Transcript Special GNSO Council Session
29 February 2016 at 21:00 UTC

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http://audio.icann.org/gnso/gnso-council-29feb16-en.mp3

the Adobe chat transcript can be viewed here:

http://gnso.icann.org/en/meetings/transcript-chat-council-29feb16-en.pdf

 both are posted on page:

http://gnso.icann.org/en/group-activities/calendar#feb

List of attendees:
NCA – Non Voting – Carlos Raúl Gutierrez
Contracted Parties House
Registrar Stakeholder Group: James Bladel, Volker Greimann, Jennifer Standiford
gTLD Registries Stakeholder Group: Donna Austin, Keith Drazek, Rubens Kühl
Nominating Committee Appointee (NCA): Hsu Phen Valerie Tan
Non-Contracted Parties House
Commercial Stakeholder Group (CSG);Philip Corwin, Susan Kawaguchi, Wolf-Ulrich Knoben, Tony Harris, Paul McGrady, Heather Forrest
Non-Commercial Stakeholder Group (NCSG): Amr Elsadr, Stephanie Perrin – joined late, David Cake, Stefania Milan, Edward Morris – absent apologies, Marilia Maciel
Nominating Committee Appointee (NCA): Julf (Johan) Helsingius

GNSO Council Liaisons/Observers:
Olivier Crèpin LeBlond– ALAC Liaison
Patrick Myles - ccNSO Observer - absent, apologies
Mason Cole – GNSO liaison to the GAC

ICANN Staff
David Olive - VP Policy Development
Marika Konings - Senior Policy Director
Rob Hoggarth - Senior Policy Director
Mary Wong – Senior Policy Director
Julie Hedlund – Policy Director
Steve Chan - Sr. Policy Manager
Berry Cobb – Policy consultant
Lars Hoffmann – Policy Analyst
David Tait – Policy Analyst
Glen de Saint Géry - GNSO Secretariat
Nathalie Peregrine- Secretariat Services Coordinator, GNSO
Mike Brennan - End-User Support

Guests:
Avri Doria, Becky Burr, Bruce Tonkin, Bret Schaeffer, Steve Delbianco, Farzaneh Badii, Greg Shattan

James Gannon, Jeff Neuman , Jordan Carter, Jonathan Zuck, Olivier Muron, Matthew Shears, Malcolm

Hutty, Milton Mueller, Robin Gross, Thomas Rickert,

Glen de Saint Géry: Jennifer Standiford? Volker Greimann.

Volker Greimann: Present.

Glen de Saint Géry: Valerie Tan.

Valerie Tan: I'm here, Glen. Thank you.

Glen de Saint Géry: Phil Corwin.

((Crosstalk))

Glen de Saint Géry: Susan Kawaguchi.

Phil Corwin: Phil Corwin just joined.

Glen de Saint Géry: Thank you. And Susan Kawaguchi? Not on yet. Paul McGrady. Not on yet. Heather Forrest.

Heather Forrest: Present, Glen. Thank you.

Glen de Saint Géry: Thank you. Tony Harris.

Tony Harris: Present.

Glen de Saint Géry: Wolf-Ulrich Knoben.

Wolf-Ulrich Knoben: Here.

Glen de Saint Géry: Marilia Maciel. Not on the call yet. Amr Elsadr.

Amr Elsadr: Present.

Glen de Saint Géry: David Cake. I think that's probably David. Ed Morris. Ed Morris is absent. Stefania Milan. Stefania? Not on the call yet. Stephanie Perrin will be half an hour late. Julf Helsingius?

Johan Helsingius: Here.

Glen de Saint Géry: Carlos Gutierrez?

Carlos Gutierrez: Here, Glen. Thank you.

Glen de Saint Géry: Thank you. Olivier Crépin-LeBlond.

Olivier Crépin-LeBlond: Present.

Glen de Saint Géry: Mason Cole.

Mason Cole: Present.

Glen de Saint Géry: Thank you. And for staff we have David Olive, Mary Wong, Julie Hedlund, Marika Konings, David Tait, Steve Chen, Lars Hoffman, Nathalie Peregrine, and myself, Glen de Saint Géry. And would you like me to mention the guest that we have on the call, James, or will we just note those in the minutes?

James Bladel: Thanks, Glen. I think that that we have a number of guests and there are more arriving by the moment so we'll just acknowledge them in the minutes and also note that several councilors indicated in the chat that they couldn't be heard and are going to be dialing in or reconnecting their audio.

Glen de Saint Géry: Thank you very much, James.

James Bladel: Including Donna and Stefania. So thank you, Glen. And thank you, everyone, for making some time to discuss - for this special session to discuss the CCWG supplemental report before we all start to make our way to ICANN 55 in Marrakesh.

                    As part of our normal procedures does anyone have any updates to their statements of interest? If so please raise your hand. And seeing none we'll just ask if everyone has had a chance to review the agenda that was circulated on the Council list and is posted in the Adobe Connect screen now. And really the agenda is just one main bullet item which is to discuss the purpose of the meeting and kick off a discussion of the supplemental report of the CCWG.

As we discussed during our last Council call, this will not be a vote to approve or reject the CWG recommendations, this is more of an opportunity to raise those concerns that have been discussed within the various stakeholder groups and constituencies to indicate whether or not the concerns that were expressed and the GNSO comment have been addressed or mitigated by this latest supplemental report and also to provide just general discussion and updates for the work that's occurring at the stakeholder group level.

So with that, I think we can probably just tee this up. And again I'm hoping that this is, for the most part, an informal and free flowing conversation. But, you know, if there needs to be additional structure or something please let me know if you feel like we've gone into a free for all.

But first before we kick off the discussions I think if we could ask the GNSO co-chair of the CCWG, which is Thomas Rickert, who, Glen, I believe is on the call if that's correct or did I miss Thomas? I do see him there. If we could ask Thomas to just kind of tee up the conversation on CCWG supplemental and specifically focusing on those changes that were adopted by the CCWG between the third draft report and the - I guess we'll call it the final supplemental report or the draft final report.

And then Thomas can address questions, we can also expect we can hear from some of the GNSO participants on the CCWG as well as those councilors and participants and members that have been working within the stakeholder groups to review these recommendations. But if possible I'd like to start with Thomas and turn the floor over to him and have him walk us through some of the changes.

Thomas Rickert: Thanks so much, James. And welcome to all of you. What you see coming up in the remote participation room is a small slide deck we prepared. And it was really a tough choice to pick those items that are of interest for Council because, you know, there's so much great stuff in our report that, you know, you best go through it and read it line by line because it's just so much fun.

I'm not sure whether I have the scroll control or whether all of you do have scroll control. But the way - I think you all should have scroll control. The way I would like to

go about this is give you a rough overview of what we have trying to highlight the changes from the third draft report to the final report or supplemental report.

And I would suggest that councilors ask questions if they need more detail because certainly I can't go through each and every detail that we've been working on through the last couple of weeks.

I am in the luxurious position that there are a lot of folks on this call who know a lot about details of the report. We have rapporteurs with us today. Jordan Carter from the ccNSO has accepted my invitation to join, so did Becky, Steve DelBianco is on the call as well as other participants and members of our group. So I would call on them to offer more detail if we really go into the weeds of what our proposal is about.

Just remember, we did the proposal, it's now final report. It has a core section of 55 pages, 15 detailed annexes and 11 appendixes. So there's an awful lot of information. And for those who have reminded us of the need to be inclusive you find them all translated into the languages that you read on the screen in front of you so that's - I think unprecedented in ICANN's policy making so far.

So the first big thing that we did, and that's also something where we had some tweaks, is the establishment of the empowered community. And as you know, we've chosen the sole designator model as the legal vehicle for the ICANN community to be able to ultimately enforce its powers if need be. And we have the empowered community composed of SOs and ACs which are - which can be decisional participants.

Let me rest with the term for a second because it may become relevant for the discussion that we're going to have. As you know, we have seven groups in the ICANN community at the moment. And currently two out of these seven groups, mainly SSAC and RSAC, have informed us that they will not join the empowered community as a decisional participant, i.e. they are removed from the scheme when we come to establishing whether there is or there is not consensus on enforcing a community power or an exercising a community power.

So that leaves us with five eligible decisional participants. The seven minus the two, SSAC and RSAC. And these are the ones that we've reflected in our report as being

decisional participants. So GNSO, ccNSO, ALAC, ASO, and the GAC are decisional participants according to our report.

And rules on how this empowered community is institutionalized are in ICANN's bylaws. So I think that's the first important takeaway because there has been some discussion around this. These five groups, unless we get a decision from them suggesting otherwise, are in the - or will be reflected in the bylaws as decisional participants. That does not mean that they are forced to join each and every decision that is being made but they are eligible to joining the decision making scheme.

A word on inspection rights. There has been some discussion between the third report and the final report about inspection rights. There has been some comment from various parties about the scope of inspection rights and we have settled this by actually making a few tweaks so basically what we have in there is now inspection rights to inspect the accounting books and records of ICANN.

And there was some confusion about the remit of the DIDP, which we're going to review in Work Stream 2, and inspection rights. And we clarified the difference of the two and basically what you have now is what we had in our original thinking, i.e. that would be inspection rights as a member would have.

We also clarified that such inspection rights can be triggered on the wish of one decisional participant. And we have gladly accepted a proposal that was made by the ICANN board with its comments that there would be additional investigation right, the right to audit, in case three of the decisional participants of the empowered community wish to do that. So that was not there before.

And because there was a concern that these rights, these inspection rights, could be used in an abusive fashion, we have agreed that there is a direction to the drafters of the implementation language that abusive claims should be avoided or prevented.

Now what you see on this slide are the seven community powers that you already know, which are related to the budget - and when it comes to the budget we have made a few tweaks that I would like to highlight and that is that the budget rejection for the post-transition IANA budget has been significantly updated. We've worked on

the caretaker budget so that has been responded. Those are the two major changes on the budget community power.

Then we have the rejection to changes to ICANN's standard bylaws which, if memory doesn't fail me, remained unchanged. Then we have the power to approve changes to fundamental bylaws, and those who have not followed the discussion thoroughly please note the change which has also been visualized here that for changes of standard bylaws the community has the authority to veto such change, which is why you see the red checkmark in the upper right box.

While for changes to fundamental bylaws there is prior approval required which is visualized by the green checkmark. And when it comes to approval of fundamental bylaws we've now - we've now clarified that the power to approve changes to fundamental bylaws and/or articles of incorporation and/or to approve ICANN's sale or other disposition of all substantial ICANN assets should be in the fundamental bylaws. So that's been a tweak to that community power.

Then we have the community power to remove individual directors. And with respect to that community power there was the concern that those in the community that have or that raised their voices to speak out publicly basically against a director could run the risk of being used for defamation or otherwise by the director in question. And there has been the request for both the directors signing a waiver prior to taking office and for ICANN to indemnify those individuals in the communities - in the community that do speak.

And we've come up with compromise language that would grant indemnification including advance payments to be made to the community member in question that is legally challenged by the director whose dismissal is being discussed by the community. So that's sort of the significant change on that point.

Then with respect to recalling the entire board, I think we did not have any change on that community power. We have the community independent review process and with respect to that, we have the power as previously stated for the community to initiate a binding IRP. And panel decisions are enforceable in any courts recognizing international arbitration results. And now we've also included the possibility for the empowered community to use the IFR, the request for reconsideration process.

Previously we've only discussed the community IRP so we've broadened the possibility to seek remedies for the empowered community.

Then we have the EEE approach, the engage, escalate, enforce approach. You will remember that we have institutionalized or made mandatory an engagement process in order to limit the risk of friction between the board and the community. So the collaboration - the exchange of positions and thoughts between the community and the board that is now done on a voluntary basis will henceforth be mandatory.

And there have been some concerns with this escalation path that takes place. So it was criticized by some commenters as too complicated. And at the same time it has been criticized for not giving enough time to the community powers to really consider the issues in question. So what we have done is we've extended the time for certain escalation steps.

And to give the empowered community or the parts of the empowered community sufficient time to internally discuss the community power and at the same time we've dropped the idea of a community call that was previously foreseen to allow for an informal exchange of thoughts to discuss the community power. So we've basically removed that.

But at the same time we've made it mandatory for the petitioning party to reach out to other SOs and ACs to socialize relevant information through the - throughout the whole community before a community forum is held. So we've given more time for the individual steps but we've removed one step and replaced it by this requirement to socialize the information in question so that everyone can come to the community forum well informed. So let's then - I guess that's it for the EEE approach.

Let's now move to the thresholds. We see the thresholds for the different community powers here. There has been some debate with respect to what the threshold should be and what the impact of what we call the GAC carveout on the thresholds would be. So let me maybe use this opportunity to introduce this idea of a carveout.

You will have seen throughout the debate that there has been criticism that the GAC, which still has the authority to direct its advice at the ICANN board, can still participate in exercising community powers as a decisional participant. That was

called double-dipping in the trade and therefore the group has come up with a compromise whereby the GAC if a community power it is exercised to tackle a board decision that was based on GAC advice.

In that instance the GAC would not be an eligible participant in exercising the community power, i.e. casting its decision whether to support or object to exercising the community power. So that is a change that was foreseen to avoid an increase of the role of the GAC. And in those scenarios we would see a reduction of the eligible decisional participants in the community power.

And there was a discussion whether that would impact and to what extent that would impact the decision thresholds. And we've then come up with a combination of decision or of the escalation plus an IRP. So basically if in case of a board removal the community wants to dismiss the board then an independent review process should be triggered where it is applicable.

And in cases where the community wins the IRP, i.e. where the panel establishes that the board decision is violating the ICANN bylaws, then a threshold of three SOs or ACs being in favor of the board removal would suffice. But where the IRP confirms that the board has acted within the boundaries of the bylaws the existing threshold would still be applicable. We can go into that in more detail as we go on.

With respect to the decision threshold that you see on the screen, those stand with this one exemption that I mentioned. Those stand as long as we do not have any new arrivals in the ICANN community or any removal from the scheme. So our bylaws, or the post-transition bylaws, would explicitly mention the eligible decisional participants of the empowered community and should we see the formation of let's say, a new supporting organization, or the removal of an SO or AC, would certainly need to readjust the threshold so that all these community powers can be exercised appropriately.

So that's what we have in our report. Now it is subject to revision as the case may be in future instances. And we've clarified in our report and some think that this is not so clear, but in my view it is clear that - and this is the spirit in which the report has been drafted throughout three previous versions of the report, that if there is a change in

the number of decisional participants the bylaws would need to be amended to reflect that change and the thresholds would need to be adjusted.

So I would suggest that we move to the next slide now. We can get back to these easily as we move on. So I think that I shouldn't go into detail on these. I guess this is an important side, you know, and the GNSO has been in charge of organization of the CWG as well. But there was a request from the chartering organizations that the Accountability group, the CCWG, would need to meet certain conditions so that the approval stands.

So if the CWG Stewardship dependencies are not met then the approval of the chartering organizations for the CWG report would no longer be existent. And it is only today that we have received a formal confirmation from the CWG that we met all their requirements so we're good to go with respect to the CWG requirements.

So let me ask for a second, you know, we've been working on the language for ICANN's mission, commitment and core values. I'm not sure whether you need more detail on those at the moment. Just go through my notes. Sorry for this. I think we should move on. We can come back to this at any point. Sorry that the formatting...

James Bladel: Thomas, no problem. Do you - this is James real quickly. I just wanted to know if we wanted to pause here. We've had a number of questions raised in the chat and we could certainly take a queue on what you have presented to date, if you feel this is a good stopping point or we could certainly - if you're near the end we could certainly, you know, finish your update. Either way is fine I just like some indication from you of how you'd like to proceed.

Thomas Rickert: Thanks, James. I think I have three more slides so I would suggest that I just go through them quickly and then we take all the questions and start the discussion.

James Bladel: Perfect.

Thomas Rickert: This is the slide to reflect the latest changes with respect to the human rights recommendation. There has been some discussion about whether or not an explicit reference to human rights should be made in the bylaws at this stage. So the compromise language you find on the screen in front of you. So we will have explicit

mentioning on the - in the bylaws and this is going to be fleshed out in a framework of interpretation that's going to be worked on in what we call Work Stream Number 2.

Then we have made some progress on accountability of SOs and ACs. So we have the regular reviews in Work Stream 1 coming from the Affirmation of Commitments. And then we have a fuller review for accountability and transparency in Work Stream Number 2.

This is I guess the last slide that I have and that deals with Stress Test 18. So there has been some discussion on how the ICANN Board should react to GAC advice. And we've now specified, and this is what you see in bold, that any governmental advisory committee advise approved by full governmental advisory committee consensus understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection may only be rejected by a vote of 60% of the board.

And if that takes place then there is this consultation process that the board and the GAC need to enter into. And that is a major change that we did on this recommendation. So these are the areas for Work Stream 2 that we know are these so that's the end of the presentation. And I hope that you will bear with me, it was hardly possible for me to follow the chat while presenting. So, James, I would suggest that you take back control over the session and that you maybe manage the queue and then either I will respond to the questions there myself or defer to other members of the CCWG.

James Bladel: Okay thank you, Thomas. Certainly appreciate that update. And I know that between the time that we asked you to come speak to this group and the time that you've had to have those slides ready was fairly quick turnaround so certainly appreciate you being able to accommodate that request.

We've had a couple of questions and some discussion in the chat. I think we've captured two both from Paul McGrady relative to inspection and how the GNSO specifically would invoke some of these community enforcement powers. But okay so that's actually one question. Sorry, Paul, I thought you had two.

So let's - Paul, are you connected to audio? Would you maybe want to raise your question on the line?

Paul McGrady: Yes, this is Paul McGrady for the record. My question was just really simple. So from a GNSO perspective there's these various community powers and different thresholds for this or that various thing, but what's not clear to me is how that actually works. Is that by way of GNSO Council vote? Or is that something else? Is there actually a mechanism in place already or one that has been agreed to that will be in place on Day 1? Or what?

And if not, what are the various options and how long will it take to come to some agreement on that such that the GNSO essentially does not have any community powers for the first X number of whatever it takes for us to figure out how we're going to exercise community powers. Thanks.

James Bladel: Okay thanks, Paul.

Thomas Rickert: Thanks very much, Paul.

James Bladel: And, Thomas, I don't know if you want to take a stab at response there?

Thomas Rickert: Sure. Paul, what we're saying in our report is that the decision making is entirely up to the SO or AC in question. So if the board chooses to form its view on whether or not a community power should be exercised that's entirely up to the GNSO to specify. What we - what we have foreseen though is that, you know, for the sake of simplicity that the decisions made by an SO or AC would be conveyed through the leadership. In this instance it would be the GNSO Council chair.

Paul McGrady: So, Paul McGrady again, follow up question. When you say it's up to the GNSO to make that decision, do you mean the GNSO Council or do you mean the broader GNSO, the various organizations, grass root kind of approach? What is - what does that mean when you say it's up to the GNSO?

Thomas Rickert: The - it is not foreseen in our charter that we would influence the decision making processes inside the SOs or - the SOs or ACs. So, Paul, I guess it would be pretty much up to the GNSO as such to specify how it wants to form its views on the

community powers. The way I would envisage this to be operationalized in the GNSO is that the GNSO Council would basically collect the views from the various constituent parts of the GNSO and express its views of by way of voting as it does today on other matters.

Not sure whether I'm - whether Steve or others from the - other members from the GNSO would like to add to that. If so, please do speak up.

((Crosstalk))

James Bladel: Thomas, I note that Steve DelBianco is in the queue. And, Steve, I know that you were participating in this exchange on the chat so if you'd like to go on this topic please go ahead.

Steve DelBianco: Hey thanks, James. Paul, I picked up right away when I saw in the chat, you asked the question, well how does that fit with the GNSO Council's narrow policy making remit. And this feels like eons ago in the chat on this call. But that's what prompted me to say to you that if Council itself, as the policy management body, felt that a particular decision, a document inspection decision for instance, was somehow outside of the remit of Council I was reacting to you by saying fear not, GNSO can through its own policies, have a resolution that simply ratifies what the underlying ACs and SOs have said.

Now I realize that for general resolutions in Council it's majority of each house that that may not necessarily be how Council would arrive at a resolution as to indicate, because the chair of Council has to answer the question when the empowered community says GNSO, what say you, to this power of exercising documented inspection or what say you to this resolution in front of us to spill the board of directors?

And when that question is asked, the chair of the GNSO Council has to provide an answer. And that answer could be developed through GNSO procedures we already have or it could be new procedures the GNSO alone can control because it's not part of policy making, it's not part of the PDP and consensus policy's picket fence, so it doesn't have to be a bylaws dictated procedure for GNSO to canvas its constituencies and stakeholder groups and come up with an answer.

And you can see that the reticence here, Paul, is that none of us in the CCWG wanted to touch that third rail by telling ccNSO or telling GNSO or GAC or anybody for that matter, how you indicate your decision when the community has to make a decision. So I was reacting to your concerns that maybe it was too narrow a remit for Council that that shouldn't be an impediment for Council to pass along what the decision is of the GNSO community. Thank you.

James Bladel: Thanks, Steve. And I think that there's been a number of responses in the chat that align with your response and I think align with Thomas's explanation as well that first and foremost the CCWG didn't prescribe a mechanism or a process for each of the SOs and ACs. And while we have some mechanisms currently at our disposal in the GNSO if we choose to we could certainly develop additional mechanisms or processes that are specific to the invoking of these community enforcement mechanisms.

And I think that that, Paul, to your question, ultimately is that something that we are going to have to determine as a Council in parallel with the implementation of this accountability work into the bylaws.

Paul McGrady: So this is Paul McGrady. I guess...

James Bladel: Yeah, go ahead.

Paul McGrady: ...at the end of the day this is a question that came up on the list for our constituency. At the end of the day is I guess the answer is that this isn't settled. We don't really know how - within the GNSO how the community power will work. And to the extent that that is an undefined thing then we'd have to read the CCWG report in a way that essentially has undefined. And I mean, it might be fine, I don't know, but it's not like there's - this has been thought through or, you know, competing proposals on the table or anything like that, it seems to be a fresh issue. Right?

James Bladel: I think that's correct. It's undefined and it's up to us to define it.

Paul McGrady: Thanks, I mean...

James Bladel: Yeah.

Paul McGrady: ...that this is the clarity that I was looking for (unintelligible) says it's unclear, which is okay. You know, good to know.

James Bladel: Yeah, where we have a blank we have some work to do to fill it in, exactly. Okay and we're going to try and kill that buys signal there. So but it is a good question, Paul, and I think it certainly identifies that we have some work to do.

                   Next up is Milton. Go ahead.

Milton Mueller: Hello, can everybody hear me?

James Bladel: Loud and clear.

Milton Mueller: Good. Okay so I'm changing the subject. I'm going back to Recommendation 5. And Thomas's slide is an accurate description of what I thought the draft accomplished. And I agreed - and it reflects my understanding. However, when I actually reread the draft I discovered a little clause in there that I found very disturbing. And I'm going to put Recommendation 5 Paragraph 146 into the chat so you can all see what I'm talking about.

                   So we agreed in our discussion, had many long and complicated discussions about enforcing agreements. And the public interest commitments came up in that context because some people were concerned about their future and whether it could be enforceable when - and whether they could be challenged on the basis of exceeding the mission.

                   And my understanding of the outcome of that discussion was that we agreed to grandfather existing PICS and that the future PICS would be subject to challenge on the basis of exceeding ICANN's mission. And now what we have in Paragraph 146 is something that does not reflect that consensus. And that is it says, "ICANN shall have the ability to negotiate and enter into and enforce agreements." And suddenly there is a little phrase there, "including public interest commitments with contracted parties in service of its mission."

Now I think it's, you know, whatever your position on PICS, I think it's completely inappropriate and indeed it's really weird to have a mention of something so specific in the general mission statement of ICANN. And I'm hoping this is just a mistake. Like responding to Becky here, we discussed this language to ensure that the service of its mission can be applied to PICS that we already have language stating that in the notice, the instructions to the drafters in the next couple of paragraphs.

But it's clearly wrong to have a mention of PICS, which the GNSO could decide not to allow any more. The GNSO is going to debate that my understanding is. So what is that doing in the mission statement? That's my question. And can we get rid of this mistake? Otherwise some of us really well have problems accepting this recommendation.

James Bladel: Thank you, Milton. And I see that Becky has some thoughts on this in the chat and has also raised her hand so, that's it, the floor is yours.

Becky Burr: Thanks. The point here is that there are PICS in ICANN's contracts. And if ICANN wants to call a section of its contracts, which of course, you know, the new gTLD contract was until the very last sort of the product of a long public process. But everything in ICANN's contract is subject to the mission statement and all contracting provisions, including any PICS, must be - meet the test of being in service of its mission. So the mission statement clearly applies to PICS going forward.

The grandfathering issue, which is a totally separate issue, we discussed, you know, the fact that there are probably PICS that right now - there's at least one PIC that I think is probably problematic with ICANN's mission. And we solved that through grandfathering until there's a new - until there is a new contract that replaces it.

But to the extent that a PIC is in an ICANN agreement this simply says, you know, all of ICANN's contracts must be in service of ICANN's limited mission. So this does not expand the picture in any way whatsoever. It clearly says that the mission is limited and ICANN's right to contract is limited to that which is in service of that limited mission.

James Bladel: Thank you, Becky. Milton, yeah, and to Keith's point, please mute your line when you're not speaking or when you finish speaking because we're getting quite a bit of

background noise. Milton, is that - would you like to continue on this topic or is that an old hand?

Milton Mueller: Yeah, I'd just like to ask Becky, so if what you say, Becky, is correct, then you still don't need that phrase because if PICS are part of the existing contracts then Paragraph 146 says that ICANN has the ability to enforce those agreements with contracted parties. So what is that doing in there? At the very least you have to agree with me that you should - if you want this to refer to existing ones, just to be clear to - you could including existing public interest commitments.

But again I think that's kind of bizarre to have in a general mission statement that's supposed to be setting out the overall mission of the corporation. Do you understand what I'm saying? There's no reason to have PICS in there if ICANN does have the ability to enforce its existing contracts and the PICS are already in the contracts.

Becky Burr: Shall I respond?

James Bladel: Becky, yes, if you're looking to respond...

((Crosstalk))

Becky Burr: So first of all the language there does not refer to existing PICS. Existing PICS are covered by the grandfathering period. This refers to provisions of the Registrar and Registry - Registrar Accreditation Agreement and the Registry Agreement and says that all of them must be within ICANN's limited mission and in service of that. I do not disagree with you that the words "including public interest commitments," are superfluous there. I don't think it changes the meaning one way or another, Milton.

And I think, you know, just any reading of that is quite clear. But I don't disagree with you. I think PICS would be covered whether we said it or not.

James Bladel: Thank you, Becky. And thank you, Milton, I think that was a good exchange. And, Milton, I see you're back in the queue but I do want to make sure that we have enough opportunity for councilors and folks who haven't been participating on the CCWG to raise their questions and get their concerns addressed as well. I see Thomas also has a hand up.

So, Milton, if you have a quick point on this we can...

Milton Mueller: Very quick question, yeah, it's a very quick question.

James Bladel: Yeah.

Milton Mueller: Just, Becky, what if the GNSO Council decides as a matter of policy that there will be no more PICS?

Becky Burr: Well then the - well I don't even know what it means to decide there will be no more PICS, right? It's just - those are just words, right? You could call any provision that says, you know, in service of my mission I will, you know, - I don't even know what it means to say there will be no more PICS. Because it is just a statement of what you're going to do or not do which may or may not be within ICANN's mission and which therefore may or may not be appropriate in the Registrar Accreditation Agreement.

James Bladel: Okay, thank you Becky and Milton. I think what we probably need to do is perhaps between now and our formal discussion on the 9th get some clarity on this point and whether or not this is - you know, I think Greg posted in the chat here that this was just a reference to a, you know, specific type of agreement when we were talking about agreements generally. And I think that was my understanding as well but we certainly don't want to introduce any confusion here. So, you know, maybe we'll take this offline and see if we can get some further clarity on this.

                    But I notice that Thomas has raised his hand so we'll go ahead and turn the floor over the Thomas for a moment here. Thomas, go ahead.

Thomas Rickert: Thanks, James. I'd just like to remind councilors of the fact that what we have in our report is not the final bylaw language. As I had mentioned to Council previously, these are instructions to the drafters. And I think the question that Milton raised may be one that will be answered by the drafters because it looks like this is pretty much a question of drafting technique.

And we have explicitly stated and tried to stay away from coming up with concrete language because, you know, maybe some individuals in our group but certainly not our group as such, is capable of drafting bylaws that would hold water in the California corporate law.

So let's not try to dive into word-smithing. We've tried to capture the spirit of the recommendations. There will be implementation oversight. So, you know, I guess I just wanted to make this point because this will not be the only place in our report where people might want to comment on exact language or exact words but this is not what we've intended to deliver with our report.

James Bladel: Thank you, Thomas. And to that point maybe you could help shed a little bit of light. When it comes time to actually start drafting the bylaws as part of the implementation of this work, those will also be subject to community review comments and ultimately approval as well, correct?

Thomas Rickert: Yes, you're perfectly correct. And in fact we are going to kick off this discussion when we Marrakesh. So we will ask for volunteers from our group, at least that's the plan from the, you know, from a project management perspective. So that we have folks from our group, there will be folks from the board. We've already seen that there are some volunteers from the board that would like to engage in this.

So let's ensure that we have broad representation from all groups concerned on the subteam and then this will be a collaborative effort between the community and the ICANN board and their respective legal advisors and as would go for all bylaw changes. This bylaw change will certainly undergo public comment period issued or triggered by the board. So there will be definitely easy opportunity for the community to chime in whether the final bylaw language as suggested at the time is appropriately reflecting our policy recommendations.

James Bladel: Okay great. And thank you for that clarification. I'm sure this is not the only point of either ambiguity or potential confusion that will need to be ironed out before these recommendations are actually translated into language of the bylaws. So okay the queue is clear so that means if you have a question relative to this subject or any subject that has been covered by Thomas then now is the time to raise those.

Alternatively if there are any councilors who would like to report on the work that's ongoing within their stakeholder groups or constituencies, or if they have any updates on the plan to review this between now and our discussions in Marrakesh this would also be a good time to inform the rest of the Council and the GNSO members and participants of the CCWG of just how we see this playing out between now and Marrakesh.

I would remind everyone on the call that we have essentially a hard stop to our process on - at our public meeting on Wednesday in Morocco, that's March 9. And that will, you know, as we say in the Midwest here, hell or high water, we're going to have to vote on this to ensure that we make the timeline for delivery to the CCWG and to the board for approval to NTIA so that they can begin their timeline.

So if there's anyone that has anything to report from discussions that occurring within their stakeholder groups now would be a good time to enter the queue. I can mention that from the perspective of the registrars, and I would also welcome any input from the two other registrar councilors, Volker or Jen, that there hasn't been a lot of discussion the last two times I have teed this up on our mailing list. Mostly because I believe that the exchange that was coming out of the third draft report was fairly vigorous and centered on the thresholds that were established for the board to reject GAC advice.

Once we described the compromises that were ultimately included in the supplemental report and described the carveout mechanism as well as the enshrinement of the definition of consensus in the bylaws I think that registrar concerns, to my knowledge, have been addressed.

Now I say that with a note that I intend to raise this again when we are all together in Morocco to ensure that that is indeed the position of registrars. But currently I'm taking the deafening silence on our mailing list to mean that, for the most part, registrars are satisfied with the compromises that have resulted in this outcome on the accountability work.

So that's what's going on in our neck of the woods and I would welcome any other councilors who want to report on anything that they are seeing particularly if there are any red flags or new concerns that remain unaddressed in the supplemental report

that could in fact potentially jeopardize the GNSO's approval of the supplemental report and recommendations as a whole.

So I see a flurry of activity in the chat but no one raising their hand so I don't know if there's anyone wants to take this and promote themselves to audio. Wolf-Ulrich, you're first in the queue. Go ahead.

Wolf-Ulrich Knoben: Thanks, James. Wolf-Ulrich speaking for the ISPCP. Well just a quick report on what's going on in our constituency. So we had several rounds of discussion of the various proposals and also in the - during the last round of the last proposal. We focused more or less on the issue with regards, as you mentioned, with the registrars, the voting and the GAC carveout.

And but so we had just this afternoon our last call and there was no objection to the proposal as it stands at the time being. So we feel we have the feeling that our concerns have been addressed with the proposal as it stands and from our point of view. So we have no objection to that.

What we have discussed in addition is the question of how the Council is now going to proceed with that proposal and with the voting on it. And we discussed also the question of the two options you put to the table, James, whether to vote on the proposal as a whole, as the entire proposal, or in slices, recommendation by recommendation.

We found after the discussion that there are, and we accept that there are still issues with some of the recommendations addressed by other constituencies. And we wouldn't like to suppress those issues in - when it comes to the question of confirmation of the approval or not. But we felt it might be, from our point of views, more preferable to vote on a package solution rather than by recommendation by recommendation. And to address the remaining issues in a kind of separate (unintelligible) to that.

So that was the discussion we had on our constituency to summarize. So no objection to the proposal as it is. Thank you.

James Bladel: Thank you, Wolf-Ulrich. That is indeed helpful. And to your point, the motion and how the Council will proceed to ultimately discuss and adopt the report will be covered here in Section 3.5. We can certainly jump ahead to that if everyone wants to take a look at that.

I think it is currently an open question of whether or not we vote as a - on the report as a package or whether we vote individually on each of the recommendations. I think that we've heard some fairly compelling discussions for either case so I think one question I might ask of Thomas, while we have him here, is to, you know, maybe weigh in on whether or not the cross community working group has a preference of how they would like to receive feedback. I think I know the answer but I don't want to presume.

But I think that that is an option that is before us and that we can move forward on that discussion. I think the one thing that we have certainly put a - put out there as a marker is that we wouldn't go forward with any deferrals because of the timeframe. But other than that I think how we proceed is really up to the Council.

Now it is possible that we could vote on a single motion even though it has 12 separate whereas clauses for individual recommendations. But we'll go next into the queue. We'll save that for 3.5 here. We'll go next into the queue to Farzaneh, go ahead.

Farzaneh Badiei: Hi. Thank you. My name is Farzaneh Badiei. And I'm going to make a short comment on Recommendation 10 which is about the accountability of AC and SOs to their community. So they have been arguing that CCWG that because the community is going to be empowered it has to be also accountable to its stakeholder groups.

And so in order to do that they came up with the idea to add - amend the Section 4 of 4 of the bylaws and say that the board should consider the accountability of the SO and ACs to their stakeholder groups when they are carrying out the periodic review. Now there are a couple of problems with this.

First of all this section of the bylaw is already there, that the board can invoke this periodic review. But the board can decide whether that organization has a continuing

purpose in the ICANN structure. And the SO and it can - so the continued purpose so it might be able to say that the SO AC doesn't have a continuing purpose.

And also it can change the governance structure of the SO and AC. And the other problem with this article is that GAC is not subject to this review. So we alternatively what we are doing if we accept this amendment we are actually - if we want to make board more accountable to the global multistakeholder community we cannot have a bylaw article that gives the same board the power to change our governance structure, it can weaken us and also board can threaten us with this in the future if it sees we want to use the accountability mechanism in the empowered community mechanism that we have.

It might say oh, I'm going to invoke - and this is just very hypothetical but I just want to put kind of the extreme on the table so that we see how risky this amendment can be. And I have suggested multiple times that we just tweak this issue in Work Stream 2 but they have decided that it should be amendment. Thank you.

James Bladel: Okay thank you for those comments. And I think that if possible we could have other folks from the Non Commercial Stakeholder Group weigh in as well because my understanding is that each councilor may have separate concerns that may or may not affect how they would vote so I want to make sure that we're hearing from an addressing all of those folks.

But next in the queue is Paul. Go ahead, Paul.

Paul McGrady: Thank you. Paul McGrady for the record. I want to go and share some of the things that have come up on our list of open issues. But real quickly I know this is - we're going to address this later. But I saw here that Thomas said his preference would be for a block vote. My concern about block vote is that we are already dangerously giving the misimpression even if we do line item by line item vote that this is somehow a vote for the transition.

This is a line item by line item vote for certain narrow proposals that we hope improve accountability within ICANN. The issue of whether or not the transition should go forward is a question that has never been asked and never been answered by this

community. And so I think that if we do a block vote on all 12 of these it just makes that problem - that question never been asked or answered even worse.

So with that said, the issues that are being kicked around on our list, one was what I've already raised which is there doesn't appear to be a settled mechanism for how the GNSO will act as an empowered community. And until that's settled that laces in quite a bit of ambiguity into the entire proposal. And I was hoping that I would - that I would be told that that actually had been kicked around but it doesn't sound like it has been. That is one of the issues that was raised.

The other big issue - a couple of other big issues. Another big issue on the list is just the breakneck speed at which this is all happening. People believe or feel that they are not being given time to fully digest the final product. And just sort of believe it's not good form to race something this important through. So be aware of that. I don't think that's a surprise to anybody.

There are some things that have been kicked around, for example, an issue around whether or not an IRP can be launched that challenges an SO's policy development process unless that SO essentially joins in the - joins in the IRP which doesn't - if that's the case it doesn't make a lot of sense because what SO is going to do a PDP and then challenge itself on the outcomes so that was a question. I haven't studied that one enough to have an opinion on that.

Also there are some questions around delegation and redelegation of ccTLDs. Again, I've not had a chance to study that question enough to have an opinion but that was one of the issues that are being kicked around.

And then one of our primary concerns of the IPC from the beginning has been we wanted in the fundamental documents for it to be clear that ICANN not only has the power to enforce its contract but it has the obligation to enforce its contract. And that has never really been addressed and it appears AWOL in these documents.

So for what it's worth that's a little heads up and what we're kicking around in the IPC. I would like to tell you that we have developed some proposed answers to these questions but, again, the timeframes here are just so incredibly compressed that

we're, you know, not in a position really at this point to do anything other than flag the issues.

And frankly, some of these I have yet to study in enough detail to even take questions on this call about them but I'm happy to try if anybody wants to ask questions. Thanks so much. Bye.

James Bladel: Thanks, Paul. Helpful update. I think that the concerns about the timeframe particularly - and I'm going to be as delicate as I can be here - particularly the last minute changes - course changes were, you know, not particularly welcome. But I thank you for your update. And I would ask that perhaps if you could come to Marrakesh with a write up of the scenario that you described where an SO would challenge or would participate in an IRP that challenged its policy outcomes I think that would be helpful because I think that's a particularly noteworthy discussion.

As I think, if memory serves, there were a number of threads on the CCWG that addressed the - or tried to establish an equivalency between let's say a policy recommendation coming out of an SO like the GNSO, versus advice such as consensus advice coming out of something like an advisory committee like the GAC. And so I think having - if nothing else, having a clearer picture of how that scenario would play out I think would be helpful to addressing those concerns if they're raised in Morocco.

So thank you for flagging that one. I think that's a good one. And the other issues as well but that one just kind of jumped out at me. So Steve, the floor is yours.

Steve DelBianco: Thank you, James. When Paul put the question that way I thought I would be able to give responses to two of Paul's unsettling questions. So, Paul, we discussed this a bit earlier that the CCWG dare not tell GNSO how to make decisions. And if that leaves you feeling unsettled about how GNSO would participate, I think we have an answer.

The default in GNSO is that Council runs a resolution and the default for resolutions that don't have to do with policy is a majority of each house. And in fact, Paul, that is the rule being used next week when Council will indicate its preference on the CCWG proposal. And that's not a policy decision, but as James has already indicated

Council will consider a resolution and it will take a majority of each house to approve it.

So it is settled, Paul, to the extent that GNSO has a way of indicating its vote. And today that way is the simple majority of each house supporting a resolution in Council. But we are definitely leaving the door open that if in the future GNSO decides it wants to have a different mechanism for exercising the community powers that are granted, Council alone can determine that. So I think that settles one.

Your second concern was really intriguing. I hadn't heard that before, a notion that a block vote, a block vote on CCWG would somehow imply that Council was endorsing the threshold question of should there be an IANA transition. I hadn't thought of that before. But if that's a concern I strongly encourage you to do a resolution in Council, I think there's still time, to bring it up. And if you wish, see if Council will debate a yes/or position on that question of whether there should be a transition.

But by all means, let's not (smoosh) that question in to as you said, an approval of the recommendations as a block. I would hate for having you be concerned about the vote because you thought it implied something that it didn't. And it would be better to explicitly raise your question about does the GNSO support the transition. I'm not sure how that would go but if that's the question you want to raise and have it not be (smooshed) into the vote then raise it as a separate resolution. Thanks, Paul.

Paul McGrady: So this is Paul. If I can respond to that. I know that I'm - I don't want to hold up James Gannon who's been patient. But and I tried to put this in the text but, Steve DelBianco, there's - there is just no way that there's enough time between now and Marrakesh to raise that threshold question, get public comments back from the community and pretend in any way that Council has a clue how the community feels about the threshold question.

It is unfortunate that it was never asked or never answered. But the bottom line is there's just - there is absolutely no way we could possibly do that in the days we have left. It's a question that maybe should have been asked a year ago by somebody, not sure, but to suggest that Council should do that at the last minute I think is - that's not going to, you know, that's not a realistic thing to suggest. Thanks.

James Bladel: Thanks, Paul. And, you know, to Steve's point I think it does make sense only (unintelligible). Wow okay thanks. I was just kind of pointing out that it does make sense to ask that at this stage in the process only if you already know the answer. But I think generally you're correct, I agree that this probably should have been something that was explicitly discussed, you know, in the immediate wake of the announcement either in 2014 or last year.

But I think overall a good slate of issues or concerns being raised by the IPC that need to be discussed and hashed out prior to a formal discussion in Marrakesh. Next up and thank you for waiting, James, the floor is yours.

James Gannon: Okay thanks. Just to Paul's point on saying - I don't believe to be correct is that we haven't as the GNSO voted on the transition. On the 24th of June in 2015 we adopted a motion conditional on the adoption of the CCWG recommendation titled the Adoption of the Final Transition Proposal.

And for myself and I think many, many others that have been involved in the overall transition work we felt that that was the GNSO very strongly endorsing the transition as a whole with the caveat that we placed in that it was dependent on the CCWG meeting the needs of the CWG which as of today Jonathan has sent the letter from the CWG chairs to the CCWG chairs indicating that, yes, those conditions have been met.

So I would say very strongly that the GNSO has voted for the transition in that motion on the 24th of June of last year, which, you know, to revisit that high level discussion now would be a mistake I think in my opinion.

James Bladel: Thanks James. And, yes, I do note that we did that back last summer. And it was contingent upon finishing this accountability work as well. Okay looking at the exchange in the chat here to see if anyone else wants to get into the queue. James, did you have any other points to raise from your perspective? I know you've been fairly active both in the CCWG as well as in the Non Commercial Stakeholder Group. Are there any SGs or constituencies that would like to weigh in, I think now would be a good time. We've got about 45 minutes roughly left in our time but we could certainly end at any time prior to that if there are no other questions.

James Gannon: So I can give you a quick two second update and, Robin, feel free to break in across me. So obviously the NCSG has been discussing it internally. We've kind of had to wait until we've seen if the final transition proposal though which is something that we've only really got in the last few days. It will need to go through our policy committee to, you know, be discussed there thoroughly. Myself and another couple of participants and members in the CCWG have raised some issues around the thresholds now that we have lowered the amount of SOs and ACs who are going to be participating in the empowered community. We have some concerns with that.

We could be forced into a situation where unanimity is required in order to exercise the community powers. This has been a principle that we felt the CCWG had been, you know, working without since its inception that, you know, the concept was that unanimity would not be required in order to exercise the community powers.

But with SSAC and RSAC stepping out and the GAC unable to come to a decision on whether it will step in or out, we end up with a situation where we are defining thresholds without knowing the final number of voting participants. And that could end up in a situation where if the GAC was unable to come to an agreement internally that they wanted to participate in a specific decision that we would have a threshold that would require unanimity of the remaining participants in the enhanced community - the empowered community. We change terms so often I keep forgetting.

So some of us have concerns around that. And that's something that personally I would like to see us, you know, this can be solved by a simple word change from "may" to "shall" in the fact that in the section that reflects the flexibility of the voting thresholds when the number of members of the empowered community changes. So that's kind of the last big thing that stands out from us at the moment.

Obviously we'll have to run it through our own internal processes as quick as we can given the timeline but, you know, from my personal point of view speaking as a participant in the process since Day 1 of the CWG, you know, I think we've come to a good place. I think the GNSO should be quite proud of what we've done. You know, we've shaped a lot of these discussions and we've given a lot of serious input and design into the way that ICANN will look going forward. And personally I'm quite happy with the work we've done.

James Bladel: Okay thank you, James. Appreciate that update and giving us the lay of the land in NCSG. Amr, I see you raised your hand but Thomas was next in the queue so, Thomas, go ahead.

Thomas Rickert: Yeah, this is just to respond to that very point that James brought up. I made reference to in fact of that discussion when I did my initial presentation. I think there might be some misunderstanding. We have eligible decisional participants. Those are the five SO ACs that I mentioned earlier. We cannot and will not with our report prescribe that each and every of these groups must join a decision making when it comes to exercising community powers.

So it will not only be for the GAC but also for the other groups to decide if the matter in front of the community is one that they want to join deciding upon. So we have eligible decisional parties, that are going to be put in our bylaws. We have the thresholds as specified in our report. Whenever a change to that is being made the bylaws need to revisited and the thresholds need to be adjusted.

So in my view, we have all the components needed in order to have predictability and security for the community in our report. And we have implementation oversight to secure that the language that's going to go to the bylaws is reflecting that. And so I think it would be inappropriate, unfortunate, if we try to reopen the report at this point and change language.

I think, you know, we - this call is being recorded so I think we can refer to the notes of this call. But I can confirm my understanding of the report that we have. And we have Jordan Carter with us on the call today. He was actually leading the work of that work party. And, Jordan, - James, if I may, I would like to invite Jordan to maybe enlighten us a little bit on the genesis of this recommendation and how the thresholds that we've come up with have been developed. And I hope that this will help remove some of the concerns that have been expressed on the list and in this call.

James Bladel: Thanks, Thomas. And, Jordan, Thomas has put you on the spot there if you can respond quickly, you're welcome to. Otherwise we can go to the queue and Amr is next. Which would you prefer?

Jordan Carter: If you want me to - I don't know if you can hear me. Is this line working?

James Bladel: Yes. We can hear you fine.

Jordan Carter: Hi, James. Thank you. Hi, everyone. My name is Jordan Carter. And I think I saw some of you at the ICANN meeting in Dublin when we were talking about this in the GNSO. The only - just to say very briefly that when we were developing these thresholds in Work Party 1 we were pretty aware that some of the SOs and ACs had more difficulty reaching decisions than others due to their internal decision making processes. So thresholds were done with that in mind.

                   But they were also done in mind with the five SOs and ACs (unintelligible). So I just reiterate the point that if there are a number of decision makers changes the thresholds have to change as well. And there is no choice about that. And that's what I think has been debated on most recently. Other than that I'm listening and can chip in any sort of replies to specific questions in the chat.

James Bladel: Thank you, Jordan. Amr, thank you for your patience, the floor is yours.

Amr Elsadr: Thanks, James. This is Amr. I just wanted to confirm James Gannon's earlier comments on the ongoing NCSG process and discussion around the CCWG's recommendations. The NCSG has different focal points or obviously members of NCSG on each of the CCWG recommendations. And we hope to have a discussion at some open policy committee meeting with all our members directly following the GNSO working sessions on Sunday.

                   But if necessary we'll also take some time on Constituency Day to discuss these further. So beyond that I don't think I can really be helpful in terms of what our decisions will be during the next Council meeting. Thank you.

James Bladel: Thank you, Amr. Thomas, is that a new hand?

Thomas Rickert: I apologize, old hand.

James Bladel: Okay, thank you. So the queue is clear and we have about 35 minutes left in our allocated time. What I'd like to do at this point is - and first of all thank you for

everyone who's weighed in on these issues. I think they - this is the beginning of a conversation. I don't know that we're going to resolve some of these questions today.

I don't know that that was the expectation. I think it was to - we had hoped to raise these questions, make sure that other stakeholder groups and constituencies and councilors and members and participants all had visibility to conversations that were occurring on and off the CCWG and within the various components of the GNSO. And I think we have achieved that. So thank you to all for participating.

I'd like to pivot just a little bit here to discuss the process that we will prepare in - for consideration in Marrakesh and particularly the process that we'll use on Wednesday. Now this is just a proposal at this point, it's something that I put out for folks to, you know, poke it with sticks and see if we can improve it.

First off I should note that Thomas expressed the desire of the CCWG to receive GNSO approval or approval from chartering organizations as a package. I don't know that that's going to be possible; I think that's the preference from some groups but I think that other groups have also indicated a strong preference that itemize our vote on each recommendation.

So this is probably the first question that we will discuss and resolve during our meeting in Morocco. So next with that we have a draft process here that would essentially allow us to examine all of the 12 recommendations within the framework of a single motion.

And each of those would involve sort of a repeating process whereby we would read the text as a report and certainly not the entire report or we'll be there all day but a summary of the recommendation and then have a queue for discussion where each of the stakeholder groups can report what their stakeholder group has decided, either to support or not to support. They can certainly reference comments that were made on the third draft report and whether or not those concerns have been addressed or remain open. And then we can proceed to a vote.

I do want to point out here that we probably don't have the luxury or opportunity to introduce new conditions, new prerequisites, new dependencies at this point so saying that we have a concern but in order to support this recommendation as written

we need certain things to change. I think that to me start to sound like a no vote because if the dependencies certainly cannot be met I think we have to assume that it won't be met any time following the vote so I think that that is - that to me indicates that that particular recommendation and that particular concern would translate into a no.

Once the queue is closed and we move to a vote we can elect as a group to conduct a voice vote. And I think this might be helpful for some of the less controversial recommendations to help us get through our agenda a little faster, however if any one councilor has an objection to this and would like to proceed to a roll call vote we can certainly entertain that and move to a roll call vote.

As indicated the threshold for any given recommendation will be a simple majority of both houses so that's the contracted party house and the non contracted party house including the voting NomComm appointees. And then we would record the vote and the results and then prepare to move on.

However, there's one thing here that I would like to throw out to the group for discussion is that we'd like to also offer at the end of each vote a discussion where councilors on behalf of themselves or on behalf of their stakeholder groups can issue a rationale for their vote or a statement associated with why they voted the way they did.

I think that, you know, just generally these would be helpful if they were in writing and not necessarily lengthy speeches. I understand this is very complicated and I understand certainly that some of the positions are very nuanced. However, I just note that we also have 12 of these to get through and if we have each councilor, myself included, weighing in at length on each vote we will be there well into the night in Morocco and we will miss our dinner.

So if possible a brief statement or a statement referring to a written statement would be ideal but we will allow for some discussion of how those votes were cast and why. We'll then at the end of voting for all 12 of these we will roll up the level of support for all of the recommendations and report back to the Accountability chairs.

Some folks have asked me how the number of approved versus rejected recommendations translates into approval or rejection of the overall report. I think this is an open question. I think that it certainly is common sense that if a single recommendation fails to achieve, you know, fails to achieve the majority necessary in both houses but the other 11 do I think that that probably translates into an approved report. I don't know that that is true if we reject two or three or four.

Where that fuzzy boundary is drawn I think is a question for the Council. And I think it's something that we need to discuss once we have a clearer picture of, you know, of how this is going to look in the weekend. So I would ask you to be thinking about that during the sessions that we have on Saturday and Sunday is how do we translate any rejection into a rejection of the report overall. So that's something I think that we need to get on the table.

And Robin noted in the chat that Ed Morris has requested individual recommendation votes. I think that is - that is correct. And I see a hand now from Paul. But, anyway, that's the draft process as it stands. Again, it's a proposal, it's my attempt to get something on the table so that we can discuss it. I am not - there's no pride of authorship here. I'm not invested in this but I think it is at least a straightforward process that we can use to get through these 12 recommendations. And I'm certainly open to any ideas that would help streamline this or make it better. Paul, go ahead.

Paul McGrady: Paul McGrady for the record. On the issue of where the Council would set the threshold for a rejection, two, three, four, whatever, I guess my - it never occurred to me so that was a new thought which is why would - why would we want to do that? Why wouldn't we just pass along what happens and let the board decide whether or not they have the consensus from the community necessary to submit to the NTIA or send it back? What's the up side of us declaring it a failure if we get to two or three things - two or three recommendations we don't like?

I guess my question is why would the Council be the deciding body about that based upon the outcomes? Why wouldn't the board be the decider about whether or not it passed? Does that make sense? Thanks.

James Bladel: It does, Paul. And so I think this is like a number of issues is that we could, for example, pass that along to the board, in this case I believe to the CCWG co-chairs

and ask them to dutifully relay that to the board. I think the upside there is that it's, as you mention, it's a little bit simpler and it doesn't get us into the weeds if there are a number of rejected recommendations.

However, I think that if we do get into a situation where we have, let's say three recommendations that are rejected, we do run the risk that the board will make a declaration that we don't agree with that says, okay, you know, three recommendations that's, you know, close enough for government work. The GNSO has declared that they accept everything. Well that wouldn't be the case. Or they could say, for example, that the GNSO has rejected the report, which might not also be the case.

So I think we can certainly take that approach but we do run the risk that the board might see things through a different lens then we would either individually or as a group. So this is exactly why I think we need to have this conversation over the weekend session.

But I think that we should, as a chartering organization, and I see Thomas has his hand up so maybe he can weigh in on this. But as a chartering organization I believe we do have some - we may have some prescribed response or response format that the CCWG is expecting from its chartering organizations, including the GNSO.

So, Thomas, go ahead.

Thomas Rickert: Thanks very much, James. And I guess this is the point in time where I hope you will forgive me for making a tongue in cheek comment to start with and then go to a more serious response. The easiest way for Council to avoid any ambiguity is to just vote yes to the whole package and there will be no discretion for any parties to construe what the Council or the wider GNSO's wish was or not.

I would like to remind all of you that there is a lot of responsibility on us at this stage. This is happening on a world stage. So we are with the votes that are being cast, with the decisions that are being made by the chartering organizations, we are adding to or eroding the legitimacy of the IANA stewardship transition proposal. So I would like to request all councilors and their respective groups not to take a decision on the rejection of one or multiple proposals lightly.

Please do apply what we've called the die in the ditch test for a while in our group. So even if you don't like 100% what we've recommended or what the community has recommended, would you die in the ditch over not getting your idea scenario?

And if you apply this test maybe you will be a little bit more gracious and even say yes to a recommendation that you don't like but you would still support it because we've undergone various public comment periods. We've listened to all the concerns. And I think we've, at this stage, come up with the best proposal that we could possibly come up with, with the broadest possible support from the community.

And I do know that this work in a cross community working group is not the same as PDP work that is being conducted in the GNSO. But I have vivid memory of a Council deliberation and ultimately a vote on the IGO INGO PDP policy recommendations. And that was a group that I happened to chair. And you know that the IGO INGO piece was very, very controversial. But it was unanimously adopted by Council.

And there were councilors going on record saying that even though they don't like all parts of the work product they have respect for the process and how the recommendations have been developed and how the community views have been incorporated not the recommendations. And I hope that you would apply the same thinking for this final report of the Work Stream 1 recommendations of the CCWG.

James Bladel: Thank you, Thomas. I think that's helpful. Do appreciate that. I note that Paul raised the question and then lost sound so hopefully he was able to catch some of that. Okay so and I think Robin made a point in the chat as well and I don't know if she wants to speak to this but I think just noting that we should have a fairly transparent record. And I tend to agree that as long as we conduct our discussions and our votes and record everything out in the open in a public forum and record that and transmit it back to the CCWG I think for the most part our intentions and our positions on this will be clear.

But I think that we should have a clearer discussion of what happens if that process fails because I believe it is potentially vulnerable to some ambiguity if we start to see recommendations fail to achieve that particular threshold.

So Stephanie is in the queue. Welcome, Stephanie, you're up.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. This may seem like a very naïve question but I've had a hard time following the state of play on all the various things that are in and out and last minute. And I'm wondering what the process is if we do vote through for fixing some of the things that are going to rear their ugly head shortly.

So for instance, the PICS example. I agree with Milton that shouldn't be where it is. How do we fix that? Are there - is this going to be like a trade agreement that you don't look at for the next 20 years? What's the process? It's not clear to me what's going to be fixed in the next work stream and what we're stuck with forever.

James Bladel: Thanks, Stephanie. So I'll take a swing at this, and probably sure to do a terrible job of responding but I'll take a shot. And Thomas and some of the others might want to weigh in as well. My understanding is is that once this effort is completed that it will kick off an implementation effort to begin to the work to actually draft these recommendations into language that will be incorporated in the ICANN bylaws.

I believe if there's a sticking point that we believe is not necessarily let's say a show stopper in a recommendation but for example a point of ambiguity or if there's additional clarity is required, then I think that we can certainly attach to our approval that is sent back to the CCWG that we expect and anticipate that this will be resolved in the implementation, that we would participate with that objective in mind.

And I say that noting that that doesn't work if this is actually a show stopper where if we believe X and some other groups believe Y and, you know, I think that going into implementation with that kind of a deep divide is a recipe for a problem, however, if it is simply a correction or a clarification then I think that that is one opportunity that may exist to address that. But I think that, you know, the cake is mostly baked at this point. I think that that's really just an option for addressing any rough edges that need to be sanded off. Go ahead, Stephanie.

Stephanie Perrin: Yeah, Stephanie again for the record. Well, it'd be nice if we had some kind of way to - and I know ICANN doesn't do this - take a derogation on a particular chunk of text and put it in square brackets. I understand that's not what the Commerce Department

had in mind when they launched this thing, but it concerns me as someone who (unintelligible) following it that closely frankly even as late as three, four days ago people who've been following assiduously for a year couldn't agree on what the voting number meant, you know, and the latest argument about GAC.

How are we supposed to figure that out? You know, be nice if we could fling some brackets around it or at least say we need further work on this. Is there any way we can do that?

James Bladel: So again, I think it depends on the nature and the depth of the issue. If it's an actual disagreement then I think at this point, no, there's not an opportunity to go back, reopen, renegotiate and redebate some of these points that particularly if it was a point of contention with other SOs and ACs or representatives on the CCWG. And I'm looking to Thomas to maybe tell me if that's correct. But I think that that part has closed.

I think that if it is something that we believe was an omission or something that requires clarity then I think that we can flag that, maybe not square brackets, but at least identify that there is some language that is missing or some clarifications that are required in order to go forward. And we can proceed to raise that as part of the implementation. So I guess - I don't have a good answer for you, Stephanie, except to say it's going to be situational and very dependent upon the nature of the issue.

Thomas, go ahead.

Thomas Rickert: Thanks, James. And, Stephanie, thanks for the question. I guess there is no possibility for us to put brackets into our report. I know that this is a technique that is applied in other (fora). This is not possible. So the report is what it is. And you will remember that I mentioned earlier that we tried to encapsulate the spirit of that should go into the bylaws in our report but that the language offered in our report at present is not final bylaws language. So it will depend on the drafting technique applied by the legal advisor to help fixing issues that actually stem from drafting.

And we can certainly ensure that the spirit of our recommendations is appropriately reflected in the bylaw language by just looking at it during the implementation oversight that's going to be there with our participation. So some of the points were -

and I'm not making explicit reference to the one that you mentioned, but where the group feels that the report was not explicit enough. We can then say okay this is what we intended to frame when we wrote our report. So there is a little bit of wiggle room there.

But for the main points, for the main policy decisions, we have what we have in our report and we can certainly change those things but such changes in a post-transition world would be subject to the same rules, i.e. the processes for changing standard bylaws and the process for changing fundamental bylaws as we've spelled it out in our report. Thank you.

James Bladel: Thank you, Thomas. I think that's a good point. And, Stephanie, to your question I think in the chat, you know, I would hope that we would signal those concerns to the CCWG for inclusion in the implementation effort. For example, to say that, you know, we're approving this or we're voting to approve this particular recommendation because our reading of the language indicates that, you know, X, Y and Z and we expect to see this reflected in the bylaws.

And if this is different then - well, I don't think that we would have an opportunity to have an "or else" attached to that statement. But I think at least putting that marker down and saying we approve this recommendation because we read it this way, would help to drive some of those clarifications.

And I do note that I did say something wrong in the chat there. I believe I said something about that the SOs and ACs vote on changes to the bylaws including the implementation of these recommendations and Marika pointed out that that's not correct, that's actually the board that votes on bylaw changes, however, the community is consulted and there will be public comment and opportunity to weigh in on that so I apologize for speaking out of school on that one.

Stephanie, a new hand or? We'll go then to Paul.

Paul McGrady: Thanks. Real quickly, this is an important topic because the, you know, the Recommendation 11 still contains the in the proposed bylaw - still contains the language that says that certain GAC advice can only be rejected by - now it's down to 60% vote so it's one less vote, but that mandatory vote language still remains.

And everybody that likes that particular recommendation, you know, continues to assure me that the drafting notes says the opposite, that a vote is not mandatory even though the draft bylaws clearly indicates that it is. But not to worry because the drafting instructions will, you know, ensure that the implementers get that right and that we don't end up with a mandatory vote on GAC advice or else it's accepted.

Well so my question then is well, what happens if the implementers get it wrong? And we end up with something that we didn't really vote for, you know, I guess same question that Stephanie has, what's the mechanism to address that? Sounds like from chat that maybe it's just that we raise the issue in the public comment and hope the board, you know, fixes it. I don't know why they would be motivated to fix it but so I guess the question is maybe should we be thinking about putting in to the vote the presuppositions upon which the votes are based for each of the proposed recommendations? I don't know, it sounds a bit cumbersome.

But maybe that's work that needs to be done on the front end. I don't know what good it will do us on the back end because there's no mechanism to actually fix anything that goes off the rails. But it might make us feel better I guess. And probably is, you know, something to be on the record about. Thank you.

James Bladel: Thanks, Paul. I think you and I were thinking very similarly there. Thomas, you're up next.

Thomas Rickert: Yes, thanks James. And just a word of caution, I would hope that Council doesn't take the route of adding conditions to its approval. I think that would be a recipe for disaster because other SOs and ACs might take the same route and then we end up having a proposal we don't really know what to make out of these responses that we get from the chartering organizations.

So I'm not suggesting that you should not add any expressions of what understanding of the report you had, but if I may I would like to ask you to be very conservative with any narrative or explanatory notes if not requests or conditions to your feedback to our (unintelligible).

James Bladel: Thank you, Thomas, that's understood. And I think that what Paul was expressing, not to speak for him but it's very similar to my statement earlier, which is that we should feel free to indicate how we were reading the language when we voted to approve it. And certainly that's a communication to the CCWG and later to the implementation work to - that if they encounter that ambiguity when crafting the language of the bylaws that they can then refer back to those statements to ensure that that is - the language reflects the spirit of the approval that was granted.

                  James, go ahead.

James Gannon: Thanks, James. I'll be very brief. I just wanted to make sure that, you know, like many councilors that will not have been able to follow this just to briefly explain that for implementation this isn't going to be a similar to the PDP implementation, this is going to be a much more interactive process. The implementation of the CCWG report and in particular the bylaws drafting which is, you know, where most of the GNSO concerns would come from, I think, will be done by the CCWG's independent Council working in conjunction with ICANN Legal.

                  So this isn't going to be a situation where, you know, the GNSO endorses the report, hands it off and then suddenly six months later a set of bylaws come back that have been ratified by the board. And we go, wow, what the hell happened here. You know, this is going to be an iterative process working with our own independent counsel for the CCWG, ICANN Legal and input from, you know, the CCWG members also.

                  So while there is not a, you know, a ratified vote that we will be going through during the implementation process to say yes we are happy with this, you know, our counsel will be intimately involved in the drafting of those bylaws and making sure that they very much match the needs, wants and intent of, you know, the GNSO for us and also all the other ACs and SOs.

                  So it needs to be very, you know, clear that this isn't going to be a hand off to ICANN Legal or to anybody else, you know, both the members and the CCWG's independent counsel who have provided us great independent advice to date will be intimately involved in that process.

James Bladel: Thanks, James. And a good point as well, that the drafting these bylaws and implementation of these recommendations will not occur in a black box. So okay the queue is clear. We have approximately five minutes left in our allocated time so if you'll indulge me I'll just take those last couple of minutes to say thank you. Thank you to everyone who made some time today on your bonus day for 2016 to come in and discuss CCWG. I think this will get us at least at a minimum two hours further down the road than we would have been when we arrive at ICANN 55.

Thank you to Thomas for his work on this group. You know, I can't tell you how many times over the last, you know, 12-14 months where I've thought to myself that, you know, he and Leon and Mathieu probably possibly had the worst volunteer jobs and ICANN and I thank him for his patience and for his work on this.

And I think that extends to all of the GNSO participants and members. And I don't want to call anybody out by name but I know a couple of folks who've done some really, really heavy lifting on some very specific and complex issues and stress tests that have translated I think into some very meaningful recommendations that we wouldn't have otherwise. So thanks to those folks and of course staff who always make it all look like it was happening on purpose so appreciate their work as well.

Thanks everyone. I would say if you're headed to Morocco in the next couple of days please, you know, stay safe and hopefully your travels are uneventful. And our next chance to chat will be on Saturday in the GNSO working sessions. So thanks, everyone, and look forward to some healthy discussions on the mailing list between now and then as well as in the room in Morocco. Thanks.

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