreseen in the WS1 report.

Robin Gross [GNSO - NCSG]: (09:03) thanks, Mary. Will it be the board then? Or the CCWG?

Mary Wong: (09:04) I believe there is a small group of SOAC reps working with the Board and senior mgt to ensure that Helsinki as the first Meeting B works for all.

Kavouss Arasteh: (09:04) carve-out was introduced at the very last minute and referred to a very limited application point as contained in Recommendation 1

Kavouss Arasteh: (09:04) That is all

Kavouss Arasteh: (09:04) Mathieu

Bernard Turcotte Staff Support: (09:05) by all

Gary Hunt - UK Government: (09:05) Good afternoon from London!

Pär Brumark (GAC Niue): (09:05) Thx all! Bye!

jorge cancio (GAC Switzerland): (09:05) thanks and bye

Kavouss Arasteh: (09:05) Pls do not forget the problem of Carve OUT

Avri Doria: (09:05) thanks, bye

Sabine Meyer (GAC - Germany): (09:05) thanks everyone

David McAuley (RySG): (09:05) good bye all

Robin Gross [GNSO - NCSG]: (09:05) thanks, all, bye!

Cheryl Langdon-Orr (CLO): (09:05) thanks all Bye for now

SivasubramanianM: (09:05) bye