ICANN Transcription

CCWG New gTLD Auction Proceeds

Wednesday 08, May 2019 at 1400 UTC

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MICHELLE DESMYTER: Good morning, good afternoon, and good evening and welcome to the CCWG New gTLD Auction Proceeds call held on Wednesday the 8th of May 2019. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the audio bridge, could you please let yourselves be known now? Thank you.

Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to

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please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this, I will turn it over to Erika Mann. Please begin.

ERIKA MANN: Hi to everybody. Good morning for those who it's still morning, depending on the time zone you are in. Good morning or whatever suits you.

The roll call we don't do, so second on our agenda is to question whether anybody of you has an update concerning the conflict of interest declaration. I'll just give us a second. No, that's not the case? Okay. Then, let us move to item three which is the update on status of outstanding action items.

A reminder how important it is to review regular – the CCWG already achieved agreements today on the latest version of the templates which you can find in the link which you see on the screen. Or if you can't see the screen, then please check the e-mail. It was mentioned there as well.

Just to brief you. We had a quite long discussion in the leadership team already last week because we had so many items which were outstanding and outstanding from our … The agreements we achieved in Kobe but then many of the discussions, either smaller groups or obligations which were put forward to the leadership team. So many of these items we reviewed, Marika and staff, like always, did immense job in updating this. I would like to ask Marika if she would like to give a brief overview where this

information can be found, the things which we have achieved and items which are still outstanding. Marika, can you do this, please?

MARIKA KONINGS: Sure, Erika. Just posted in the chat the link to the Wiki page and where we have all documents and templates posted. On there, you'll also see at the bottom – and I have to admit that we do need to update that document based on this last call you had. But we have a document there at the bottom that says a CCWG agreement based on review of comments.

What we've done there is basically to pull out of all the templates the different action items or agreements the group reached as it reviewed the comments that have been received.

As you go through that list, we've also tried to assign who those different agreements or action items belong to, and as Erika noted, we started working with the leadership team through those items that specifically said [with] the leadership team. Staff is also following up on its action items. But there are quite a number of those in there that the group will need to come back to once we really start working on producing the final report because there are a couple of areas where we basically indicated that the CCWG will basically review that further and when it would come to the drafting of the final report, there are a number of areas where proposed language will need to be inserted and of course that will need to be reviewed by the group as well.

But I think, in the meantime, it would be really good for you to review that document, already taken the work that's ahead and if

you have any input or suggestions on any of these items, of course to come forward and put those forward.

I think a number of those, staff will take them on and produce an extra version of the report reflecting the different comments, as Erika noted, I think in the next couple of days you'll also see follow-up on some of the items that leadership and staff have taken on. But we're hoping that way we're able to document the different items that are outstanding and also clearly demonstrate to the broader community what action the CCWG has taken as a result of the review of public comments received.

ERIKA MANN: Thank you, Marika. Just looking at the chatroom and checking whether somebody wants to make a question or make a comment. It seems to be not the case. So, please be so kind to review this. It's still a work in progress. There are some items even we as the leadership which we committed ourselves to fulfill by today, we haven't done yet just because both Ching and I were travelling so intensively and it was just incredibly hard to get this all done. By the way, Ching, you had a birthday. Happy birthday to you. Have a great new year. So, the two of us, we were travelling so much – and staff the same – but it's primarily Ching and my role to review this and there are some items which we just haven't managed. So, apologies for this as well. But please be so kind and check this list. It's a great overview and it gives us a good reminder about the topics we committed to do or we already did.

So, if there's no questions, I can see – happy birthdays are coming in for Ching but nothing related to this topic. Then I believe

we can move to the next item which is already the FAO. Is this correct, Marika?

MARIKA KONINGS: Yeah.

ERIKA MANN: The leadership team I don't think there's much we have to do, with the exception with what I just said. So, please, be so kind and introduce the item.

MARIKA KONINGS: Thank you, Erika. I hope you've seen that staff posted on the mailing list and I'm also posting it in the chat again where you can find the frequently asked questions document. There are two of those. One of them focuses on the input that has been received to date from the board and the other one focuses on the input that has been received from ICANN Org in relation to legal and fiduciary requirements.

So, we've tried to translate that into a questions document, a question and answers document, which will hopefully make it easier to parse the information that – especially in the case of the board has received various letters and bringing it all together in one document.

The hope is that you'll all take an opportunity now to review this information so you're all aware of what information and input has already been provided, but also use it as an opportunity to identify

any follow-up or clarifying questions you may have about the board liaisons and Sam and Xavier have been really good as well about providing input during our calls and on the spot, but if there is anything that you believe is missing or is not clear or you have a follow-up question, please make sure to identify that sooner rather than later so we can make sure to obtain that information and add it to the FAQ, so they can as well serve as a resource as we go through reviewing the different charter questions and eventually as well the final report to make sure that the recommendations are not in conflict with requirements that have been indicated previously or the group is also aware, should there be a conflict with board input that has been provided on the topics.

ERIKA MANN: Thank you so much, Marika. Just a reminder maybe because some of us are relatively new in this group. Let me just give you a little bit of background. We had, from the very beginning, there were questions which came up which had a quite legal nature. Then the there were questions which related to the obligation the board has to fulfill in being a part of this CCWG auction proceeds exercise in the future, in particular the fiduciary obligation and the judiciary obligation.

So, what we did, we had many questions which we put forward to legal and to the board. Quite often this was done actually even in exchanging letters, and instead of raising the question only during the discussions.

Both entities provided us actually with quite frequent – with answers. So, what was very difficult for us when we now have to

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review all these comments to understand how they relate to the answers we already receive.

So, for you, it will be extremely good in particular, those that joined, who were not part of this exercise from the very beginning, just to review these two templates staff provided which is extremely helpful. And there's nothing new in there. It's all what was already said in the replies we received from Sam or from Xavier or from the board. All is included in there. It's just in a different format instead of a lengthy explanation and a lengthy document. It is now broken down and relates to the different questions. So far, it is extremely helpful. Thank you so much, Marika and Joke, and everybody else who was involved in doing this.

Checking the chatroom and participants, nothing I can see. No comment. It looks like it is okay and it looks like the purpose of these two documents is well-understood. Again, thank you so much.

Let's move to the next item which is the comment concerning charter question two. There we had, if you remember, a small group working on it which was Marilyn, Elliot, Jonathan, Alan and Maureen to develop draft language for conclusion. We do have a draft language. Who wants to introduce the topic and present us with the final language you are recommending?

MARIKA KONINGS: If I can just, before someone from the small group speaks …

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ERIKA MANN: Absolutely. Go ahead.

MARIKA KONINGS: Just note I started sharing my screen which has the language that was put forward, developed by the small team. And in red, you see an addition that Vanda proposed on the mailing list. I think I saw someone, one person, responding in support of that but it may be worth it as well for the group to look at that and see if they're happy to support the addition and of course the overall language as well.

ERIKA MANN: Marika, why don't you then read the complete text and then I will check if somebody from the small group would want to say something in addition or if you just can accept the document, the text, as it is? Just please be so kind to read [inaudible] may have difficulty in seeing it well on the screen.

MARIKA KONINGS: Sure, Erika. To give a little bit of background or those that may be new to this or may not recall where this language comes from, there were a number of comments that spoke to the issue of how to distinguish between what belongs within ICANN's operational budget and what may have been funded on a more exceptional basis and might still be qualifying for auction proceeds and how to draft that and guidance that is to be provided to evaluators.

So, the language that you see here is basically the outcome of the small group that looked at the comments that were provided as

well, factored in the discussions that the CCWG had on this topic. I think someone needs to mute their line. Okay, I think the line is muted.

ERIKA MANN: No, I don't think so. Somebody wants to speak. Somebody is not unmuted.

MARIKA KONINGS: Yeah, I think they're still on the line.

So, the proposed guidance to evaluators – and again, this would be included in the appropriate section, in the final report, and I think this is part of the implementation guidance that would be provided, that evaluators may need to differentiate between what is in the regular ICANN operational budget and what has been funded on a more exceptional basis. This will be a determination that needs to be made by the evaluators in line with the legal and fiduciary requirements.

Consistency with the ICANN mission is a necessary but [not sufficient] condition for funding. Evaluators should specifically consider the scope and impact of the proposed project in light of the constraints otherwise imposed.

Then, the group also reviewed additional language that should be included in relation to the preamble, to the annex, with examples to also provide that context and a deadline which would be a consistency with the ICANN mission is a necessary but [efficient] condition for funding. Evaluators should specifically consider the

scope and impact of the proposed project in light of the overall purpose of the auction proceeds and constraints otherwise imposed. Examples provided are specifically intended to be illustrative, not definitive.

Vanda had suggested to that last sentence the following words be added, so examples provided are specifically intended to be illustrative, not definitive, and openness to innovation and the future of Internet shall guide evaluators.

ERIKA MANN: Okay, thank you so much. Somebody from the small group, would you like to make some comments concerning this work you have done or is there nothing you would like to add?

MAUREEN HILYARD: Erika, this is Maureen Hilyard. Can you hear me?

ERIKA MANN: I can hear you well.

MAUREEN HILYARD: Okay, thank you.

ERIKA MANN: Maureen, are you on audio only? Can you see the screen or not?

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MAUREEN HILYARD: Yes, I can see the screen. I just wanted to say that I was looking through the participants and I noticed that I can't find anyone else from our group who is there. I must admit I had very intermittent involvement in the development of this statement, which I actually do agree with, of course. I also agreed with the inclusion of Vanda's statement within the statement because it did actually reflect what we had actually earlier discussed and we're now looking at basically how evaluators might look at scope and impact, for example. I think that it would be a good addition to make into the statement.

But apart from that, I thought the others might be here who might add something. But as far as I'm concerned, I quite like the statement. Thank you.

ERIKA MANN: Thank you, Maureen. I believe Jonathan is with us. I saw him. I can't find him in the moment. Oh, there he is still. Marilyn has her hand up. I can't even find Marilyn. I was checking where she is. Marilyn, please, go.

MARILYN CADE: Thanks. Erika, I think that's because I'm MS Cade on the sign-in list.

ERIKA MANN: I was tricked again.

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MARILYN CADE: Not to be mysterious, but if no one can find me as Marilyn, I'm usually MS Cade. I'd like to hear from Jonathan as well. I think we're like 99% there. There is a phrase we included that I don't really fully … I think I understand it but I just want to make sure that all of us understand it and it reads "and constraints otherwise imposed." That may be clear to the CCWG AP members, understanding the legal implications, etc. But it's kind of a strange phrase to include here without perhaps a footnote that clarifies some examples such as the legal requirements or other requirements, because right now it just says constraints otherwise imposed.

As to the addition, yes, that would help a great deal. Thank you for adding that [parenthetical]. As to the addition, I'm generally in support of it but I think we have to always remember that we're trying to remain true to the ICANN mission even if broadly interpreted.

I'm okay with the addition as long as we're clear that we're not trying to expand the mission of ICANN through the use of these funds.

ERIKA MANN: Thank you, Marilyn. You have dogs in your background. I like the noise.

MARILYN CADE: Those aren't my dogs. They're somebody else's.

ERIKA MANN: Ah, I was wondering. Jonathan, is there something you would like to add? Maybe he can't hear us. Oh, Jonathan.

JONATHAN ROBINSON: Hi, Erika. I can hear you but I'm in a public place and it's difficult for me to contribute by talking now. I think there's not enough to add for now. Thanks.

ERIKA MANN: Thank you, Jonathan. So, coming back to the point Marilyn raised, I was wondering about this as well. So, I believe the first we can solve easily. Somebody was already typing. I would make legal and fiduciary requirements. We can put this exactly in the bracket. So, this should be easily solvable.

The last one, I understand the reasoning why it is recommendable to add something in relation to the future of the Internet as a whole so that it shall guide evaluators as well.

There is this tricky part, and Marilyn pointed out to it, that of course the constrains will override very lightly any evaluation future evaluators will do with regard to the open Internet in case there is a clash to the nature of – the legal nature to ICANN. So, maybe we just have to twist the last language a little bit. I definitely would recommend to end after the sentence, not definitive, and then add a new sentence instead of just continuing. This sounds a little bit strange. Then maybe one could say something a little bit lighter than it is drafted right now, openness to innovation and the development or the future of the Internet shall be part of the evaluation evaluators will do – something like this, just to give a

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little bit more context. And somebody will just have to look into it and do a good drafting and a good English language so it sounds good.

So, what I would recommend – I don't think we need to talk about it because it looks like we have an understanding here. I'm just looking at the chatroom if somebody is completely opposing this language, because right now I just see that we need to balance the language with the constraints ICANN will have even in the future, the legal and fiduciary constraints, and then we need to ensure that the requests for evaluators to take the nature of the Internet into consideration is well understood and it's not leading to an open-ended [tenders] in the future which have no connection to ICANN. So, somebody just needs to do some good language draft and that's all.

Let me check. Openness to innovation and the future of Internet may be part of the evaluation consideration. I think it can be "shall be always part" but I don't think we should say it shall be always part of the consideration. We just need to do a good drafting so it's well understood what we want to say here.

Just checking with Vanda. If Vanda feels, because she was putting forward on this language, if she is fine in recommending to redraft the sentence a little bit. Vanda, are you okay with this? And Marilyn?

MARILYN CADE: Let me explain, because I typed into the chat. I really can't accept the word "shall". Having worked so much in the UN environment,

the word "shall" or "should" is definitively instructive. "May" is a possibility. But when you use "must," "shall" or "should," then you're basically saying that has to be included.

I'm not comfortable with our examination of the implication. We could in fact flood the application process with all sorts of applications which are worthwhile but they're not close enough to the ICANN mission.

ERIKA MANN: Yeah. Marilyn, well-understood. Totally agree. But that's why we need to do some reviewing of this last sentence. I believe we have an understanding what Vanda and those who recommended this want to achieve. We still have no agreement how it shall be phrased. So, that's all which we need to work on.

What I'd like to do instead of doing this right now on the fly, just give it back to the small group, and please be so kind, just review this last, sort this out please and try to come back to us, and then we can finalize this topic. Is this okay with you?

MARIKA KONINGS: We have a couple of people in the queue. I don't know if you're seeing the hands, but we have Sam and Jonathan that already had their hand up for long.

ERIKA MANN: I'm totally lost in seeing this, I must admit, on this new screen. Yes, I see Sam. I saw Marika, this was you. Sam, please?

SAMANTH EISNER: Thank you. I wanted to talk about some of the language in the first section, on the proposed guidance to evaluators. From a drafting team on this, was there any assumption of whether this would be something assigned to independent evaluators versus the more administrative [inaudible]? Putting the onus on, for example, the independent group of people who will be evaluating the applications, to then assess things against ICANN's operating budget and what's been funded and what hasn't, looking at that at a historical view, that seems to be a very objective task in some ways that actually spells out a lot of detail in there. There's a lot of opportunity to maybe get it wrong if you don't understand what you're looking at.

So, I wanted to understand that there is flexibility in this language to make sure that this is just part of the evaluation process as a whole, looking at both the administrative and then the substantive level of who within the independent evaluators determine should get the funds or if this is something that the drafters saw as reserved to the independent group? Because I think from the ICANN Org side, we might have some inputs we want to put in based on how that falls out.

ERIKA MANN: That's actually a good point you are raising. I'm just checking the chatroom if somebody else would like to talk. I can't see it, but again I might not identify it right. Apologies in this case.

I think you raise a very valid point because it is true it's not a role of the evaluators, actually, to check whether a request which comes in shall … Okay, Marika, thank you so much. Whether it is touching on an existing operational budget and how to respond to this.

I agree. It's a little bit strange. But I see Jonathan and Marilyn would like to say something. So, Jonathan maybe first and then Marilyn. If you have a chance to talk now, Jonathan.

JONATHAN ROBINSON: Thanks, Erika. I was simply going to offer to edit based on Marilyn's previous input. Sam's obviously added another dimension to it now. I'm not sure I can respond completely to Sam's point. I'm not sure I understand it completely yet. So, I don't know how we fix this. It's probably better that we try another short session with the drafting group and with Sam participating, and that may be the most practical way to deal with it. But I defer to others if there's a better way of trying to get past this little impasse. Thanks.

ERIKA MANN: Yeah. I agree, Jonathan. That's maybe the best proposal, to put this back to the small group and you have a call with Sam to sort this out and to get this right.

Marilyn, and then I believe Xavier as well. Marilyn, please?

MARILYN CADE: Thanks. I'm going to be really both clear here and give some examples without being negative. I am going to express concerns that at least the BC and others in the CSG constituencies have about ICANN Org being, I'm going to say, in a position of being judgmental and perhaps overly restrictive and overly interpretative of what they think should be funded.

My examples include the fact that significant cuts have been made in community outreach program, the special projects, etc., while funding has gone off to – in the ICANN budget has gone off to other activities that are also – were supported in the budget comments.

But I just want to reinforce the idea that just because a form of community outreach activities at a limited level is funded in the ICANN budget, that should not eliminate the opportunity for applications that benefit the broader community.

So, I want to be careful that we're not going into a check-the-box approach where the ICANN Org is put in a very difficult position of saying, "Oh. Well, we have three examples, so therefore, independent group, you should exclude other similar but different examples of community activities."

ERIKA MANN: Marilyn, I believe that's well-understood, so that was the purpose for this group to come up, actually, with this language because of exactly what you just described. But the question then remains, of course, shall it be the role of evaluators to do this work and are they actually able to do it and the basis of it? That's what I

understood from Sam which I believe it's a reasonable question to put forward to this group, and in particular to the group who was working on this language.

So, I believe giving it back to you and having a – reviewing the current text, in the light of what Sam said, without neglecting what the purpose of this whole exercise is and the purpose of what you just said. I believe it would have some value.

But let me ask Xavier, are you still on Xavier?

XAVIER CALVEZ: Yes, I am. Can you hear me, Erika?

ERIKA MANN: Yes. Strangely, I don't know why I don't understand the symbols of who raised hands or not. Somehow, apparently I lack this capacity to follow this stuff. Xavier, go ahead. I'll go on mute.

XAVIER CALVEZ: Thank you, Erika. I just wanted to jump in because until Marilyn just spoke, I think there was confusion. But now I understand the concern that Marilyn was pointing out, which makes complete sense. The concern being that ICANN staff, if doing this check, would also propose or suggest an opinion as to whether the activity should or should not be considered eligible.

I think that we can look at it from a very practical standpoint. If the evaluators would be in charge of checking with an activity is already an ICANN operating plan, they would not be able to do it

without asking ICANN Org. So, imagine practically how that would be done. They would have to go to documents that ICANN Org produces, and as Sam indicated, interpreting or reading or trying to figure out whether or not that activity is or is not included in it. It may not always explicit depending upon how the activity is formulated.

So, inevitably, at some point, ICANN Org is going to have to make that assessment and provide feedback. Now, I think that – the way I understood this, which makes complete sense to do, was that someone needs to check whether or not that activity is included. It's not about whether the proposed activity should not be considered. It's about, factually, is there already something done or not in ICANN operating plan relative to that same activity?

So, I think that this is something that ICANN Org has to do one way or the other, even if the evaluators are in charge of it, ICANN Org will have to do it. And offer that information, factually without opinions – factually – and substantiate that factual feedback so that then the evaluators can take that into account.

I think that if the factual, tangible which is not an opinion – it's just facts – feedback is required, which it should, then it can and should be performed by ICANN Org, so that then the evaluators can take it into account and challenge it possibly if there's doubts about it. That's fine. But I think that if we limit what ICANN Org does to the checking of factual information, there's no opinions about it. It's either in or out. I'll stop here. Thank you.

ERIKA MANN: Thank you so much, Xavier, for the additional comment. There's one other aspect to it as well. Just because something is cut and a new request comes in through the CCWG auction proceeds, the future mechanism, doesn't mean because it was cut it has to be supplemented now out of this fund because maybe there were other reasons to cut it. Maybe it's not worthwhile to continue it. So, there are many reasons.

I believe it would be good to give it back to the small group. And in the light of the discussion we just had, further exchange, Jonathan recommended to have Sam and very likely Xavier, we would just like you to then rephrase and reframe it a little bit in a different way, keeping Marilyn's concern into consideration as well. Is this fine with the small group? Can we give this back to you?

Okay. Looks like it. So, we do have an action item here, Marika. Would you be so kind just to rephrase the action item so that we have a common understanding? And then we can move forward.

MARIKA KONINGS: Yes. Thanks, Erika. I think that the action item here for the small team that worked on this original language together with Sam and Xavier to review the input that was received during this call and come back to the full team with possible proposed edits to this language.

ERIKA MANN: Yeah. Thank you so much. We need to check the chat room as well. Ching made just a recommendation. There should be a declare of interest process built in for the fund applicants, meaning

that they will have to declare if they received fund from ICANN Org or from other sources, it has to be done anyway.

Yeah. And then Judith has her hand up. Apologies, Judith. So Judith, please.

JUDITH HELLERSTEIN: Yes. I think we want to also clarify what Marylin was saying and what Xavier was saying, is that when they ask ICANN Org if this is funded, they ask more specifically so that Marylin's concern that, "Oh, is outreach funded?" It's not getting classified as outreach, it gets classified as what particular part of the outreach has that applicant had proposed and not that that is classified [inaudible] outreach. And that way, the independent panel can have a better idea of what's funded and what's not, and maybe they would be – I guess my suggestion is they don't, say, put things in broader categories and asking ICANN, "Is this funded?" But putting in the specific categories so that a factual answer, they can have a better idea. I don't know if that's clear.

ERIKA MANN: Yeah. But we want to keep in mind as well that of course we don't want to – if everything will be funded out of the auction proceeds in the future, which is cut by the operational budget, then we're practically only supplementing the operational budget. So the original purpose of this fund was to do something new and something fresh.

So it's just something to keep in mind, so it's good for the evaluators always to balance, is this what was cut, shall it be

supplemented in a new project which is important and relevant to sustain the work of the community work, or is it just – was it reasonably cut and there's no need to supplement it?

So I believe there's something you have to work on to take all these points which were just mentioned into consideration. Marylin, I just checked, is supporting as well that it goes back to the small group, and she supports Jonathan's suggestion as well. So I believe we have an understanding, so let us give back this whole work to the small group, and Marika already summarized the action item. And with this, I believe we can – I do a final check. Xavier, I believe that's an old hand, and we can move forward.

Okay, great. What is happening to the screen right now?

MARIKA KONINGS: Erika, I stopped sharing my screen because we finished on that item. We will just go back to the agenda, and once we get to the next agenda, I'll put up the relevant document.

ERIKA MANN: Thank you so much. Okay, so we finalized item four, charter question in relation to charter question two, and then we do have a review of comments and we are now moving to item four, and the first charter question would be 11 if I understand the agenda well. So let's go to this charter question. Or do you want to make a general comment first, Marika, related to the review of comments we received and which you have captured in the templates? I don't believe we need to do [inaudible] but I am asking you.

MARIKA KONINGS: No, I think we can just go with the agenda and I can put up the template for the charter question 11.

ERIKA MANN: Exactly, put up the point item 11. Okay, I can see it. Thank you so much, Marika. Please make an explanation, introduction into the item and the recommendation we have received so far from the leadership team. Thank you so much.

MARIKA KONINGS: Sure, Erika. So the charter question 11 relates to – or the question is, should a review mechanism be put in place to address possible adjustments to the framework following the completion of the CCWG's work and implementation of the framework? Should changes occur that affect the original recommendations? For example, changes to legal and fiduciary requirements and/or changes to ICANN's mission.

So there are two recommendations, and one recommendation in relation to guidance for the implementation phase that were provided in relation to this charter question, and you can see them here up on the screen. I'll just read them out so everyone's clear on those.

The first preliminary recommendation number nine says as a standard element of program operations, an internal review of the mechanisms should take place at regular intervals to identify areas for improvement and allow for minor adjustments in

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program management and operations. The second recommendation notes that there should be a process to evaluate whether the program is effectively serving the identified goals and whether allocation of funds is having the intended impact. And then there was also guidance for the implementation phase provided that notes the response provided to this charter question should guide the development of the review framework during the implementation phase.

And if we then look at the comments that required further consideration – and again, as a reminder, what you see now on the screen is a summarized version in which staff and leadership try to digest the main gist of the comments for the group's consideration. But of course, you're all expected to have reviewed the full comments, which you can also find further below in this document.

So the first comment is from the NCSG, the suggestion from the commenter is that the CCWG should consider including stronger language in response to charter question 11 concerning the role of the ICANN community as well as stronger procedures for monitoring and evaluation. The leadership recommendation here is to clarify the role of the community and it notes also there are previous leadership recommendations, and it may be worth here as well reminding the group that there is still an outstanding action item that the leadership team is working on together with Alan Greenberg on developing a proposal or proposals for how community engagement should look or could look. And then leadership also note that – should check whether this should be

done in this phase or the next, which would be the implementation phase.

ERIKA MANN: Yeah. Thank you so much, Marika. To remind you, during our discussion over the last years, the topic came up frequently, and in the comments, we received actually many communities putting forward some kind of language in relation to the question whether they shall be and how involvement in the evaluation or any kind of process from the community can be ensured in the future.

So we want to get this right. I believe – and this is my quite personal opinion with it is important to have the community involved, but it's maybe much more difficult to define how this can be done. I mentioned many times that I was involved and I'm still involved in big funds which are always involving certain parts of certain communities.

For example, if you remember, we had the exchange with the European Commission and the European Investment Bank during our first phase when we had discussions with outside experts, and they have set up a mechanism for review and this mechanism for review involves different partners who are part of this whole funding exercise. And since the community is a partner in different ways to ICANN, it is, I believe, absolutely crucial to have this engagement and the involvement in an evaluation process.

But the question here is, how shall it be done? So the first goal is something the leadership team is working on with Alan, and we just haven't had the time to put forward the language we are

recommending. So we will have to wait, maybe until our next call, to hopefully Alan and the leadership team will find the time to finalize the proposal which we then would want to put forward to you.

The second question of course is a little bit more practical, and that's the question whether it shall be done right now, or shall it be done in the implementation phase? I believe we need to have a general recommendation about the importance of the involvement and the engagement from the community, but then how it will be done, depending on the concrete mechanism we will have to select in the future, the nature might change if it4 is part of the inhouse of ICANN or if it is working in combination with a different entity. In both cases, the nature might change a little bit.

So maybe we want to say this then shall be done by in the next phase, the implementation phase. So I just want to check if there's somebody who wants to make some comments. There is Marylin. Marylin, if you want to speak, please do so. Otherwise, I'm reading what you have written. Discussion about how the community might support [inaudible] more discussion than a single person regardless of which community. Yeah, that's pretty much what I just said. We will just make a proposal that we agreed upon last time in our discussion, Marylin. But yes, it has to be put forward to this group, and then the group can decide, and if you're not happy about the language, we can always build a bigger small group.

MARYLIN CADE: Erika?

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ERIKA MANN: Yes, please, Marylin, go ahead.

MARYLIN CADE: Thanks. I understand I missed a call, but I don't understand why the leadership team would anoint a single representative from only one group to engage in this development.

ERIKA MANN: Nobody else wanted to join. Everybody else, I believe, is flooded with work. Just a practical reason, there's nothing else behind it, Marylin.

MARYLIN CADE: Yeah, that's not actually the issue behind it. The issue is inclusiveness of input. We can address this in two ways: one is how soon will there be a mini draft that others can comment on. I will just say as the CSG representative I can't really go back and tell the CSG that this is an exclusionary process. So if at least there's a date when there's going to be some ideas and suggestions, then I can go back and say, "Here's when we'll have a draft to respond to."

ERIKA MANN: Yeah, that's clear, Marylin. Absolutely. We wanted to have this done last week, we just couldn't manage. That's all. So Alan, I see you here now. I believe we can do this next week, or maybe even this week and then can send it to the group hopefully next week.

Alan, would this be okay for you? If somebody else wants to join the small group, this really tiny small group, always feel free. Marylin, in case you want to join, you're more than welcome. Alan, can you talk?

ALAN GREENBERG: Yes. Sorry. I just joined so I'm not quite sure what you're talking about.

ERIKA MANN: Alan, it's the work we were supposed to do, you and the small – and the leadership team in reviewing language for how the engagement of the community can be done for evaluation purposes.

ALAN GREENBERG: I'm available if anyone wants to work with me.

ERIKA MANN: Alan, we sent you a proposal. So yeah, that's fine.

ALAN GREENBERG: Sorry, that I must have missed. I'll pull it out then. We'll talk after this meeting.

ERIKA MANN: No, I just see Marika coming in, you haven't even seen it yet, it's still in discussion. So apologies. So I will send you later the

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proposal. You can review it, and I'm just asking Marilyn now, and anybody else who would love to join the work of the small group. Marylin, would you like to join?

MARYLIN CADE: Sorry, Erika, I'm happy to join, or I'm happy to just provide comments. My comment was just I can't go back to the CSG and say "This work is being done, we have no insight into it, we don't have a date, we don't have a draft." So either I can join the group, or I can wait for whatever is provided, and then engage on behalf of the CSG in reviewing it quickly and getting comments back from the three constituencies.

ERIKA MANN: Thank you, Marylin. Yes, I totally understand this. So let us get this done. Apologies to everybody for the confusion. So what we will do, we will finalize this in the micro team, Alan and just the leadership team, send it to all of you, and then you have the time to review it. Just let's keep it simple. Back to you, Marika, and please, just summarize the action item and then let us move forward.

MARIKA KONINGS: Yeah. Thanks, Erika. I'm trying to take some live notes as well that will reflect in the template as you can see on the screen, so I'll try to reflect some of the points that you made and also note that this is linked to the work that's happening in response to other comments that were made concerning the role of the community. So I've made a note here that this is likely to [await] the outcome

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of that small team work to see whether anything further needs to be done or whether this comment is sufficiently addressed.

You also noted that it may be worth including a general comment in the final report that notes that depending on the mechanism chosen, the review framework may need to be adjusted to ensure that there are sufficiently strong procedures for monitoring and evaluation are in place. So if everyone's happy with that, I'll just also note that as a clarification staff will make in the proposed language for the final report.

Then for the next item, our next comment comes from the ICANN board. The suggestion is that the CCWG should consider clarifying that if a review indicates a need for fundamental changes to the mechanism or the purposes of the use of funds, those would be significant changes for which additional community input will be required. And the leadership recommendation here is to integrate language that recommends requesting community input after proposed significant change after review, and notes as well that significant may need to get defined.

ERIKA MANN: Thank you so much, Marika, for introducing this item. I just noted in the chat room because I saw that Marylin and Maureen actually noted in the chat room they would be willing to participate in the small group. So I recommend we forward the draft text to Marylin and to Maureen as well. So we have then Alan, Marylin and Maureen working in the small group with the leadership team.

Okay, I still see somebody typing here. Marika, is this actually the template you want to show us, or is this still what I see here something else than you were just talking about?

MARIKA KONINGS: No, what you see me typing is I'm just catching up on what we discussed under comment number three, but for the group's purpose in comment number seven, which you should see right below that. I'll highlight that here on the screen. So that's what we're discussing now.

ERIKA MANN: Okay. So on the screen, we see the two – you're still typing – in relation to the discussion we just had, and then comment seven is the new one. Do we have any comment here? Or I believe that's an item we can park. I don't believe there's anything actually we have to do. But I want to see if somebody else wants to make a comment here.

So just maybe to read it again, Marika, maybe you can just read this comment again and the task which we have, clarify the task clearly what we have for our discussion today.

MARIKA KONINGS: Yeah. So comment from the ICANN board suggests that the CCWG should consider clarifying that if a review indicates a need for fundamental changes to the mechanism or the purposes of the use of funds, those would be significant changes for which additional community input would be required. So I think for the

group, it's to discuss if the group agrees that indeed that will be the approach or the process, the group may want to clarify how that is expected to happen, or maybe it's sufficient to just state that appropriate community processes would need to be used to effect any or recommend any kind of changes, or however detailed the group wants to be in that regard.

ERIKA MANN: Yeah. Thank you so much, Marika, for clarifying it again. So just Xavier, is this an old hand or a new hand?

XAVIER CALVEZ: Sorry, it's an old hand.

ERIKA MANN: Thank you so much. Just maybe to give some context to this question, so what happened frequently in these kind of review processes – and everybody who is involved in such kind of review processes will know what I'm talking about. So what happens frequently [that in a review one] identifies that either the program is not working well, the goal is not really met well, or the project's applications are 80, 70, 90% out of scope, so it's difficult to identify projects which are valuable under the scope definition and the constraint definition actually to select good projects.

This is something which happens in review processes frequently. And then the question always arises, is the original definition of what can be funded and how it shall be funded, is this correct, or is maybe the environment one is targeting for projects, maybe it

shifted, maybe the total environment in what shall be funded totally shifted? This is something which happens frequently.

Now, I notice more from the research environment where project ideas were scoped but then nobody actually came forward with concrete project applications, so sometimes the ideas of those who are sketching out scoping project environment is sometimes outside of the reality. These kinds of things can happen. So in a review process, this will be evaluated, and then somebody needs, typically the review team needs to bring forward ideas how to fix it. So here, the question is how this clarification of a process with regard to review, how it shall be done. So in case there are fundamental changes recommended. So I'm just wondering if somebody of you would like to make a comment here.

No? So either the topic is not totally clear, or you believe we shall maybe park this item and review this topic after we have selected a mechanism and we have clarified our approach to the review process a little bit more, and then we can come back to this point?

MARYLIN CADE: Erika, I'd just make a quick comment. I appreciate everything you just said. It's very consistent with my experience as well, and I think we might want to, at least internally, distinguish between an assessment after the first round of submissions, not just those that are approved but kind of assessing so we called for 14 Johnny Appleseeds – that's a term that many will not understand, but we called for a certain established criteria, the applications actually that came in did not seem to understand the criteria. But a mild adjustment, which is improving the communications and

strengthening the awareness of criteria, that's a mild adjustment in my view versus after a period of one to three years of projects, whether those projects have ben fulfilling the objectives and contributing to the overall mission that was established.

So a mild adjustment and correction of communication and clarifying information, that's one thing, and that, I think, is definitely needed at the assessment period of what do you get in response to your first call. Not those who are approved, but those who are submitting. But that shouldn't be a major change, that's an adjustment approach.

The larger issue, I think, that you're identifying is, but we also need to have a review process of the effectiveness of the actual projects that are funded in whether they're achieving their defined objectives, and those objectives were accepted by the approving entity, whatever it turns out to be. So two phases to this at least. One very light and doesn't take major change, but it does take a change in communications. The second would require actually an evaluation process and would be possibly rather expensive – not expensive, but rather important to undertake, and should be factored into the overall cost for the entity.

ERIKA MANN: Yeah. Thank you so much. And of course, it relates back as well to the role of the community, because I remember Elliot, while he's not with us today, but he was always keen that the community is engaged in this review process as well and this evaluation process, and I think he's right, there needs to be a [role clarified.]

So what we have to do here, I believe – I believe that's an item we have to definitely spend a little bit more time, and we can't do this in this big group. I don't want to create millions of small groups because I know we all have so much to do, so this is not going to work neither.

So maybe what we can do, maybe we need to get a to-do order in place, because I believe everything we recommend here will relate to the mechanism we will have to select at the end of our exercise as well. There will be differences, and I have seen this in practice. As soon as you change the funding environment, all related processes to some degree change as well.

So I believe you're right, there are incremental changes and then there are major changes maybe needed in case something is not working. Either it's not working because none of the projects fulfill their role, or it is not working because the scoping of the ideas for funds is not actually met with concrete proposals. So there's something which we will have to discuss again.

I'm just puzzling a little bit how we can put this item forward. So, do we want to park it? There's something we could do maybe for those who worked in similar evaluation and review processes before. Maybe we can do a check and look into the best practices we have used in different environments, and we can just send this forward to staff, and then we can do an evaluation how these kind of best practices already work, and maybe we can do a paste and copy of good ideas which already exist instead of inventing something completely new. And we can have a Google document and then we can just check and we can finalize this topic item. Marika, I believe you want to say something.

MARIKA KONINGS: Yes. Thanks, Erika. I think this is also probably aligned to the previous item and the role of the community, so I'm wondering if it's helpful, because I think there are two different aspects here. One kind of goes around the review, and I think some of that may already be addressed in the recommendations itself that talk about on the one hand you have the review of the actual project, and on the other hand, of course, you have the more overall review of how is the mechanism functioning, is it you're delivering on the objectives that were set out by the group? And I think as Marylin notes, there may be small changes that are done on a more ongoing basis as kind of minor improvements, and that may not require a full-scale review process, but then there's a need or a desire after a certain amount of time to have a more full-scale review of the program. But there's also the question of the role of the community in that and how those changes would go through a community process before they would get to the board for consideration. And I think that may also closely align with the item you spoke about previously, the kind of proposals around the role of the community, and I think we've spoken before about the kind of community advisory group or committee that might have different roles or responsibilities, and one of those could be the responsibility for carrying out such a review, using, I think, existing ICANN processes and procedures that [I think] also applied for reviews and other contexts, for example policy reviews or structural reviews where I think there is already a lot of experience. So maybe the work of development of that proposal would address to a certain degree or could address the board comment here and providing more details around what such a

review would look like and what the role of the community would be to make sure that there's a robust process in place, or at least a recommendation in place for how that could be done. So maybe this is one where the group just needs to look back once you've done your work on the kind of agreeing on the role of the community and the context of the different aspects of the mechanism and see whether that sufficiently addresses this comment or whether more work needs to be undertaken.

ERIKA MANN: Yeah. Thank you so much, Marika. Marika, I'd like to take this back to the leadership team just to talk about how we can get a hierarchy of order into the decision-making we have to take here, because there are so many facets to it which come up in different comments which we received from the community and from others outside of the community during the public comment period. So we have to get an order, a hierarchy established ion how we want to discuss it and how we want to approach [it.]

There's the review, there's the role of the community, there's the evaluation process, there are the incremental changes which practically need to be done continuously, and then there is the role of the evaluators, there's the role of the evaluation process and the role to the community, and major changes which may have to be made. so I believe we need to take this back to the leadership team just to clarify the hierarchy of decisions, the related comments we already received, and the related work which is already going on, for example in this particular small group you were referring just to.

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So let's take this back, let's build the hierarchy, and then I believe it will be much easier to approach this comment in a hopefully fast and quick way. And we have to keep in mind we need only to define what we need to scope for our work, and then we need to put some language into the guidelines for the implementation team. So we don't have to do everything, but at least we want to scope the work which we have to do in a correct way, and then we want to scope the recommendation we want to make and the guidelines for the implementation team as well.

Okay. Marika, I'm just checking if somebody is raising their hand. No. No further comments I see in the chat room, so I believe we have an understanding. Marika, do you want to quickly summarize the action item? And then we can move forward. Thank you so much.

MARIKA KONINGS: Yeah. Thanks, Erika. So what I've noted is that the agreement here is for the leadership team to propose a hierarchy for how to discuss and approach the different related items, example given the evaluation process, the role of the community review and role of the evaluators.

ERIKA MANN: Yes. And the intervention, the needed correctio and intervention processes in case something is identified in the evaluation process or during the ongoing work is not going as expected in the right way. So the correction mechanism.

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Okay. If we have an understanding here, then I believe we can move forward. I'll let you finalize the typing, Marika, before you move to the next item. Just finalize it.

MARIKA KONINGS: I'm done.

ERIKA MANN: Okay. Then please be so kind and let us see the next topic and introduce the item, please.

MARIKA KONINGS: Yes. If I'm not mistaken, I think next I'm looking at sections one to four of the initial report. And as a reminder, those sections cover the executive summary, a description of the objective and next steps, description of the methodology used by the CCWG, and a summary of the deliberations that led to the preliminary recommendations.

So there were a couple of comments here received from the ICANN board. The first one –

ERIKA MANN: Marika, can I disrupt you? It's not what I can see on the screen right now. I just see the agenda.

MARIKA KONINGS: Oh, Andrea, if you maybe can stop sharing the agenda.

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ERIKA MANN: Thank you so much.

MARIKA KONINGS: No problem. The comment form the board here, or the suggestion from the board is that the CCWG should consider whether a second public comment period is required if material changes are made to the approach and options as set forth.

ERIKA MANN: Yeah. Thank you so much. So the leadership team made no recommendation here, but I believe we will have to do this. If there are substantial changes, that's my personal opinion, I believe we need to have a second comment period. But please be so kind and let us know what you think about it. Comments, please.

MARIKA KONINGS: I can maybe provide a little bit of context here so people can think about it. In the charter, the only required public comment periods are really on the initial reports, but there is an understanding that between the initial report and the final report, if there are material changes to the recommendations, there should be an opportunity for the community to comment on those.

Of course, it could take various forms. You could for example only put out for public comment those aspects that you consider material changes. You could put out a whole proposed final report. The different approaches you could take if you believe indeed

fundamental changes are made that require an opportunity for the community to opine or provide input on.

Of course, it may not be possible to yet make that determination, and of course, it may be good if people can give an indication if they think it's necessary. But presumably, you'll be able to see more clearly once you have your draft final report and take note of the changes that have been made to the recommendations to make this assessment on whether indeed it has substantially changed from what you recommended in the initial report to what is being proposed in the final report. So again, that's really a determination to make for the group and in due time make a decision about.

ERIKA MANN: Thank you so much, Marika. Yes, I agree with what you just said. And it may be time to have a discussion in your community about this topic and just see and test the mood there, because if it's again a public comment period of course at least a full public comment period will of course delay the whole process again, so maybe the recommendations from coming up in your constituency how to approach this topic, and so maybe it's just a discussion which you need to have.

If I remember well Marika as well there was a board recommendation related to this item. I just can't find it. I was looking for it, but I believe the board said if there are substantial changes, a new revised public comment period would have to be made. There it is, you're just scanning it. Can you read this, please, the point from the board?

MARIKA KONINGS: Yes, of course, Erika. So this is the literal text of the board comments which note that if the report changes significantly as a result of public comments, the board would encourage a second period of public comments to make sure the community and beyond have opportunities to comment on any material changes to the approach and options set forth in this draft before submission to the chartering organizations for adoption.

ERIKA MANN: Yeah. Exactly. That was the point I was looking for. Thank you so much. And Marylin is saying, "Yes, if there are substantial changes, yes to a second contracted parties. How short are we allowed to be? It is better to address the substantial material changes rather than starting over in my view." I do agree.

Okay, if there in the current – [there's somewhere] recommended how short a second contracted parties can be, Marika, is there something mentioned anywhere?

MARIKA KONINGS: I believe that the standard at this point in time is 40 days. I know there are some exceptions that are possible to that, especially in the context of PDPs and CCWGs. I'm not 100% sure what flexibility there is, but obviously, shortening time often makes it more difficult as well for groups to turn around. So it may also be a question for you to socialize with your respective groups, what would be reasonable if there is a desire to shorten that period.

And again, we would probably need to check what we are allowed to do in that regard.

ERIKA MANN:
Thank you, Marika. Can we clarify this? Would you be able – so then two clarification processes probably needed, one from staff just to check how the second comment period is handled in different environments. You just mentioned [PDP.] Maybe we can copy from this. I don't know if – or if CCWG environment needs to have their own set of rules. I'm just not aware about this. So if you could please be so kind to check this, and then to all of us, we need to check with our respective group how they would see a second contracted parties.

Vanda is writing in the chat room as well, "We can ask, I believe, but my own opinion may be a short public period only for the material changes," so there's an overlap to what Marylin is saying. Okay, if there's nobody else, I think we can summarize this as an action item what we have to do here, Marika, and then we can move forward on this topic. There's no decision we can take today, but we need to be clear about the past we want to take forward.

MARIKA KONINGS:
Yes. Thanks, Erika. The first agreement I have here is for staff to check what the requirements are in relation to the duration of another public comment period, and then the second one is CCWG to check with respective groups whether a second

comment period is desirable, and if so, what the minimum duration should be.

ERIKA MANN: Yeah. Thank you so much. No further comments, no hands raised. Okay, let us continue, Marika, please. Next item, please.

MARIKA KONINGS: Yeah. Thanks, Erika. Next comment also from the ICANN board. The suggestion here is for the CCWG to clarify how the criteria outlined in section 4.5 are to be used in the evaluation purposes, and the CCWG to consider recommending that a specific application appeals process be built into the eventual application review mechanism. As with other grantmaking programs, the appeals program could be limited in scope to abuses of the process only and be time-bound. This could give applicants the opportunity to challenge for procedural faults without implicating ICANN's reconsideration or independent review process.

the CCWG should consider a recommendation on a bylaws change, specifically carving out individual funding decisions from the bylaws provided accountability mechanisms of reconsideration and independent review, similar to other existing exclusions.

ERIKA MANN: Yeah. Thank you so much, Marika. My recommendation would be here to build this into the hierarchy we have to build in the – we just discussed previously we have to build in the evaluation process, because that's part of the evaluation process. So it's a

different animal, but it's still related to it. So the application review mechanism the board is talking here about needs to build into it. So let's put this as one of the items in the list of hierarchical topics we will have to discuss related to the whole evaluation process and the review process, and then let's come back to this item once we have done this hierarchical list once we have defined it, because reconsideration is one part of it, and the appeals process is one part of it too. It's a different animal, but it's still part of the same hierarchy we have to build.

And there is Marylin in the chat room. I'm not sure I understand. "If there's an independent entity managing the application, what evaluation process they need to provide this? ICANN should be outside this if there's a truly independent mechanism." Absolutely. But there can be a conflict. So again, back, Marylin, to the research environment where I have to deal with this. So there can be conflict arising. So the original owner of the – so the evaluation owners of a reviewing the project and seeing a request for reconsideration coming in, they may provide an answer, but then there may arise a conflict and the conflict needs to be sorted out somewhere in this whole organizational structure. And typically, it then goes back either to the advisors if advisors exist, or it has to be referred to somebody who is reviewing, depending how the whole process has changed. And this is what I understood from the board, how the board would love to have some kind of understanding how an appeal process can be done.

So it's the appeal process, I believe, you were right, this has to go to this entity who is the evaluators entity which is handling the whole process, but then if there's further conflict, somehow it has

to be scaled up somewhere. So that's at least my understanding. Marylin, do you want to speak? Can you speak? Are you able to talk?

MARYLIN CADE: Sure. Just very quickly, I think we need to be really careful that we're not putting ICANN in a kind of unforgiving loop. The relationship of ICANN, ICANN board and ICANN Org to getting involved in appeals, etc., I think needs to be taken into account and limited. If it's an independent mechanism, they need to have an independent appeals process, and reviewing whether that's effective could be part of the review process. But if we create a loop back to ICANN at every stage, then we're also going to tie ICANN up in these unlimited lawsuits that are going on right now in relation to just a few of the gTLDs as just one example, something we don't want to do. We want these funds – they're supposed to be segregated. The appeals process should be proposed by whatever the mechanism is, it should be as totally independent as possible so that ICANN doesn't get implicated in lawsuits, appeals, etc.

ERIKA MANN: Thank you, Marylin. I agree. The independence is absolutely crucial. But then in case there's a conflict, it needs to be the question at least of why is it. If there's some kind of different involvement from a different entity possible. It could be even the kind of community advisory team which we had discussed as well.

So my recommendation is, yes, we have noted your concern, and I agree with them, so let's get this hierarchy right, let's put in just a question the board is raising here, the concerns raised by Marika, by Marylin, and then we will have to come back to this point, because I believe Marylin is right, if this group would just put in a recommendation that an independent application appeal process shall be created by whoever is in the future responsible for the evaluation process, then I believe this should be fine. We may have to say in case there's a conflict arising, then something else has to be done. I don't have an answer to it yet.

But let's put it first in the hierarchy, Marika, and then we have to come back to this point again. Checking the chat room just to see if something has come up here.

MARIKA KONINGS: Erika, we have hands up from Sam, and then Alan.

ERIKA MANN: Wonderful. Sam and Alan. Yes, thank you so much. Sam, please, and then Alan.

SAMANTHA EISNER: Thanks, Erika. This is Sam Eisner from ICANN Legal. I wanted to come in behind what Marylin was saying, and I appreciate the point she was raising there. Just for other people on the call who might not have been through some of the experiences with ICANN, we have a history of when ICANN has empowered or selected an evaluation panel to do a certain process that some of

ICANN's work in that has actually become an issue that's been challenged either through reconsideration or IRP. That is the [inaudible] through the new gTLD program for example as we were commissioning various different panels to do different types of reviews, even though ICANN wasn't doing the review. So we'll get a process, even though this is the process that we're developing within ICANN, the process of grantmaking itself, as Erika flagged and as Marylin has flagged, actually typically comes with an appeal process built in where the applicant can appeal to the evaluator to revisit their decision. We see that as a very different level of appeal than looking at whether or not the ICANN board or ICANN staff violated its bylaws in taking a decision. For example when the board takes a decision on the CCWG recommendations and moves things forward to implementation, someone could challenge that decision on the basis of whether or not the board violated its bylaws, but we do think that there's value for the individual application decisions and making sure that that's handled in a process that's typical for these types of things. So that would be assigning the appeal process within the evaluation realm, which is how many other entities that do grantmaking do that. So as we walk through that – and I appreciate the high-level statement that Erika was saying, we can also see where that interplays with the bylaws because there might be some need to incorporate a specific statement that individual grant application decision as made by the independent evaluator are not appropriate for challenge to the ICANN accountability process while still maintaining the fact that the board and the organization have broader responsibilities. So this isn't about not having appropriate responsibility and not owning appropriate

responsibility and being accountable, but making sure that we have the right accountability lines for the different types of decisions.

ERIKA MANN: Thank you, Sam. That's really valuable and adds the flavor to what Marylin just said. Thank you so much. Alan, please.

ALAN GREENBERG: Thank you very much. A couple of things. First of all, as I listen to these discussions, I get the feeling that we are building what I would consider atypical ICANN process, that is, one that is exceedingly convoluted, difficult to implement and costly to implement with multiple passes and phases of everything.

On a more general position, all of the funding-type projects, funding-type processes that I've been involved with – and I hadn't been involved with a huge number, but I've been involved with quite a number over the years, I've never heard of one where you could appeal. You put an application in, someone decides whether they're going to give you money or not, and that's a done deal.

And I would, to the extent possible, minimize the opportunities for appeal, for having to convene panels, for making sure that we are not liable for lawsuits and make that a condition of application. So I think to the extent we can make this simple, we should, and not make it a typical ICANN process.

We have the IRP which the accountability measures put in place. We still haven't figured out how to convene a panel, and it's three

years. So, let's not make this more complicated than we absolutely have to. Thank you.

ERIKA MANN: Thank you, Alan. Okay, so our action items, we need to make this as part of the discussion for the hierarchy, see where it would fit in the hierarchy. We need to take the – if we want to go this path, we want to make a recommendation, there shall be an appeal process involved, or as Alan said, second, there shall be no appeal process. Alan is right, both is possible. The different granting and funding environments have different processes. So that's a general recommendation we have. If we make the recommendation for an appeal process, we have to put something in the guidelines, because it will depend on how the whole process is set up for evaluators and how they're shaping it out, we just then make a recommendation, an appeal process shall be involved. If we come to the conclusion no appeal process shall be involved, then we can say this as well. And then we have to deal with the board recommendation and we will have to give the answer to the board why we believe we can work without an appeal process.

so I don't believe we can take this any further today because we need much more time to – and you will need time to review this with your community as well. I want to do – and Alan, maybe you as well, and everybody who was involved in such kind of funding and grant environment, please check the procedures in these environments you work with. I will do this too just to see best practices and see if in each case, an appeals process is actually

legally required. I don't know if for example in the US context there are legal requirements to do this. I have no idea.

So a little bit of checking needs to be done here, and then I believe we can take this item forward in the context of all of the other items we need to discuss in relation to the review and evaluation process. Marika, I give it back to you so that you can summarize the item. In the meantime, I'll check the chat room and we can move forward, please.

SÉBASTIEN BACHOLLET: I'm just on the line, if I can talk.

ERIKA MANN: Absolutely. Please.

SÉBASTIEN BACHOLLET: Yeah, just very short, I wanted to support Alan's position and point of view. I think ICANN is very good to increase complexity on everything. Then if we can find a way to decrease the complexity and not to try to overturn any [inaudible] it will be great. And in this case, the way we allocate funds with the foundation organized by [inaudible] there is no appeal mechanism, there is a decision, and then that's it, you lose the project. And if we spend time on that and money on that, it's money who will go outside of other projects, and that's not good. Thank you.

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ERIKA MANN: Thank you so much for your comments. And I see more support f or Alan's point in the chat room. So, we have a clear point here. Is an appeal process needed, or can we actually skip this item? We will include this in the hierarchy, the leadership team, which we have to [inaudible] we will include this decision which we will have to make as well, and in the meantime, we will check if there are any kind of legal requirements which would prohibit [in the ignorance of an] appeals process. I'm not aware about it, but we need to check that. Marika, please.

MARIKA KONINGS: Yes. Thanks, Erika. So the way that I've written down [inaudible] CCWG agreement or action item is that once [inaudible] has been developed, the CCWG to come back to this comment and determine how this is to be addressed. At that point, the CCWG to consider whether or not there should be an appeals process for individual project applicants, and I've put a note here that many express support for not having an appeals process. And if there is a recommendation for an appeals process, guidance would need to be provided for the implementation phase. Also need to address the board's comment regarding applicability or not of ICANN redress mechanisms.

ERIKA MANN: Thank you, Marika, and I just would check, would include one action item as well, maybe Legal can do this, just check whether there are legal requirements which would not allow us to ignore an appeals process.

MARYLIN CADE: Erika, sorry, isn't it depending on the allocation mechanism that is selected? Because if there's no – let me be clear, the BC and CSG have expressed our strong preference for an external mechanism, but maybe tasking Legal with this, it would be trying to determine what the requirements are for an appeals mechanism based on those three options based on those three options that are still being examined.

And I think it would be fairly complicated, I would just say. And again, it's Marylin speaking. It would be very difficult if we choose option one to keep a review mechanism, appeals mechanism, outside of ICANN. But I think Sam has commented. My comment would just be if we're still trying to examine three options, then we might need to understand whether the appeals mechanism applies to one, two, or three. Just for clarity.

ERIKA MANN: Yeah. Thank you, Marylin. I was thinking in much more simple terms. I just wanted to have the question in my mind, maybe in the US environment, as a general requirement, and whenever in whatever kind of environment, funding is provided and grants are given, appeal process must be established. This was my very totally independent from any kind of structure or funding environment. So a much more general in principle, and I think you just need to call to one lawyer who's working on these kind of issues. Should be pretty straight forward. Yours is much more details and is much more complex, but if for example there is a provision which requests whenever funds are provided, there must

be an appeal process, then we don't even have to discuss sit because then it's independent from the three mechanisms. Whatever kind of mechanism we will select, we will have to do it. If there is no provision in place, we can skip this item totally if we feel that's what we should do.

So, do we agree on this item? So no, there isn't. John Levin, "[inaudible] no there isn't, I'm a trustee of the ISOC foundation, we don't have one." Sam is saying there's no legal requirement to have an appeals process, but there might be an accountability need to have one. Okay, that is a different item, Sam.

Okay, so just let's put the topic in the hierarchy list, and then we come back to it in the future. If there is no provision required, then it's pretty simple, we then just have to take a decision, yes or no, do we want to establish it or not. And then Sam is raising the question about accountability. That's a little bit different question, Sam, but we can put this in here as well just as a reminder that we have to look into it, but it's not a question where we need to have an appeal process or not. It's a different one. Marika, back to you.

MARIKA KONINGS: Yes. Thanks, Erika. I'm not sure if I need to restate the agreements here. I think we already covered those. So there are no further comments in this item. Do you want to go to the next one? We still have 12 minutes left in this call.

ERIKA MANN: Yes, please. I believe we can maybe handle one more, and if not, at least we have an introduction into the topic and we can finalize it next time.

MARIKA KONINGS: Okay. Just pulling up the next one. The next one is Annex C, and [inaudible] on that, and as you may recall, Annex C covered guidance for proposal, review and selection, and of course, we just discussed earlier on this call there is already some additional language that is being proposed to be added here, and I think we have some other items as well where we noted that some additional guidance may need to be provided to this new section. In any case, that will see some updates.

So the first comment here that's put forward by the ICANN board is the CCWG to reconsider the board's communication from January 2013 regarding objectives and Annex C to address potential inconsistencies with the objectives and ICANN's mission.

Leadership team has suggested that we should check. The board is concerned that the content in Annex C creates potential inconsistencies with objectives and ICANN's mission and therefore could result in confusion during application and selection and may result in challenges against the selection process.

Also check that the board is concerned that the content of Annex C – I think that's actually just repeat language. Sorry about that. And then it notes that the board asked for clarification on whether these guidelines are intended to modify the principle of the auction

proceeds. I'm not sure if there's something missing in that sentence.

ERIKA MANN: Yes, it's a tricky item. And we had discussed this when we came up with the – to some degree, we had discussed that when we came up with the idea of the examples. So if you remember well, in the history of our discussion, we were concerned that evaluators may be in the future too restrictive in providing support for projects which fall within the mission but which have a broader nature, and may be to some degree not outside of the mission but are not sufficiently clear if they're within or without the mission.

So what we then said to provide guidance – and the list of examples were just guidance for evaluator to be able to judge incoming projects, would we regard them as being within the mission or not? So there are now many, of course, such – once you establish such kinds of examples, there are potentially difficult questions arising f rom such list of examples.

The first one would be if somebody would copy just one of these examples and would put it forward. That's a legal question: would this already provide potential conflict?

The second one would be – which relates to what the board here actually is saying – are there inconsistencies? And this raises the question to us, as those who came up with the list of examples, do we have to review all of these examples which we put in the list and see if there are inconsistencies, or can we just have maybe a general introduction, review the introduction of the sentences, the

language we have provided for the examples and maybe clarify potential inconsistency to some degree?

But then of course the question arise, are we creating maybe legal risk, and maybe we don't even want to have the list included? Or maybe we have to find a way in reviewing how we want to put the list of examples forward to future evaluators. Maybe we even want to handle it in a different way. So there are many, I believe, legal questions coming, arising from the comment from the board.

So let me check the comments. Do we have somebody from the board here, actually, today? I don't think so. I can't see Maarten, neither Becky. Why don't we –

MARIKA KONINGS: Erika, Alan and Marylin have their hands up.

ERIKA MANN: Marylin, please.

MARYLIN CADE: I think Alan's hand was up first.

ERIKA MANN: Thank you so much. Alan then first, and then Marylin.

ALAN GREENBERG: Sorry, that was an error.

ERIKA MANN: Marylin, go ahead, please.

MARYLIN CADE: Thank you. I appreciate having the opportunity to comment on this, because the comment noted here, I think that we believe that the board is being overly – the BC, let me put my hat on here, we think the board is being overly cautious, and well-meaning, but I think there are ways to address this. We could turn the examples into a background briefing. We can have all these caveating statements that attorneys are really good at. Not a comment about – I hope this won't go into the comment here, but not a comment about any particular attorney, but hey, I used to work for a big corporation, we hired and fired a lot of those boys and girls. So I know attorneys are really good at creating the caveating language, that these are illustrative, they're not a commitment to award – to approve any particular application. We can certainly put that into this session, and I think that should deal with this concern raised by certain board members.

And I also don't really understand this board statement, "Annex C creates potentially constituencies with the objectives and ICANN's mission and could result in confusion during the application and selection and may result in challenges against the selection process."

We just said we don't believe that an appeal process is needed, we're going to take a position that no appeals are possible. So perhaps the earlier statement, which is now, what, 15 months old?

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January 2018. Perhaps this could be reconsidered by our two board liaisons taking back to the board.

But I do think giving some ideas of the kinds of examples is useful, and frankly, so what if an application is consistent with one of the examples? That's the purpose of having the example, is to give some indication to the evaluators of what is consistent with ICANN's objectives and mission from the community point of view.

ERIKA MANN: Yeah. I agree, Marylin. Okay, so somebody else who wants to talk whom I can see? No? Okay. So we're coming to the end of our discussion today, so what I recommend to do here, Marika, based on the short discussion we had here, the concern raised by the board, comments made by Marylin, by myself, we put forward a simple question to Maarten – not to the full board, just Maarten – and to Becky based on what we just discussed in a simple e-mail, so not an official letter, just a simple e-mail asking for clarification on some of the points based on the discussion we just had. And then we can – provided we receive an e-mail, and Maarten and Becky is on the call next time, we can continue the discussion.

Marika, are you okay?

MARIKA KONINGS: Yeah. I noted down [the] agreement here. Put question forward to board liaison based on this comment asking for clarification on the input factoring in the CCWG's discussion. And I'll make this an action item for leadership to draft this question.

ERIKA MANN: Correct. Thank you so much. And with this, I believe we can finalize the topics of the day. And then when you're ready, can we see the agenda again? Andrea, or who is doing this?

UNIDENTIFIED FEMALE: Okay, I have the agenda back up now.

ERIKA MANN: Thank you so much. I don't think that we need to summarize all of the action items today, Marika. We have done this at each topic point. So I recommend we don't do a complete summary of all of the action items, it will just take too much time.

So the only thing which is left is to confirm our – if there's no other point somebody wants to raise, just want to ask you if there's anything else you would like to raise. Maybe one question, Marika, do we have some kind of clarification about what is going to happen in Marrakech now, about the time? Can you already talk about it, or is it still too early?

MARIKA KONINGS: Yes, Erika, it's still draft, I think we're still looking at an extensive block. I think three hours if I'm not mistaken. I believe it's currently scheduled for Wednesday morning, so it would be good if people penciled that in. And Andrea, if I got that wrong, feel free to correct me, but there are still some moving parts ass SO/AC leaders are still finalizing high-interest and cross-community topics which

could result in some changes, but that's what we at least have on the draft schedule for now.

ERIKA MANN: Okay. But we do still have currently an understanding that we may have a slot Wednesday

MARIKA KONINGS: Yes, correct.

ERIKA MANN: Okay. So maybe you just pencil, as Marika recommended, the time in your calendar for Marrakech, and it would be good to hear as well from you who is actually going to be in Marrakech and who's not going to be there. Maybe we can do a polling about this as well just to get an understanding, Marika, and we know who's going to be there. We don't have to do it today, just if we can do it by e-mail maybe.

MARIKA KONINGS: Yeah. Thanks, Erika. I think once we are more sure that the slot will stay as is, we can set up a Doodle poll to make sure that there's sufficient participation to go ahead.

ERIKA MANN: Exactly. Thank you so much. Okay, then the last item on the agenda is the confirmation for our next meeting, which is on Wednesday again, May 22nd, and at 2:00 UTC, 14:00 UTC.

Thank you so much, everybody, and have a great day, great evening, great morning. And back to you, to Michelle, I believe, today.

MICHELLE DESMYTER: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]