

**Transcription ICANN61 San Juan
NCSG Open Meeting
Tuesday, 13 March 2018 at 17:00 AST**

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Farzaneh Badii: Welcome everyone to the NCSG Open Session.

We are going to - so, just a couple of housekeeping, state your name before you speak for transcription purposes. And speak at the microphone clearly. And that's about it.

So we are going to have - I think everyone knows each other but we can do - (so we'll do a Table), if you want, and then we can start - and I'm going to introduce you to - but let me just go over the agenda for the moment. No, let's do the (unintelligible) it's more logical.

Mine is Farzaneh Badii, NCSG Chair.

Rafik Dammak: Rafik Dammak, the GNSO Councilor for NCSG and also the Policy Committee Chair.

Joan Kerr: Joan Kerr, NPOC Chair.

Arsene Tungali: Arsene Tungali, GNSO Councilor for the NCSG.

(Hatemi Joan): (Hatemi Joan), newcomer and a fellow.

Farell Folly: Farell Folly, NCSG Policy Committee.

Elsa Saade: Hi. Elsa Saade, NCUC Executive Committee representing Asia Pacific.

Tatiana Tropina: GNSO Councilor, elected by NCSG.

Gangadhar Panday: This is Gangadhar Panday, NPOC Membership Coordinator.

Raoul Plommer: Raoul Plommer, NPOC Vice Chair.

Stephanie Perrin: Stephanie Perrin, NCSG Councilor.

Oreoluwa Lesi: Oreoluwa Lesi, NPOC.

(Cherry Shek): (Cherry Shek), a fellow.

(Michael Castelduval): (Michael Castelduval), freelancer.

Farzaneh Badii: Okay. Thank you very much.

So, welcome. I'm going to go through the agenda.

We will have the non-com leaders in at 5:15. They're going to talk to us about NomCom. And then we have the finance and budget discussion session with the finance team. They requested to be here for 15 minutes and are going to discuss our comments.

And then we will have the interesting issue of GDPR and (who-is) privacy, because we have not discussed it enough. So we are going to talk to Thomas Rickert and have a discussion about it. I think this will be a very informative discussion so that we know where we're at and where we're going and set our goals like that.

For the non-com session, I just want to give you an introductory background. As you know, we only have one non-commercial representative on NomCom, and that's NCUC representative on NomCom. And this has, we have been saying this for a long time, that we need more non-commercial representatives on NomCom, and they have not taken our request into account.

But now that (unintelligible) question, now that the review is going on, since we make these comments that there should be like more balanced representation of commercial and non-commercial, do you think something would - could change?

Man: So there was (unintelligible) on speaking. There was that kind of initial report from the independent examiner in, I think, in January. So they asked the community for input with a really short time. And my understanding that we'd take this comment and to they should adjust the report, but I'm not sure to which extent. So we will have to wait for the final report (unintelligible) process, even after (final) report can (unintelligible) for public consultation, there is not that much we can change. So we have to wait and to see what they did, so.

Farzaneh Badii: Thank you. Farzaneh speaking.

So what - recently NomCom has changed its operating procedure, I have not followed up on the latest operating procedure, but we are not clear whether what kind of change has been done, but we are concerned that non-voting members in NomCom might not be included in the process. So this is one of the questions that I'm going to ask. I'm going to ask you on how are you anticipating to - how are you including non-voting members in your process.

And after that, we will also talk about the finance and budget discussion. We quite clear views on that, and (Adam) has provided a very extensive comment on the budget. So we are just going to discuss the various issues,

and of course I'm - we are going to thank Xavier and the finance team for the thorough report.

And then we are going to go over, for GDPR and (who-is) privacy (unintelligible).

What - I also, since I have time, there are not - NomCom leaders are not here yet, I want to just give you a small update on the NCSG policy course. As I told the Policy Committee and the Executive Committee at NCSG, we have - there's a consultant that ICANN referred us to, and that consultant has come up with a plan.

And the plan is that they are going to have - we are going to have NPOC members, six NCUC members, and six NCSG members that participate in this program. And then afterwards - the program starts with face-to-face meeting in Panama.

And then we can - and then we will have two Webinars after that. It will include scenarios of how various working groups work and what are the, you know, it's more like a role play. So we will play the Commercial Stakeholder Group and Non-Commercial Stakeholder Group and (unintelligible) and try and give the members an understanding of what really is happening in these working groups.

So, after the - and some people have raised concern that this might be similar to the leadership course. We have taken that into account. Of course, it will be split to negotiation and consensus building, but it won't be - it will be specifically about NCSG participation. This is the new aspect of it.

And we also have the - yes, that's about it. So we are going to - I'm going to send this report to the Policy Committee as well as the Executive Committee, and then we are going to go forward with the consultants, and then people should also participate in designing the course. Some of the - he is going to

ask for advice and we will design the course and together, and then he can implement it.

Now I can see that the NomCom leaders are here. So, without further ado, we can just start the segment with...

Hans Petter Holen: While we're waiting for Zahid, we can start to introduce ourselves to save some time. My name is Hans Petter Holen. I'm Associate Chair of this year's NomCom. That means I was Chair last year and selected by the Chair to advise him and sort of bring the knowledge from last year forward to this year's committee.

Damon Ashcraft: Sure. My name is Damon Ashcraft, and I am the Chair-Elect of the NomCom, and it's nice to be here today.

Hans Petter Holen: And Chair-Elect means that he's then probably going to be next year's Chair, so.

And then our Chair this year is coming in, and we're just warming up for you to make sure that you have a flying start in the meeting.

Zahid Jamil: Thank you. Hi there everybody. Thank you so much for the time. We were waiting outside for about an hour, we were so keen to get here, and then something dragged me, I apologize.

Let me tell you about the Nominating Committee. I'm sure you know most of you and you can get this from the Web site and we have limited time, so I won't go through the entire presentation. But you probably know what our makeup is. You actually have representatives from the, or delegates from the NCSG who are like, you know, who's from the NCSG this year? Anriette. Who's actually on the Nominating Committee.

We're the ones who appoint to those seats which aren't elected seats. So we actually select and appoint people from the community or from outside the community based on getting CVs.

So this year we have the ICANN Board of Directors three seats open. That means, first of all, we have no geographic restrictions this year, and we need to fill three seats that are going to open up in the ICANN Board. We have one seat with the GNSO, it's a non-voting position, and again no geographic limitations on that, so anybody can apply.

It's really important that we mention this. You don't have to be affiliated with the GNSO to be able to qualify to be able to be selected for the seat or get a reference from the GNSO. Anybody, anybody can apply.

The same is true for the at-large and ccNSO, by the way, but there's a little exception to ccNSO I'm going to come to. At large, two seats, European, North American. And the ccNSO has two seats as well. It's very important that we stress this. You cannot be a person who is affiliated with, involved in, or related to the ccTLD to then be appointed to the ccNSO Council. That's the only thing that we've got to keep in mind.

So those are the basic slots we need to fill this year from within the NomCom. And as you can see, this is important. These are leadership positions. So if you have people that you want to suggest, you have a small window, we'll tell you what that window is. But let's give you some stats.

Last year we did better. We moved the applications of women from 19% in 2016, has moved to 36% in 2017. So we're hoping to do better in 2018. At the same time, when we filled positions, 29% women-filled positions in 2016; we managed to up that number to 50% in 2017. And by the way, as you all know, that there were two board positions last year, both board positions we appointed women.

So here's what's happening basically with this map, is you can see that, in the legend, those who are - have a gray, silver sort of board around them, these are the people rotating off. So you have the ccNSO rotating off, that is the African representatives. But you will see that the ccNSO delegate or director, we've just found out that his replacement is already - has already been selected.

So then you have the - so we have (Lito) who is from Latin America. He will be ending his term this year. And we also know that (Ms. Reese) will be, from Europe, is ending her term this year as well, but - and also George Sadowski's term limit, so he's actually going to be leaving the board as well. So that basically means two board members that we've highlighted (Reese) and (Lito) are eligible to be reappointed by the NomCom to the Board.

We have NomCom@icann.org and this year we're going to make sure, starting from this year, that the nominating committee of that particular year's Web site is nomcom.icann.org. It used to keep changing.

So you have till the 19th of March to make these applications. It's a very short window. We haven't decided whether we're going to extend it by a few days, but we might. But really considering 19th of March as your hard deadline, because you've got to get in the expression of interest by then, so that then, by the 26th of March you can actually complete, finalize your application, so you have a little bit of a grace period to complete the application (unintelligible).

If you want to suggest somebody because you think they're not applying, you can do two things. You can let us know, we'll reach out to them. The second thing you can do is basically have them speak to us, we're happy to talk to people.

And especially if you could focus on women and people from Latin America, that will be great. Please reach out to those networks that you might have.

There are some improvements we made this year. We noticed that the NomCom had great responsibility but no real power, and we'll explain why. The NomCom's destiny was predetermined before its birth. Before we could be seated, everything about our budget, etcetera, was decided before that. And so we had a Groundhog Day situation that every single year we were presented with the same set of options which were basically you either say yes to this or you don't get it, which is, for instance, the recruitment firm, we had to decide either we, the one offered up, either we select them, or we don't have a recruitment firm that year.

Similarly, that is true for the assessment firm as well. And we never knew what our budgets were. We couldn't decide our own schedule, we couldn't actually decide when we wanted to meet face to face other than the three meetings that basically were budgeted.

So our basic operational planning was it has been a problem. And that's because staff had to decide and the budget had to be set 11 months in advance. And that point we didn't exist, right? NomCom can't exist 11 months prior to its seating.

So we changed some stuff. This year, on our birthday, the day we were born, we basically took all the decisions we needed to take. We then communicated that to the staff. The first one was a forced budget (unintelligible) tell us what the numbers are, tell us what money you've got that basically is allocated to us, so we can then decide how to basically make decisions within that budget, although I know we can get more money, even though we asked for it and didn't get it.

So we were able to get a second recruitment firm this year. We - and thanks to staff and ICANN org to make that happen. The second is we've changed our assessment firm. We've also done what I think is the most important thing, decided that we're going to move to a face-to-face (unintelligible)

(session), and I'll explain to you why that's important in a second. And all of this basically is because of the enormous effort of staff in ICANN org.

We also have made a further improvement, this year we have a job description that the ICANN Board had actually vetted and approved and said, yes, that's right, that's what it looks like to be on the board. It's on our Web site now.

We've also basically improved the criteria. So we have basically preset criteria of how we're going to select folks in the board. Number one, job description, which the board as I just mentioned provided some vetting to. The second was a list of qualities and skills. Our committees worked in the last two months really hard on this, to set up qualities and skills that they're going to match against. And there's board guidance that the board has provided. That's not binding board guidance, but it basically is used for us to know what the board is really looking for and just giving us different things that they want hopefully in the candidate that we choose.

So we used to do things like using a ServerMonkey approach where basically you had a list of candidates and we sort of rate them 1 to 5, and that number that then, you know, used to come say people got 5 or 4, a 3. But then you say, well, maybe people below 3 shouldn't be looked at, you know. Why are we looking at people below 3?

So, based on that, I guess, objective, without deliberation rating, a lot of people would be eliminated from the process. And we were thinking there must be a way to try and improve it. So we decided that it's probably best to have in-depth face-to-face meetings for the deliberations when we do assessments and selections. We actually talk to each other. We go through every application.

So this year, every single candidate who applies to the NomCom will get the opportunity that their application will be reviewed and assessed by us when

we sit together in deliberation. And I think that's a big thing. Because a lot of people came to us, said that, you know, and I'll honestly tell you this, a lot of folks said NomCom's a joke, the way you guys do things and the way we've been treated previously, what are you doing about improving this process? So we've taken a hard look at it.

We've recruited - doubled the recruitment capacity, as I mentioned, two firms, but we also at the same time put out RFP this year so that we will have a - and Damon next year as Chair-Elect will be able to choose from a pool of firms, not just one or two.

So, a lot of people used to say NomCom is a black box. You know, you apply to this black box and you don't hear back, nobody knows what's going on. So, for the purposes of transparency, every candidate, when they don't make it to the next stage, will be given - will be sent an email letting them know that they haven't. You know, we'll basically encourage them to apply again possibly and let them know that we may still come back to them, but you haven't made it. And so they don't have to plan to be in Panama, for instance, and not know what's happening, to apply for visas and travel and other things. So that communication I think is a big change from previous years.

We want to know our customers in a sense. We've implemented trainings, different types, interview training, confidentiality training, training onboard governance skills so we understand, you know, what are we looking for when we interview people or select people. We've also done trainings on, well, what does - does the ccNSO delegate to the NomCom how the (ELAC) works? Does he know how the GNSO works? Does he know how the board works? And vice versa, amongst that group.

So the only way to do that is for us to basically give training to each other about what our groups do and how they function, so they understand the

political dimensions that they work in, so that the slots when we fill them are - and selections are based on that understanding.

And we had this problem where basically after we do selections, we just send the names off to due diligence to ICANN and ICANN would do the (unintelligible) but here's the problem. What if ICANN comes back, and this happened last year, and says, ah, "We got a problem with one of them"? The whole process gets delayed, we can't get the message out. And then at the end of that term, really members of NomCom are sort of not necessarily going to get together. We might not even, and we didn't in one circumstance, get quorum.

So we've decided to improve that process and say, no, when we do our final selections, and we do the interviews face to face, in Panama, for board members, we want to make sure that everyone who comes to that has been pre-vetted through due diligence, so that we can have a final decision, we don't have to wait until some unknown circumstance rises.

Let me just finish a couple of slides and we'll come back to that.

And so we also, you'd know about the Web site that now is, you know, static, which is NomCom.icann.org, which will have (unintelligible) Nominating Committee.

The other thing we've done is we've hard-coated in our operating procedures the fact that we're going to reach out and ask every ACSO and, you know, that we will basically be appointing to, guidance on what they want. And we're waiting on the GNSO so we know that you're part of the GNSO. So if you could encourage getting us a letter to, you know, basically say, well, what do the GNSO think is a good GNSO candidate to select? Please let us know.

The other thing we've changed, this is my last slide, is that the bylaws say that there's a distinction between what is term-limited versus term-unlimited,

and therefore, voting versus non-voting delegates and liaisons. And so, while the non-voting on term-unlimited liaisons are participating, deliberating, suggesting, recommending, even participating in straw polls, as they've done in the past, they will not be part of a voting process where the fate of a candidate moving from stage one to stage two will not - will be only determined by a vote of those who are authorized to vote.

That's pretty much it. That's my presentation. Thank you.

Farzaneh Badii: Thank you, Zahid. Rafik (unintelligible)?

Rafik Dammak: Thanks, Farzaneh. Thanks, Zahid, for the presentation.

Zahid Jamil: Thank you.

Rafik Dammak: So I was sometime in my life in the NomCom, that was interesting experience. So I think all this kind of, well, you call improvement and changes, I have some concerns in some area. In particular, like you're complaining that -- not complaining -- raising the concern that your, how to say, you, how to say, you are like someone else doing - preparing everything for the NomCom beforehand. But I see one of your suggestion that you are going to do that for the next NomCom when you (unintelligible) about the strategical planning. So I mean, it seems that you are going to do that too and do - you are going to set the path for the next NomCom.

And also in the last slide you talked about law-abiding, I mean, kind of, I mean, maybe (unintelligible) here, but my understanding from the process, that the vote is something that happened at the end, that when you vote, I think in the last - the final (slate), what you are doing exactly (is the pooling), and I think when you mentioned before the server - SurveyMonkey versus deliberation, it can be kind of misleading, because what you are doing with that SurveyMonkey (means pooling), which is you're trying to get some - trying to get some objective assessment of a candidate. Because my fear

with the deliberation, even it seems positive and trying to be more inclusive, in fact, any deliberation will be dominated by some members, and they can push other members to go in some direction.

So there are many concerns. I understand that you are trying to improve and to do better things within the NomCom.

And also, in terms of this kind of improvement, don't you think that maybe the community should be more involvement - involved within that process and to give you guidance? I mean, this is one of the issues usually with the NomCom, is how it's operating, it seems like independently from the rest of the community. There is some reason in how it's set. But maybe the improvement, even if done in the way to be more positive and constructive, they are arising many, many concerns, so.

Zahid Jamil: Thanks, Rafik. There's a lot of questions there and I'm going to keep asking you if I've got one of them or not. But let me start asking a question back.

So the - so let's take an example of how the online survey, as we called it, versus, and rating, which you thought was useful, versus the face-to-face deliberation. So I'll posit to the group, you know, what you think is better. So let's assume that, and this is what used to happen, is that we had, say, a hundred applications. And the NomCom membership would be asked, sitting at home, everyone independently without talking to each other, so I don't think it's objective, I think it's very subjective, because everyone's giving their own opinion. And it kind of depends on whether you've done the hard work of actually looking in an application. And you had no discussion, so nobody else's view is playing on your mind.

And you're asked to sort of, you know, rate this particular candidate, and you've got a hundred candidates you got to go through. So you rate them, you know. Somebody gives someone 1, 3, 5, 4, whatever it is. And that leads to a certain number.

Now remember this, you don't do that a second time. That number sticks. Based on that number, the ones who got the 5 are the ones at the top of the list. The ones who got a 1 are at the bottom of the list. So if I think, ah, it doesn't look - that application doesn't look very interesting or I haven't spoken to that person, it doesn't really matter, I think. And by the time you get through a hundred applications, you're tired, right? This is a practical process.

So what ends up happening is that subjective rating, which is done without deliberation and discussion with anybody else, sticks through the process. And then you do have to do something else. You have to say, well, okay, now, what do we do with this rating? And you say, well, we'll cut them off. Well, where do we cut them off? At 4, at 3.5, at 3?

And I got to tell you, there's - it's really random. You take a mean and a median and you say, well, what's the mean and median that works out? And based on that number, maybe it could be 3.45, 3.5. And you draw a line in the sand. And everybody below that suddenly gets rejected.

If I could complete my point. So everybody gets rejected. And everybody above that list is a person who basically now is in play. And what we noticed is that, and it happened this year for instance, (Fiona), if you know, who's with ESO, a fantastic candidate from Kenya. Basically when Damon (unintelligible) we don't even remember her from last year as an application, right? And she declared this. This is not confidential. She actually said "I've applied last year, and what happened?" And she was a great resource of what was wrong with the NomCom process, so, could have been improved.

So that's why this online thing where people think that it's a good idea to do that actually causes prejudice. It's very subjective. And it actually has a discriminating effect, I think a lot, on developing country applicants. Because (oftenly) those applications tend to fall through.

So what ends up happening is that meeting face to face, actually going through the application, and you disagreeing with me and I'm disagreeing with you about an application, saying "Have you read this?" actually does give you a better feel and you make a really concerted decision.

There's one other thing that happens. After the rating, we go on to a con-call. And the con-calls, I'll tell you what used to happen, a third of the time on the con-calls, one-third of the three hours, which means one hour out of two - the two hours, or the three hours, we used to keep asking, hey, can you hear me? Can you hear me? Can you hear me?

Farzaneh Badii: Zahid, can we (get our word done)? Rafik would like to...

Zahid Jamil: I was just completing my (comment).

Farzaneh Badii: Okay. Go ahead, Rafik.

Rafik Dammak: Thanks, Zahid, for this explanation. But I mean, you are telling me that you expect that, okay, so they - one thing that caused - there are so many applications so you are not sure how people are reviewing carefully all the applications, because they are not in the same, how to say, so many - they are not in the same place. But I mean, when you put...

Zahid Jamil: Actually I'm not saying that. I'm saying that every applicant deserves the same collective...

Rafik Dammak: Yes, I understand that. However, however, so the problem with this deliberation and the meeting is there is real risk that, I mean, that's the experience, you can ask NomCom members how some members can dominate the discussion, and they can influence others. So the polling, it's not perfect, nobody say it's perfect way, or the number - ranking is a perfect

way. However, it ensures some kind of, let's say, some level of kind of freedom for others to express themselves.

Maybe there is a problem of ranking, but do you expect that all - for one candidate, that he will get from everyone a bad ranking?

Zahid Jamil: Yes, actually that's...

Rafik Dammak: Yes, yes.

Zahid Jamil: So let me clarify.

Rafik Dammak: Please, please, Zahid, I'm hearing you, but I'm trying to (unintelligible). So you expect that he will get a really get bad ranking from most of the NomCom but somehow he's a good candidate because there is some deliberation? Deliberation, there is a bias. You can influence by many argument. I was in the NomCom, I heard some what people can bring as argument, how they can defend candidates. So I'm personally not comfortable with that way.

You can say that this deliberation, everything is okay, it's kind of (kum ba yah), that everyone will be happy, and they agree...

Zahid Jamil: So can I get my word in (unintelligible)? Okay. So let me explain why that's a problem.

Because what happens is, without - I'll give you an example. I think the candidate is worth 1. And I've seen so many times in the NomCom that, when I speak to other people and I start hearing, and then some people actually know folks think that the candidate is not 1...

Rafik Dammak: Sorry, Zahid, that's called lobbying. That's called lobbying.

Zahid Jamil: Yes, absolutely.

Rafik Dammak: No, we have a problem here, because when we...

((Crosstalk))

Rafik Dammak: ...Zahid, please listen to us. So when you have the polling, you - I know it's not perfect, it's not good - I mean, it's not the best way, but you have some tools more objective than deliberation and lobbying, because I have - I can have champions and try to influence my fellow NomCom members. How you can ensure that there is no bias? How you can ensure...

Zahid Jamil: You got to let me speak a little bit, all right?

So with this logic, the thing that would be best to do then would be the following, that actually we don't discuss with each other, because according to the logic I'm hearing discussion is lobbying and lobbying is not good. We should just do a survey.

Rafik Dammak: No. You do that at the last - you cannot do - sorry, Zahid. You cannot do - how you will do that for a hundred? I mean...

Zahid Jamil: We are doing it.

((Crosstalk))

Rafik Dammak: ...you are filtering, no? That's why you are using the polling in the first place.

Zahid Jamil: I'm confused.

Farzaneh Badii: I want to make a comment. So, okay. Hans Petter, and then I will go to Stephanie, and then there is Raoul.

Hans Petter Holen: So I'm a bit surprised of having this discussion here, because we need to adhere by the ICANN bylaws. And the bylaws states that the NomCom sets its own procedures. I do think your point that maybe that's not good in the new structure, maybe there should be some community input that, great. But we can't change the bylaws. You need to initiate that and get the board to change the bylaws through the process that's established for new bylaws. I mean that's welcome.

When we come to the non-voting, which is voting members, it's exactly the same. The NomCom can't change the bylaws, we have to adhere to them. Rafik is referring back to when he was on the NomCom. I've been in the NomCom though for five years, the process has been different every year, and the NomCom this year has decided that there are more actions than the last one that are actually (unintelligible) and we needed to do that.

So we are trying to be as open as possible to explain this and share this. You have a committee member on the NomCom who can fully participate in this internal in the NomCom, and please give her your inputs so she can be most efficient there. But it's very important that we sort of separate the two things that this NomCom needs to get enough applications in, we need your help to do that, so we have a really good pool to select from. And then we need to work constructively to select the very best candidates.

And there is no time now in this NomCom or under this bylaws to actually open up the discussion of our internal procedures.

Farzaneh Badii: Hans Petter, this NomCom has been making changes to the operating procedure in a way that we wonder, so the previous NomComs were all wrong and then suddenly we all want to improve, and so many changes, that it's just astonishing for us.

Hans Petter Holen: Can I ask, what do you mean by so many changes (unintelligible) if you could tell me what they are?

Farzaneh Badii: The operating procedure.

Hans Petter Holen: Yes. Which one?

Farzaneh Badii: You have changed the operating procedure that non-voting member can...

Hans Petter Holen: That's one.

Farzaneh Badii: Yes. And then you want to come up with the intercessional, to have these -
like to meet...

Hans Petter Holen: That's not a procedural change.

Farzaneh Badii: Yes. But you were talking about procedure here, Hans Petter.

((Crosstalk))

Farzaneh Badii: Hans Petter was talking about procedure.

Hans Petter Holen: So let me explain. It's not (procedure) change.

Farzaneh Badii: Right. You're here to talk to us, so, and I think you are here to also hear us. We have our concerns with the current operation of NomCom. We think that there are many things that are being called confidential, which should be open and transparent. There are many changes that are happening that we are not in favor of. And I believe that, yes, the bylaws say that, but if we have a serious problem with the operating procedure, there might be other ways that we actually can file a complaint or something. I mean, it's not like you can set your own procedure, but if it's biased, then - yes. It can be, it can be biased. It can - of course, when you...

Zahid Jamil: Farzaneh, as you said, we're also here to listen to you...

Farzaneh Badii: Yes, sure.

Zahid Jamil: But if it's possible, can I understand? Because you said a lot of things which are basically judgmental about the fact that we are being - we're doing things which are a lot of changes and things, some things that you have objections to. I yet to understand what is the objection. So let's start listing them. I think it's very helpful to have this discussion, let's use this time to figure it out.

So the first thing you're saying is that the changes (unintelligible) could you tell us what the changes that you are concerned about and what's the concern?

Rafik Dammak: Just to clarify, it's interesting that voting, non-voting issue was brought. I'd never talked about that. When I talked to Hans, I talked just about the polling, because that's before the voting, yes, on itself. So I'm surprised that was brought.

However, I mean, what we are expressing, that it's good that you do improvement and you think that you can change, and also acknowledge that ability to set up your own operating procedure. We know that. However, we are expressing concern that you are changing, because you are - so many, you may change dynamics and you have unintended consequences.

Zahid Jamil: Change, by the way, change, because change isn't a bad thing. I'm asking, what's the change that you have an objection to and what's the objection?

Rafik Dammak: So, Zahid, I'll just throw in some points. Like, for example, for that...

Zahid Jamil: Can we take it step by step? Let's take the first one and we can respond to that, that's - because otherwise I forget how many the list that raise. So, what's the first one?

Rafik Dammak: Okay. So (unintelligible) you said deliberation, I expressed my concern how the dynamics, that's the reality.

Zahid Jamil: Okay. So I wasn't able to complete my response to that. If you'll let me complete my response to that.

Rafik Dammak: I got your response, okay, but...

Zahid Jamil: No, no, I'd like to complete my response to that. If you allow me, I mean it's important that people understand because it's a very serious issue, right? You're saying that this doesn't work so we'd like to be able to provide a response to that.

So, on the face-to-face, it's not a procedural change. We always have the deliberation. The only thing we're doing is, instead of having the deliberation over phone calls, we're having the deliberation face to face. That's the only change.

And the reason we feel that's a very good change is that because when people sit at home and they don't basically meet each other face to face, they tend to not consider all the applications.

The second thing, which you are right about, is an actual procedural change, is that basically the subjective rating that everybody did at home as homework sticks forever and basically affects everybody who's below 3 for instance. So everybody who's got 3, 2 and 1 scoring is automatically out of the process, no discussion, no conversation, nothing.

I think that's not healthy. I think it's unfair to candidates that basically, by this blind process of people sitting at home, that this thing can happen. So we think that it's really important that every single candidate, and I think I'm sure you'll every with this, every single candidate should get the consolidated,

combined review of the NomCom, as it is done in many other places. So that's my response to the first one.

So I understand what your concern is. I hope that's clarified. What's the second one?

Farzaneh Badii: So, Stephanie had her hand for a long time. Do you want to speak, Stephanie?

Stephanie Perrin: Stephanie Perrin for the record. Yes. I just actually wanted to comment on this procedural fracas, because I do feel your pain. I've been on these big staffing things in government where there's an appeal right and, you know, it's a real, you'd try it one way where you separate people out, and yes, you have a very strict, you know, point grade rating. But it's useful to discuss and make sure that you're signing the points the same way.

But I take the other, you know, we've had, and I've been like the manager, for lack of a better word, with all of these things in the teams, and then you have to make sure that your teams are congruent, but not over-influencing each other. So it's a problem.

I guess I raised my hand to, A, offer that observation that I feel your pain. You know, we shouldn't...

Zahid Jamil: Thank you.

Stephanie Perrin: ...we should try and wrangle this down to, like, how does one come up with a good procedure and where do we put our input? I understand there's a review going on. Sadly, this packed agenda in these policy meetings is so packed, I don't think too many of us can make the review meeting tomorrow morning. Can we offer our comments on the procedural thing?

The one thing that is I think encourages an awful lot of good documentation in government procurement is that appeal mechanism, you have to have your documentation absolutely water-tight.

Zahid Jamil: Yes.

Stephanie Perrin: And so that takes even longer to make sure that you're congruent and you're evaluating in the same frame. That's where my question is, like, how does that work with NomCom? How do you - you don't have an appeal mechanism like that, you don't have to produce the documentation that proves that you're using the same evaluation framework and that it isn't being influenced.

Zahid Jamil: So let me answer the last one first and then we'll go backwards.

As you saw this year, what we're doing is we're setting a criteria. Now, the bylaws allow us to be able to, without - regardless of criteria, make decisions. We're trying to make sure that we are professional. We actually have a set of criteria that we match candidates. And to the extent that that's possible, we're trying to apply it.

But there's no bylaw requirement that it be done, so even as a Chair, I can't enforce it. That's - I have a challenge, even though I'd like to because people should be disciplined. So that's the response to the first one.

Response to the first thing that you raised, which was that basically, you know, about the ratings. Let me also clarify that the ratings will still take place, people will be actually rating 1 to 5, but that entire rating is not going to lead to a cutoff. So we're still going to be sitting at home initially, looking at the applications, and we're going to be doing 1 to 5, 4, 3, 2, 1, but we're not going to use an arbitrary number to say, right, everybody below 3, we're not going to look at you, or, unless somebody especially brings you up on the list.

And instead, everybody, including with the ratings that are (variable), is going to be part of discussions at the face-to-face intercessional, which is a lot of work for us, no question, because that's a hundred or something applications we have to go through, but we're willing to do that. And that's the commitment that this NomCom has shown, that we're going to work together and work hard, look at every single application.

On the other point that you mentioned, what is the criteria and how do we provide input? I think the - even if you don't make the meeting in the morning tomorrow, I think that you have a 40-day window between I think end of next - end of this week, etcetera, when the recommendations will become available to the public, and then you can provide comments to that. And we encourage people to do that.

Here's one of the last thing. I said to somebody when (unintelligible) why is it that your rules are changing and why can't they be community-led?

I will be the first to offer it up, if the community wants to make out the rules, please do so, because we spent so much time and debate going over it that we waste a lot of time. As a Chair, I think we could be doing better things. So if the community wants to take control of what the rules are that govern us, it saves all this conversation that we're trying to have, and would be happy for you to do that, no question.

I hope that answers the three questions. Yes, please.

Stephanie Perrin: I'm just - Stephanie Perrin, for the record. Both Rafik and Farzaneh will probably pull out the gun and shoot me at this point, but I've been preaching about the (COSO) requirements for an accountability framework for ICANN, and I really do believe that it's incumbent upon us to come up with better accountability standards.

And I don't mean that as a criticism of this NomCom or past NomComs, but we're on a maturity march to a higher level.

Zahid Jamil: Yes.

Stephanie Perrin: And that means, and I would caution against full disclosure, you know, we don't have a privacy act right to see all of the deliberations of everybody, but there should be better appeal rights from NomCom decisions and better transparency about the rating grades. You know, that I think we could be striving for. So, just giving you a little heads-up of what I will be saying to the NomCom review. Don't take it personally. This is part of my larger (COSO) campaign here.

Zahid Jamil: We'd be - we'd welcome. Everything you said is something we would welcome. Thank you so much.

Hans Petter Holen: And talk to the reviewers. You don't have to be to the meeting, find them and talk to them.

Farzaneh Badii: Hans Petter. I am the Chair, I'm chairing (this session). First of all, please state your name before you speak.

Raoul, you have a comment.

Raoul Plommer: You've been calling this polling subjective. That would be true if it was a poll for one person. But since there are so many other people than just one, you know, it'd be - it's like calling an election subjective.

Zahid Jamil: Let me clarify. I think you're right. I think you're absolutely correct. Let me explain what I'm trying to say.

The number that is assigned by one individual person to that particular candidate, that one individual rating number is a subjective rating. But when

you put all of it together, that's an amalgamation of subjective views of all the members regarding that member, right?

Now it's possible that, if I could - it's possible that basically, and this has happened, that the majority of the members of the NomCom, when I looked at the application, didn't realize something, and they rated that person low. We've had situations where people have, this has happened a few times, where people have been picked out from right to bottom, where they got 2.5, and people realize when they came to the interview, oh my God, did we make a mistake?

So it - that's why that cutoff is a problem. And it is. You know, I mean, how do you know? You've no idea who that person is, you've not really done a deliberative discussion, you haven't thought beyond your own mind about that person. So, yes.

No, but I agree with you that that subjective number is just the one that you placed on that one individual, so, I agree with that, yes.

Raoul Plommer: So really the sort of average scoring is objective, in my eyes.

Zahid Jamil: I would say an amalgamation of subjective views. An objective view would be basically what somebody else might also think as well who has had a time to just look at it objectively.

So I mean, there are many ways we can cut it, and I don't disagree with you. We have found in practice, and I repeat this again for the purpose of emphasis, we found in practice that people's ratings and their experiences when they have discussions and when they have interviews, they range so differently. And it's important that we keep an open mind to that.

So we are doing the three things. Just so that it's clear. We are having the ratings, we are going to do the ratings, but we're not going to make it

eliminate people. Those rating numbers are going to be viewed by everybody and available so that everybody knows who rated how much for whom, and we can discuss on the basis of that. "You rated us 2, why did you do that? You know, tell me."

Then there's going to be a discussion, the intercession, where people are going to deliberate amongst each other. And based on that, there will be reduction, there will be voting, first straw polling. So, non-voting people get to participate as well. And then there will be voting on whether that particular candidate goes forward to the next stage or not.

So, all of that is included. We haven't excluded any style or process. The only thing we've made a difference is that the rating numbers don't kill - kick people out. That's all.

Farzaneh Badii: Thank you. There's a remote participant.

Woman: This is (unintelligible) (staff). First, as an administrative matter, please state your name before speaking. That includes guest speakers as well.

So there are two comments and questions. First is from Renata Aquino Ribeiro.

Would NomCom consider outreach to specific communities like the (200 IT women Lat Nic) and online meeting is possible?

And then the second question is from Dorothy Gordon. During the individual assessments, are they entering their ratings on a platform?

Zahid Jamil: Thank you. So let me answer Dorothy's question first. Yes, those ratings are being put on to a platform that is confidential and protected, and that's how it's been done for years. And there may be a follow-up after what I've just said.

The first question from Renata, let me answer that. We would love that to be the case. In fact, in a particular situation this year we'd realized that there are hubs in Africa, for instance, where individuals could take, and if you look at the screens right now, we're working on preparing something, which is a documentary type video, tomorrow, and that will basically message out generically about what the NomCom is, because you'll be surprised in our public meeting, after we've completed the entire presentation, somebody stood up and said, you kind of said you were going to explain what the NomCom is, could you explain what the NomCom is? And this is at the end of the entire presentation.

So it's true that most people don't understand what the NomCom is, and so we're going to try to make an effort. And by the way, if you're not from the U.S., you've never heard of the NomCom, because we don't have that process anywhere else in the world. You just have it in the U.S. It's very U.S. sort of centric thing, that there are nominating committees that choose people to board and such. Otherwise, most people are elected as board members. So that's why we're going to do that.

So, having those hubs and us being able to give them that material, that they can actually run those videos, etcetera. We completely agree and we're trying to make that happen.

To some extent, some of our folks who outreach did try that this year as well. Thank you.

Farzaneh Badii: Thank you, Zahid. We have a meeting with the finance team but they are not here, so we can continue this until - is there a finance team here?

Zahid Jamil: I just need to check whether (Charlie), can you check whether we're ready to go? If you could just check in the next room? Because we also have an

appointment with the guys next-door. Yes. So we'll find out. We'll know.
But let's carry on until then, please.

And this is - we are - we, because of the concerns you have in the NCSG, we want to give you as much time as possible so we can answer your questions.

Farzaneh Badii: That is very kind, thank you very much. Farzaneh Badii speaking for the record.

Okay. So, are there any comments? Other comments that you would like to make? Raoul and then Arsene. Okay. Go ahead.

Raoul Plommer: Well, a really quick one. I think the change that you've made, after the polls and the ratings that eliminate candidates, I think that's a good change.

Zahid Jamil: Thank you. Thank you very, very much. Appreciate that comment.

And if you could, when you do send comments into the review, if you could make that point, we'd really appreciate it. Thank you.

Farzaneh Badii: Please state your name.

Zahid Jamil: My name is Zahid Jamil. Oh, sorry. Did I get that wrong? I apologize.

Arsene Tungali: Now this is Arsene Tungali. I'd like to understand a little bit about, I mean, about your budget.

Zahid Jamil: Okay. Right.

Arsene Tungali: That will be one. How do you use your budget and for what?

And the second question will be probably, with all those new changes in the procedures, what's the implication on the budget? Do you get an increase on budget due to all those procedural changes?

Zahid Jamil: So, first of all, let me clarify that there'll be no procedural changes. The procedures in general have remained the same. The effect for instance of one action of what it has, that has changed, for instance, in the rating. That's literally the only one. Otherwise, nothing else has really changed.

What is our budget and how will these changes affect our budget? We ask for more money. We scream for more money. We said that we needed two intercessionals, and nobody said yes. Our budgets remained as it was, and by the way, I would like to ask the same question you did, what is our budget? We still don't know what our budget is. We got some line items and certain items, and so we tried to say, well, if we sacrifice that money and not use that for this, can we use that for the intercessional, as an example. And so that's how we did it.

There was no budget increase. Not a cent has been, to our knowledge, devoted to us beyond what our budget is. So we actually had to find fiscal space within our own line items to be able to then say that, you know, that's how the intercessional or anything else. So, no budget increase, no impact.

And can I just say that I think that going forward there needs to be consultation between the Chair-Elect, who will be Chair next year, prior to the new NomCom sitting together, so that the budget that is decided is sufficiently resourced for the activities of that next year. That's how budget cycles usually work, right? That's why you make a budget. And that hasn't happened so far, and I think it's helpful if it could happen going forward. Thank you for the question.

Farzaneh Badii: Thank you very much. It seems like the finance team is here actually.

Zahid Jamil: Is it? Okay.

Farzaneh Badii: Are they?

Zahid Jamil: I don't see them here.

Farzaneh Badii: I don't see them either. Yes...

Zahid Jamil: There's a question here on the left.

Rafik Dammak: Okay. Rafik Dammak speaking. I think it was a little bit tense as interaction, but I think it was good to hear more what - why you were thinking to do that. I won't say I'm convinced by the change, because when you are sitting about, like for example, it's kind of eliminating, the reality now, because you can have, like the way, I think I remember, it was like the green, yellow and red basket, and so on, there are other approaches that you can use. But I'm not going to talk too much into (unintelligible)...

Zahid Jamil: I'm glad you brought that up.

Rafik Dammak: Okay.

Zahid Jamil: Can I respond to that?

Oh, my name. This is Zahin Jamil. Let me try to respond to Rafik.

Rafik Dammak: So it's not - what I'm just - there are so many changes, I have also to digest, but I'll be honest, I'm discovering so many things at the same time. And that's - we understand the intention, there is good faith here to improve, and you are constrained, so we need to maybe digest and give inputs.

So I know that was a little bit tense, but we made...

Zahid Jamil: I think the day I can change your mind about anything will be a very big day. But don't worry about that.

Can I just say something, which I think is positive - Zahid Jamil. Oh my God. Sorry. Okay.

Going forward, can I make a suggestion? And I put this out there. We know that there are - and this is what I've done. This is one of the - I won't say it's the first year, but we haven't done this for a long time, where we have gone to the community and met people. Like you didn't see us last year or the year before that, and that was operational reasons. And we've never been to the ASO, for instance. And the ASO was surprised, why do you want to come and see us, everything okay? Like, no, we just wanted to outreach and tell you what we do.

So I have a request or a suggestion. There seems to be concerns. Can we, if you would like, sit down and discuss them after this also at a particular time? We're happy to have you on a call with us. You can discuss that with us. Because it'll help us improve how we do things, will help us understand what your concerns are. And so, absolutely, happy to do that.

On the red, yellow and green basket, we found that, first of all, people who get into the red basket never get out. And the yellow basket also was difficult to get people out of that in practice in the last three, four years, although you could theoretically do it, you're right, Rafik.

And eventually what ended up happening, and Hans said this in other meetings as well for instance, we then basically, if you weren't selected to get into the green basket, you're pretty much out in the process. And that's what ended up happening. And that's why that led to many of the other decisions.

But I'd really like to have a conversation with you or other people within the NCSG if you have ideas, to sit with us and continue the dialogue. So, and I

appreciate everything. I don't think it was tense. I'm part of the GNSO so I know these conversations can get heated, and that's a good thing. Thank you.

Farzaneh Badii: Stephanie, you have a comment?

Stephanie Perrin: No. Just...

Farzaneh Badii: Your name.

Stephanie Perrin: I always say my name. I'm following the Marilyn Cade rule that you wait for the translator to catch up. I start then I go, for the record. Anyway, Stephanie Perrin for the record.

I just wanted to get on the record a concept that I think might be useful, and I haven't thought through my comments for the NomCom review yet, but I had had the misfortune to be in a government department where the staffing process went wrong and where the government agency that is - that does the oversight on staffing and all the training and all of that stuff came in and monitored.

And it occurs to me that an independent staffing person that you can get at through a contract, which you would need the budget for outright, but I think it might be useful, because after all, this is - this weird beast of multi-stakeholder model, and there is - you don't have a necessarily homogeneous group, neither do you have people always that have had the same required training as you do in a government environment, where I would have to have completed all the courses, I do understand that you do briefing and training and that sort of thing, but it's not quite the same, it's not to the same level I would suggest.

So you could have a roving expert just to make sure that there's consistency in the evaluation of the criteria.

Zahid Jamil: I'm dying to respond to that one, and I'm so glad you mentioned it.

Farzaneh Badii: Your name.

Zahid Jamil: My name is Zahid Jamil. I'm dying to respond to this. I'm so glad that you mentioned it. Okay.

Damon has done a great job this year to find an excellent interview trainer who we wanted, because of the way he sort of explain how the interviews work, was to have him in the room. So we're trying to make sure that that person is there. So when we're evaluating, we're getting this time, and you're absolutely right, an objective view of someone who's not, you know, involved in the community, etcetera, to give us what they thought, number one, a professional response, that's number one.

And the second thing we're trying to do is, we always have these evaluation firms that do their own evaluation, again, totally unconnected to the community, so, an objective evaluation. And if we can get those two things, and I don't know if we're going to get those two things, that depends on ICANN contracting and making sure that happened, we've identified those people, we I think will be served in exactly the way that you just defined.

And can I say that, underscoring that in any comment that you send would be very much and highly appreciated. Thank you so for those.

Farzaneh Badii: Farzaneh Badii for the record. Thank you very much, Zahid, for attending this - thank you very much NomCom leadership. Hans Petter, do you still want to make a comment? Just say your name, Hans Petter.

Hans Petter Holen: I'm Hans Petter Holen for the record. I just wanted to make a final remark saying that you soon have to think about who you send to the NomCom next year. Luckily, I'm not going to be there because, as Associate Chair, I've

been Chair and Chair-Elect, and I was two years on the NonCom before, so I have now served my five-year sentence.

But I would really encourage you to think about contributing to that because that's one way of reforming it, is to actually contribute from the inside, and then also to apply for the position as Chair-Elect and Chair following that. So if somebody wants to discuss what that would take or whether that's good idea, please contact me and I will share my experiences on that.

Farzaneh Badii: Thank you very much. So I'm just going to - do want to say something.

Damon Ashcraft: Sure. Damon Ashcraft for the record. I just want to say, with respect to your representation, Anriette, even though she hasn't been there in person, is doing a fantastic job, and she's lively on the phone, and she's serving you well. So I just wanted to compliment her publicly. I haven't had the pleasure of meeting her yet, but she sounds like a remarkable person.

Zahid Jamil: I'm so sorry, if you don't mind. Zahid Jamil. Yes.

We had complained that people who come to the NomCom, we ended up having one year where there was only one women. That was it. And it was all men in the room deciding all these things. So, kudos to you and (others) who send women to the NomCom.

One last thing, I actually thought this was going to be a lot more challenging, and I have to say that I'm so happy in the kind of debate and discussion we had on this. We really appreciate it. Thank you so much, Farzaneh.

Farzaneh Badii: Thank you very much, Zahid. And yes, it was a little bit heated, but I think it was great to meet you, and thank you very much for coming and meeting us.

Now we have Thomas who's going to talk about GDPR.

Thomas Rickert: I'm glad you didn't ask me to say my name myself. It's day number five into the ICANN meeting, I can hardly remember who I am.

It's of no consequence. Hello everyone.

I have to confess, I have a hard stop at maybe 2 minutes before 6:30, because I'm supposed to be with the board caucus on the Framework of Interpretation for Human Rights. So that's just a little heads-up.

So you tell what I should discuss.

Farzaneh Badii: Farzaneh Badii speaking. Stephanie has her handlebar. So, go ahead.

Stephanie Perrin: Stephanie Perrin for the record. Thomas, I'd love to know what happened in the closed session between the registrars and the NTIA.

Thomas Rickert: I haven't been there, so I don't know. I hear through the grapevine that some pressure was imposed on the contracted parties, but I don't know exactly what the language was.

Stephanie Perrin: Okay. Stephanie Perrin for the record. Failing that, I have another burning question. Well, okay, it's not burning. But, and I believe I asked it previously so you may recall it, in the event that a - some kind of stay of execution or stay of enforcement of the GDPR was negotiated with the Data Protection Board, which theoretically might be possible, but, how would that affect the rights of the end-user or citizen to sue both of them, the controller and the data protection authorities?

Because it's my understanding that that would have go through the European Parliament to be approved because it removes a right that is reinforced under the charter. In other words, there's a cross-linkage between the charter - European charter fundamental rights, the right to be protected by a data protection authority, and, well, for brevity's sake, we'll call it a deal being cut.

Thomas Rickert: To be quite honest, I think that the chances for (unintelligible) are so remote, I haven't even tried to think this through. Whenever we discuss the GDPR topic with policymakers of the European Commission and its institutions, they have emphasized the independence of the authorities. And I would find it very difficult or very unlikely that a deal is struck whereby enforcement action is put on hold. So I think we should all be prepared and have no illusions, you know, this is going to enter into force on May 25th. The question is, what can you do between now and May 25th?

And I think my biggest concern with where we are today is that the cookbook, as ICANN has called it, despite of the improvements that you find in there between the three models that have previously been proposed and what's now the (Calzone) model, that the document is too patchy for any DPA to comment on.

If I may, I would like to illustrate this with two examples. The (Calzone) model has proposed a retention period of two years beyond the registration of a domain name. And what the cookbook says is that this is in line with European data protection laws. Now, I may not have studied European data protection law sufficiently, but I'm not aware of any provision in any European data protection laws speaking to that very issue.

So that doesn't mean that you can't do duration of the registration plus two years, but you need to explain why isn't it six months, why isn't it five years? So you need to come up with a rationale as to why you land on two years specifically. And it may well be that you need two years because two years is usually the period during which domain name transfers are disputed, or that might be the period of time before claims against the contracted parties are barred by statutes, you know, the limitation of - after which we can take anyone successfully to court. But you need to spell that out.

And if I were a DPA and I just got the information, we want two years beyond the registration of the domain name, that would not put me in the position whether the rationale for that exactly time span is sufficient or not. And therefore, you know, you need to put flesh to the bones. Why do you want those two years?

The other point that I want to mention is the requirement to collect the (full who-is) data, i.e. the data elements for the registrant, the (Admin C Billing C Tax C). Although we know from the use case matrix that ICANN has conducted a couple of months back, that no registrar uses the billing data in the who-is for sending invoices. They send invoices through the account holder, right?

I'm not saying that you can't collect these data elements. I doubt that you can legitimately collect them following the principle of Data Minimalization, but if ICANN chose to require those data elements to be collected, they need to explain why.

What they said in the cookbook is that they want to leave that to the community process and that this has basically been done for so many years. But you need to explain, you know, yes, we need the technical (contact) because that serves certain purposes and this is why we need it. But in the absence of an explanation why you need it, you won't get any DPA in the world, that's my firm belief, to speak to that, and give their blessing to that collection. Right?

So, and I think - so I think that a lot of the things that you find in the cookbook might be defensible but we don't know whether they are defensible in the absence of any rationale offered. And this is what makes it difficult.

So I have publicly applauded ICANN for the progress that has been made, but more work needs to be done. And I think that ICANN has the hope that, since they now produce this document, and I heard (Joan) say "This is as far

as I could go" right? So I think that this document probably has a completion status of 3% to 5%. And they are now throwing this over the fence to the governments and to the Article 29 group to fill in the blanks, and I guess that's just not going to happen.

So I think we need to come up with rationales for what we're doing, and then probably the Article 29 group and others will take a look at it and say, well, that sounds okay, or, you know, you've gone too, or, you are too restrictive.

Stephanie.

Stephanie Perrin: I don't want to monopolize the conversation -- Stephanie Perrin for the record -- Farzi is rolling her eyes at that, for those of you who are on remote. She knows me too well. I'm calling this the Spaghetti Model, Thomas, because it's like they threw it against the wall to see how much would stick, you know? And there's more sticking than the last time. But I agree with you, I wouldn't go quite so low as - for the legal rationale, but you're the lawyer, I'm not.

I wondered if you could explain, because one of the things that concerns me quite a bit in the current model is (full sic who-is) and (full sic who-is) going to the escrow agent. And so, I mean, quite frankly, if I were a law enforcement agency, why would I not just turn up at the escrow agent, because there's going to be more data there because there is less limit that's got to be kept as long as the registration is alive and for a period afterwards.

Thomas Rickert: Yes.

Stephanie Perrin: Much better than the data retention requirement, you know.

And as to the date of the data retention, I mean, you could add up a few months, nine months for the average time, for an (AMLA) to be processed, six months to allow an investigation, blah, blah. You don't get to two years no matter how you slice that one. Thanks.

Thomas Rickert: Well -- Thomas Rickert for the record -- I just wanted to explain the mechanics that, you know, if you want to come to two years, you need to explain why your thinking can get to two years.

Now, with respect to escrow, I think that the paper is not precise enough. The registrars today are required to collect something in the area of 75 data elements, not all of which are personally identifiable data, but there's payment data, IP addresses, other services, and domain names that are provided, and so on and so forth. Yet the (Calzone) model just says that all the data needs to be escrowed. That would be more escrow than what the registrars are currently required to escrow, because the data that they are required to collect and retain according to the data retention specification is not escrowed today, if you look at the RAA, right? And therefore, I think it's just an editorial glitch that they have not specified what needs to be escrowed.

Same would be true for the data retention waivers which they said would be kept intact, right? Because that has caused some confusion because, yes, we do have the data retention waiver process that was applied for by a couple of European registrars to limit their retention period, but that process was meant to be for payment data as well. And I think ICANN meant it to be applicable to registration data, which is a subset of these data elements.

I think we're pretty much into the weeds now, you know. But I think that this needs to be tidied up, and ICANN needs to specify exactly what data elements are meant when they're talking about escrow and the waivers.

Stephanie Perrin: If nobody interrupts us -- Stephanie Perrin for the record -- we're going to keep going on this. These are really important weeds though, because the registrars that I talk to claim they do not give the details, you know, like the IP address and those sorts of things to the escrow agent. That doesn't mean it isn't required in the RAA.

Now, the document itself, and as you say, there are so many holes in the document you can't tell, the document itself says full thick data. That doesn't include the billing data, but the RAA has the billing data. So, which is it, you know?

Thomas Rickert: Yes. So I guess that needs to be tidied up. It's my impression that ICANN meant registration data only, i.e. the data for registrants, (F&C), (taxi) billing fee, and not payment data, IP addresses and so on and so forth.

Do we have more questions?

Farzaneh Badii: Farzaneh Badii speaking. Thank you very much, Thomas. But you mentioned something, you said that each data element that is being collected, there has to be a purpose, a legal purpose for it, right? And ICANN has to provide that. That (unintelligible) because they might come up with these purposes and they might bring up these rationales, it's designed and the purposes are set and they're beyond ICANN mission and then, you know, are going to have problems.

Thomas Rickert: That's a valid concern. This is Thomas Rickert speaking. You always need the combination of a lawful purpose and a legal ground for each and any processing activity. And so far we don't have enough information to assess whether what's in the model is actually justified or not.

So, but that led me to the conclusion that I think we need to fill in the blanks, because I guess it will not happen or it will most likely not happen that DPAs will get back with a fully-fledged data model. So I think we need to assess the contracted parties in providing the full story about what can and what can't be done, so at least the (GAC) and the Article 29 Group and other interested parties can look at the rationale and say, okay, you've gone too far here, you should be more strict here and there.

Because even if you look at the framework for the gated access or the accreditation model, there seems to be the notion, and I hope that I'm wrong, amongst (GAC) members that each and every government would just come up with lists of entitled parties and that those would get access to each and every data that's behind this firewall.

And I think you need to take a more nuanced approach. You need to look at who is the requestor. Is it a requestor inside the E.U., is it a requestor outside the E.U. where you have non-E.U. transfer regulations that need to be played by? Then you have different access rights potentially and different requirements for law enforcement versus security researchers, versus consumer protection agencies, versus IP holders.

Typically, and this might sound a strange concept for you, it will be more difficult for non-European law enforcement to get access to data than, for example, for IP rights holders, because the impact of what law enforcement can do to individuals, it's much harder than claims that are based on civil law, right?

So - and nobody seems to have bothered so far about making the distinction between other use cases, looking at the purposes for the individual use cases, look at the legitimate interests that could back up those purposes, and limit that with the appropriate safeguards. Not everyone, you know, I have a huge issue with granting gated access in the first place, but let's just assume it were possible to do that at the global level. An IP lawyer doesn't necessarily need to get access to each and every data element. They might be okay with doing individual queries for specific cases and then captures that they need to do manually.

Yet a different thing is lookup of historical data or reverse lookups, you know. But nobody has really spelled that out, and I think you need to write it up and come up with a rationale for each and every of those use cases.

Farzaneh Badii: Thank you very much, Thomas. Farzaneh speaking. Stephanie, we have Xavier and (Becky) are here and we need to talk about finances. So we can let you leave earlier, I think. But there is a remote participant - no, no, you've talked too much now. Are there any more comments? If you'd just read that and we get the response and then go to Xavier and (Becky).

Okay, go ahead.

Woman: This is (unintelligible) for the record. There is a remote question and comment from Kathy Kleiman. Note that GAC is also asking for more rationales for each data element, public and non-public. Can we talk briefly about the accreditation system for tiered access and whether we want GAC or the ICANN community to do it? If the ICANN community, (my) preference, how do we do it in the short time available?

Thomas Rickert: Thanks very much, Kathy, for the question. It is a challenge. It is a challenge. I think as far as the role of the GAC is concerned, my preferred option would be for the GAC to substantiate their own requests. The GAC has sent a letter to ICANN asking for certain access to be made possible. The GAC has enumerated certain legitimate interests and user groups, so I think it's perfectly appropriate to ask the GAC for how they think this can be made work in a compliant fashion.

But I would not go further, and I've made this clear during the community session yesterday, the GAC should not have a role in operationalizing a gated access system. That is up to ICANN and its community.

I doubt that this will be possible by May. So my prediction is that, come May, we will not have a globally working accreditation system, but those who want to get access to data will need to go to individual registries and registrars and ask for that data, and potentially they will need subpoenas or other legal documents to get access to that before we have a robust system that would facilitate (consultated) access globally.

Farzaneh Badii: Thank you very much, Thomas. Thank you very much for attending. This was very useful for us and for our members.

Thomas Rickert: Thank you for having me.

Farzaneh Badii: So now we go to the agenda item, finance and budget discussion, session with Xavier and Becky. Sorry, Xavier, I don't know your family name.

Xavier Calvez: Calvez.

Farzaneh Badii: Calvez.

Xavier Calvez: Thank you. And first, we want to apologize for coming up late to your session. Our punishment is that we are between you and a glass of wine possibly, so. But we really apologize. The closer we come to the end of the day, the - everybody becomes late. So, sorry for that.

We have a few topics that we had prepared, but of course we will want to focus on the topics that you're most interested in. We were suggesting to speak about the process for the Operating Plan and Budget and maybe the reserve fund if it's of interest to this group. But please let us know otherwise.

Farzaneh Badii: Thank you, Xavier. So, Farzaneh speaking. What are members thinking? Are you thinking? Which part do you want? I think we are all tired, so maybe we just pick one issue.

Replenishment, are we going with replenishment? Okay. Let's do that.

Xavier Calvez: Thank you. Next slide please. Thank you.

So let me brief you very quickly on the reserve fund. There is currently a public comment process that started last week, Tuesday, for the

replenishment of the reserve fund. There's a suggested strategy of replenishment that is offered in that public comment, the document, and it's suggested by the board and the board seeks input on that strategy.

It's a public comment number two because there was a previous public comment period three months ago, four months ago, on, first, what is the rationale and what should be the rationale for the reserve fund? Why do we need one? And what is the target level of that reserve fund? So that period was closed, a lot of comments were submitted, and the board reviewed the comments.

In its board meeting of early February, one, adopted an expanded rationale for the reserve fund, as per the offered comments. And two, confirmed the already existing target level for the reserve fund as 12 months minimum of operating expenses.

That is the target level that had been in place since the beginning of the reserve fund in 2007, but it felt that it was relevant to reevaluate whether it was adequate or not, and the comments received were mainly consistent with that target level. So the board confirmed the target level.

Once we have set that target level, then you can easily see that there is an issue, which is that we should have 12 months of operating expenses, and we have six more or less. So, in dollar numbers, in U.S. dollar numbers, the reserve fund should be approximately 138 million, which is simply the FY19 budget that we use as a proxy to measure 12 months of operating expenses.

And the actual reserve fund, the balance of the reserve fund that we have now is \$70 million, at the end of December. That is after having allocated 5 million of the FY17 excess that we have seen the previous fiscal year, allocated 5 million of that FY17 excess to the reserve fund. So it was 65 million before, now it's 70. But that still leaves a shortfall of approximately

\$68 million. So the public comment currently offered is offering a strategy for replenishment.

First, it suggests that replenishment happens over a period of five years. And second, there's three - the document also lists the various sources of fund that ICANN has available for replenishment. Out of that list, then an approach is suggested, the strategy is suggested by the board for replenishment.

It consists of the following. First, (unintelligible) to generate excesses up to \$15 million over the five-year period for the purpose of replenishment of the reserve fund. Two, using a fraction of the auction proceeds for replenishment. And the suggested amount of the auction proceeds to do that is an amount of 36 million, which corresponds to the INS transition expenses incurred over the - between 2014 and 2018 for the purpose of the INS stewardship transition.

Once we would have done that, then there would be a remaining gap of approximately 17 million, and the board is offering three sources there. One, contribution from the leftover funds from the new GTLD program, if there would be any. So you may remember that the new GTLD program led to collecting application fees, that the application processing has occurred over the past five, six years, that there are funds remaining available to cover for risks, to their risks, being in this case mainly for now lawsuits or IRPs which are happening, so we are consuming some of those funds for the purpose of carrying for the - of defense costs and so on. But if there would be leftover funds from that after the end of the program, those funds could be considered for the replenishment.

Second option, an additional contribution from the organization in addition to the 15 million already offered in the first bullet point. And last option, an additional contribution from auction proceeds in addition to the 36 million already suggested in the second bullet point. So the board is leaving open

the - for community input these three options. You may see - let me rephrase.

You may notice that you're not seeing in this strategy to increase the fees on the registrants and the registrees and registrars. So that's an option that the board is suggesting to not retain, in order to not burden the registrants basically, at the end of the day.

With that, I'll stop to see if there's any questions or comments.

Ayden Férdeline: Ayden Férdeline for the record. And thanks for the presentation.

Earlier today there was a suggestion that was raised informally that there could be further withdrawals from the reserve fund to fund the recommendations associated with the implementation of the Work Stream 2 recommendation. I was wondering, if that was to happen, how would the further short will be funded? Would it be likely that this will be a further contribution from the new GTLD auction proceed fund or - what will be the replenishment strategy there? Thanks.

Xavier Calvez: Thank you. So I'm not aware of that case that you just presented, so I also don't know what we would do if it would happen, because I don't think that's been evaluated at all.

My sense would be that there would be a very strong desire, in my views, let me back up. I will speak on my - on the behalf of the role that I have in the organization. It will be simpler than speculating as to what others would do.

So if it will be just from me, I would have a strong desire to not fund implementation - let me rephrase - expenses to implement recommendations from WS2 from the reserve fund. Of course, this is without knowing what those recommendations are and what the costs would be to implement.

My sense would be that we should try to look at what recommendations are retained, what does it take to implement them in terms of resources, and try to either replace things that already happened that we think are less important than the recommendations from WS2, or try to - and/or, by the way, it doesn't have to be mutually exclusive, and try to plan over time the implementation of those recommendations so that, if they cannot all be done immediately by lack of resources, that they are at least scheduled for implementation. And of course we're trying to do what is felt as the most urgent earlier and the least urgent later maybe.

So I'm speculating a bit, because I don't know, right? But that would be my sense of what we should be doing, if that would be the case.

Robin Gross: Hi, this is Robin Gross for the record. I have a question about the second to last bullet point - excuse me - on there, where the remainder of the money would come from. It says additional contribution from ICANN org.

So I'm just wondering if you could be a little more specific about that. Where - what is the thought about that would come from? Is there a pile of money somewhere that we can draw from? Or would we need to have budget cuts in some of our other programs in order to find that? So I'm just wondering if you could be a little more specific about that point. Thanks.

Xavier Calvez: Thank you for that question, that's very relevant, and it's not precise here.

So, both for the 15 million that is in the first bullet point for our ICANN organizations contribution, as well as for any additional contribution from the organization, it will need to come from savings that are resulting from an excess. So we would need to say we're going to spend less money, so that we create an excess versus funding, and that excess becomes then allocated to the reserve fund.

So there's no - of course, I didn't summarize here the entire paper, but in the paper we list all the possibility of funds that ICANN has -- auction proceeds, new GTLD funds, raising the fees, and so on. And so there's no other sources of funding. So this one is about the organization on an annual basis planning for an excess.

So, before we start the year, in the budget that we all work on, we plan for limiting our expenses with, let's say for example, with 3 million gap between the total funding we're expecting and the total amount of expenses that we're expecting, so that if everything happens as planned, we have 3 million left at the end of the year, and we put that 3 million into the reserve fund.

So, yes, to your question, this assumes that we find savings to do that. Or funding increases. So we are not expecting that funding is going to increase significantly, at least over the next few years, so we would need to look at operational savings, which is what we've put in that first bullet point. But it also applies to the second bullet point, to your point. So, yes, it would be savings from the organization, across all areas or span of the organization, to be able to do that.

Farzaneh Badii: Thank you very much. So we are going over time and we cannot (continue). But last - no, it's okay. Last comment will be Joan and, yes, we can't take them, I'm sorry.

Joan Kerr: Hi, it's Joan Kerr for the record. So my question was kind of related to what Robin's question is but from another angle.

To replenish the fund, I was wondering why - the presentation is about operating expenses, so you want a reserve fund for 11 months of operating expenses, right? That's what you want in a reserve fund.

Xavier Calvez: Sorry. The target level is a minimum of 12 months of operating expenses. I want to distinguish in case that would help that we're using that metric of 12

months to measure the target level. It is not what the reserve fund is supposed to be used for, that may have been your point or comment.

So when we say 12 months of operating expenses, it's simply to try to dimension the target level of the reserve fund in terms of in the language of operating expenses. But the reserve fund, if you have read the first paper, the reserve fund is there to ideally never be used, right? It's only to be used if there is an extreme need that was not planned for, for very large expenses. Think office destroyed, earthquake, and we need to rebuild something, or there's a very sudden shortfall of funding that we didn't plan for. So that's the type - so it's supposed ideally to never be used for.

So it's not - when we say month of operating expenses, it's not simply to be used just for operating expenses.

Farzaneh Badii: Thank you very much, Xavier, for, and Becky, for joining us. I'm sorry, I keep saying Javier. Is that okay?

Xavier Calvez: Don't worry about it.

Farzaneh Badii: Okay.

Xavier Calvez: ...recognize, I accept.

Farzaneh Badii: Meeting adjourned. Thank you.

END