
DUBLIN – At-Large Ad-hoc WG on IANA Transition & ICANN Accountability
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OLIVIER CRÉPIN-LEBLOND: Good afternoon, everyone. Good afternoon again. This has been a very long day today. This is the At-Large Ad Hoc Working Group on the Transition of Stewardship of the IANA function and on ICANN Accountability. We have met several occasions earlier. Not today, but earlier this week. We've just had a meeting with the GAC. We've heard some of the point of views held on the GAC.

I guess that the first thing we can do is to have a debrief, perhaps, on the discussions that we've had since. I wonder whether, Alan, you have heard any further updates about what's been happening on the CCWG Accountability mailing list. I know that you have been chairing meetings most of the day.

ALAN GREENBERG: I have absolutely no clue what's happening on the mailing list. There were some breakout sessions, informal ones, today. I believe there was a Work Party 2 over lunch, and I did not participate in that either so I don't know.

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But I haven't heard that anything cataclysmic has happened to destroy where we were, so I am optimistic. I was just talking to Larry Strickling, who I presume would have heard if anything cataclysmic had occurred, and he didn't seem perturbed. So on that sense, I think it's all going relatively well.

We don't have a lot of time today. I don't know what you were planning to do with it given that we really don't have new events, but I have a proposal or two. I would really not like to have people make the same arguments they've made 17 times because either we all agree with them or we disagree with them and it's not likely to change. That's my opinion. People can say what they want.

I'd like to talk about, if we assume – and it's an assumption – that the membership model is off the table, then I would like to talk a little bit about what is left and what the variations look like and are we going to have to make a decision on that? I'll be glad to share my personal opinions and we can take it from there, but I have no strong feelings what we should do. We have, what, 45 minutes? Something like that.

OLIVIER CRÉPIN-LEBLOND: We have about 45 minutes, yes. Thank you very much, Alan. So this session was primarily for an update, but since there is no update because we have spoken to each other so recently, I'll

first let the floor speak. And then if everyone is okay with being able to discuss the models, then let's go ahead with it. Let's start with Sebastien Bachollet.

SEBASTIEN BACHOLLET: Thank you very much. I think that there are two topics that we may need to discuss also. What, if any, position about stress test 18? The second, the question of the timeline and how we see this going on, and what is our request to finalize a decision from At-Large on this topic? Thank you.

ALAN GREENBERG: Stress test 18 I think is a good topic.

OLIVIER CRÉPIN-LEBLOND: Thank you. Next is Garth Bruen.

GARTH BRUEN: Thank you. Garth Bruen, NARALO chair. I would like to discuss consumer trust and the promotion of consumer trust as it's been laid out.

OLIVIER CRÉPIN-LEBLOND: Thank you, Garth. Next is Seun Ojedeji.

ALAN GREENBERG: Could I ask for a clarification? That's in regard to the accountability bylaw changes? Is that what you're asking or something different?

GARTH BRUEN: Oh, this is only about bylaws?

ALAN GREENBERG: No, it's about anything associated with accountability, but the only aspect that is on the table is the integration of the AoC into the bylaws.

GARTH BRUEN: Well, the AoC contains language concerning consumer trust.

ALAN GREENBERG: That's what I'm asking. That is what you're talking about? I just wanted to [clarify].

GARTH BRUEN: Well, I want to make sure that, yes, it's part of the language.

ALAN GREENBERG: Okay, thank you. I can give the status of that if you wish.

OLIVIER CRÉPIN-LEBLOND: Thanks for this. Seun Ojedeji?

SEUN OJEDEJI: Thank you. One personal [detail] I've observed is that every interaction/opportunity to talk with other SOs or ACs include the Board member which I happen to have participated in [inaudible] point of action to actually ask about an individual Board member removal. From all their responses, it seems that there's a level of consensus on the current process that that's been defined by the CCWG. So that is a good progress.

One of the things I wanted to mention, Sebastien has mentioned. The other one is that I would like us to also look at talking about the HR, the human rights, aspect of the accountability process or proposal.

OLIVIER CRÉPIN-LEBLOND: Could you repeat, please? What was it? The topic? Human resources?

SEUN OJEDEJI: No, human rights. That's HR is the human rights.

OLIVIER CRÉPIN-LEBLOND: I was wondering. Christopher Wilkinson? Mic, please.

CHRISTOPHER WILKINSON: I was just going to speak to the question of the follow-up to the IAG to consumer trust and competition. Should I do that now or when we take this up our colleague opposite?

OLIVIER CRÉPIN-LEBLOND: That goes under the consumer trust. We have stress test 18, the different models, the motion of consumer trust, individual Board member removal, and human rights. Five topics, I believe. Have I missed something? Timing? Please, Sebastien.

SEBASTIEN BACHOLLET: The agenda for coming with a solution and how we will be integrated in that and when it must be done, what is it NTIA will do, the Congress, and so on and so forth, and when we need to be ready as the CCWG for proposal. Do we need a [set] consultation, public [consultation]? Could we agree not to have? All that is, I think, a very important topic we need to have some discussion if possible. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Sebastien. Six topics in 40 minutes is going to be a bit difficult. That one is one about process. I don't know how soon that discussion will come into mind. We might

have to prioritize. Should I just start with stress test 18, since there was a question from the GAC and I offered a personal view on this? Alan?

ALAN GREENBERG:

Thank you. Nowhere in the recommendation of what to do because of stress test 18 does it say anything about telling the GAC how to do its business. I really wish you hadn't made that comment.

The prelude to the stress test 18 says, "What if the GAC changes its definition of consensus to majority?" Under the bylaw that is currently being proposed, it says that only if the GAC gives advice based on consensus does the Board have to enter into its negotiation phase. Consensus is defined by principle 47 of the GAC principles. If the GAC chooses to redefine its principle 47 to be majority or if Olivier walks into the room and says, "Yes, we will all agree," then they change it and it's consensus and it meets the definition of formal advice.

So although there is a reference to GAC changing their methodology, it's not in the bylaw that was being proposed. It is something that was proposed in the last day on the very last hour of Los Angeles by someone, and it never has received any talk again.

So as far as I see, no one is telling them whether to change their rules or how to change their rules or if to change their rules. It simply says that if the rules stay the same, they cannot call it formal advice if it met some other definition, other than what they define as consensus.

OLIVIER CRÉPIN-LEBLOND: It depends on what their definition of consensus is. At the moment, the GAC's definition of consensus is unanimous consensus, I believe, isn't it? Isn't it? If there is one objection, then it's not consensus.

ALAN GREENBERG: Ah! That's not unanimous agreement. That says, "Somebody proposed it and no one objected." That's it. That's the definition the United Nations uses, and that's the definition GAC uses.

OLIVIER CRÉPIN-LEBLOND: That's correct, yes. The question, though, is – and I think it is a non-issue. I believe it is a non-issue because if GAC was to change that definition, the GAC would need consensus to – as it is, wouldn't it? Or do they have another way change it.

ALAN GREENBERG: Principle 47 which says someone says it and no one objects is how the GAC comes to consensus on advice or it makes decisions. How the GAC changes its principles is by majority rule at two consecutive meetings. It may not make a lot of sense, but that's what it is.

If you would have a majority who are adamant to do it and they couldn't be talked out of it, and they did it at two consecutive meetings, it would change the principle.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan. Seun Ojedeji?

SEUN OJEDEJI: Yeah. Alan, I think it seems you have very good understanding of GAC, so I will be asking a question related to clarifying stress test 18. You said the intent of stress test 18 is actually not to tell GAC how it defines or applies consensus. So I would like to ask you: what actually does the CCWG want to achieve by actually putting in stress test 18? What exactly? Please, try to be very specific and in plain English, please, so that I can understand. Thank you.

ALAN GREENBERG:

Now, that is a very astute question. And the answer is, to a large extent, I don't have a clue. We have been told that it is a requirement, unspoken, not written but an unspoken requirement of the NTIA.

What it does do, it does have an effect – a potential effect. If the GAC could decide, without changing the definition of consensus, which to be honest would be a bit revolutionary because it is a definition used within the UN system.

If the GAC would decide to, simply a decision, to call something advice just because a small number of people said it. Now, if you read the GAC communiqués right now, some things are advice and other things they have a number of other expressions which are weaker, but they're not advice.

If the GAC would choose to call those weaker recommendations advice, they could really tie the Board up in knots and keep the organization almost unable to do anything, should they choose to do that. As far as I can tell, that's the only real impact. But it's a good question and it's hard to get a real answer because the people who are setting the rules aren't talking.

OLIVIER CRÉPIN-LEBLOND: Now, I did speak to a number of GAC members after the session, and I was given some explanation as to the reason for this. As

you said, it seems to be a requirement for it to actually be accepted. As far as we're concerned – and you will have noticed the way that I described my point of view was referring to the ALAC not to the GAC.

Ultimately, it's going to be an internal thing in the GAC, because as far as we're concerned, I don't think we can point in one way or another regarding stress test 18. Perhaps our only answer could be, well, we want to see the transition take place and we want to see the accountability to happen – in which case, if it's required, it's required in the same way I guess that we have said in the past, "If it doesn't fly with the Board, then it's not going to happen. So we have to understand that as well. If it doesn't fly with NTIA, it's not going to happen. So I would say recommend or my point of view would be to just say, well, just leave it as it is.

We have a queue at the moment. Sebastien Bachollet, Holly Raiche. Heidi is looking at me. She is very puzzled. Sebastien Bachollet, you have the floor.

SEBASTIEN BACHOLLET: Yes, thank you. If you maybe not remember that, on Sunday afternoon, there was a session about the IANA stewardship transition, and it was composed of one speech of Ira Magaziner and then I will call that a roundtable with four men in black on

the stage, and all are people working for senators or for the Senate or for the House of Representatives.

I just want to [quote]. I think it's important to see one of them say, talking about one of the senator, I guess, he wanted to see in the bylaws that only GAC advice by consensus will be considered by the Board.

Another part of the discussion, those people say clearly that we are in charge of oversight of the NTIA. Then I came to ask the following question: if you are overseeing the NTIA, you will have the last word. And there were a little bit in trouble. But they say, "No, we will not be, but we are overseeing NTIA."

Then where it come from? From the Congress. NTIA agree, I guess, yes, and they [have to anyhow]. It's a request from the US government and from the [Congress].

I have also made another comment, and I would like to tell you. I say go to discuss with the GAC, and don't ask us to be in the middle. We're end users at the end of the day. We care about our advice, but we don't care about how all that is organized. If you find an agreement with them, that's good. If not, that's not our work to decide among the American government and the rest of the GAC. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Sebastien. Alan, you had a direct reaction to this?

ALAN GREENBERG: Yeah, two direct reactions. Number one, going back to your intervention in the GAC. If the Board said to us, “We will not act on ALAC advice unless you formally decide on that advice to us,” I would say, “Huh? Why would I send you something that we didn’t formally decide on?” So I wouldn’t consider that particularly onerous, but we’re talking more principles here.

I reacted to the US Congress issue. My understanding – and I am not an expert on this – is Congress does not have oversight over NTIA, but they can stop the NTIA from doing things because they do have monetary oversight, I believe.

Let’s let the US person tell me.

GARTH BRUEN: Thank you, Alan. According to the US Constitution, Congress does have the oversight over all commerce matters in the United States.

ALAN GREENBERG: May I follow-up? My understanding of the DotCom Act is that allows them to basically say nothing and let it pass, but they can stop it should they choose.

SEBASTIEN BACHOLLET: On this point, [inaudible] it was part of the discussion. What is the difference between the committee in charge of the oversight of the NTIA and the DotCom Act? I will stop here, because I don't know enough about the US organization, policy, and so on.

But it seems that there is a disagreement between the committee in charge of the oversight of NTIA. It was said by the Congress people who were there, and the DotCom Act wanted to do something not in the same language as the people in charge of the day to day.

If I understood well, the one are in charge of the money, the other are in charge of policy and their conflict. And don't take one to oppose the other. Yes, take one to oppose the other. They don't agree, then we have difficulty to understand all that.

ALAN GREENBERG: I certainly do.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you. Holly Raiche?

HOLLY RAICHE: Very quickly. People may not realize it, but when we walked in on a GAC meeting, it was supposed to be discussing the stress test 18. [Bertrand] was there as an audience because he wanted to see the fireworks. They simply deferred it. And what they decided to do was everybody was going to put on the table, but they couldn't decide what it was, but it has to be text and it's going to take one hour of discussion tomorrow and my best guess is there will be no decision.

OLIVIER CRÉPIN-LEBLOND: Okay. So that was the first one, stress test 18. I don't think we have anything to tell to the GAC. Pretty much following our own advice, we won't tell the GAC what to do on a GAC matter. That's probably quite wise.

Next one, we have a choice between different models, promotion of consumer trust, individual Board member removal, and human rights. Should we just do it in order? Different models? Different models being, I think we've pushed aside the membership model, and now it's down to the single designator or the multiple designator or something else.

Alan Greenberg?

ALAN GREENBERG: I'm going to write something up on that, so I'm happy to pass that by and simply ask everyone to read what I write. Consumer trust might be one we can do quickly.

OLIVIER CRÉPIN-LEBLOND: Okay. Thanks very much, Alan. Any objection for consumer trust? No objection, so Garth Bruen? Sebastien, do you still have your hand up? Okay, Garth, you have the floor.

GARTH BRUEN: Thank you. Garth Bruen, NARALO chair. I think we can all agree – and, please, just show some sort of sign if you disagree – that consumer trust is part of the Affirmation of Commitments, that consumer trust has been part of the CWG development, that consumer trust is part of the requirements by the NTIA in terms of a valid transition. I think everybody here agrees with that. If you don't, please let me know.

Consumer trust is also part of the mission statement for ICANN Compliance. Yesterday, I had the head of ICANN Compliance – he was sitting right over there on that side of the room. I asked him several questions about consumer trust, and he actually rejected that consumer trust was part his mission statement. He rejected that it was a critical point in the Affirmation of

Commitments, and he claimed no knowledge of it being part of the CWG or the transition.

I quoted the mission statement of Compliance to him. I asked him three times to confirm it, and he said, “It’s not part of our mission statement as a department as far as I am aware.”

I am very, very concerned that some folks on the staff level need to be either reminded of this again or there is an effort to dismiss this concept as we move forward. I think that this is a core tenet of what we’re doing here, and we have to make sure that it is accepted at all levels. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Garth. I hope that our members and participants in the working group have been able to keep up with the discussions that deal with the replacement of those bylaws. We’ll start with Alan Greenberg and then move to Christopher Wilkinson. Alan, you have the floor.

ALAN GREENBERG: Thank you very much. The AoC has two references to consumer trust in it. One is in the introduction where – and I’m not going to try to give it verbatim – but it says ICANN has an obligation to protect consumer trust in the domain name space or something

like that. Clearly, we only have control over the global domain name space, not the ccTLDs.

It is then referenced to a larger extent in the AoC review associated with consumer trust. The latter part has been transposed virtually verbatim into the proposed bylaws. The first little phrase was added in the first proposal to one of the core values or something like that. It was removed from that in the second version because it was believed that the AoC review was sufficient.

ALAC pointed out in our comments that the AoC review is explicitly looking at the enlargement of the domain space and does not say anything about, for instance, dot-com. Yet, the statement in the introduction to the AoC is a very generic statement of “in the domain name space” or whatever the right wording is.

So we object strenuously to removal of that phrase, and I believe in the current iteration it has been reinstated. So if it has been reinstated as we ask, then it is pretty much identical to what is in the AoC, except now that core phrase, which is in the mission, becomes part of a fundamental bylaw which requires the community approval to change.

So I think we’re okay, but it’s contingent on that item being fixed. We’re supposed to be reviewing it tomorrow, and I have

asked explicitly for a before-and-after chart to be put up to make sure that we're not missing something. I believe we're okay if that phrase was reinstated. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan. I have the Affirmation of Commitments in front of me, and the paragraph which you were referring to as the beginning of the AoC is paragraph number 3. I'll read it to the record so that you can hear. I'll try not to be too fast.

“This document affirms key commitments by Department of Commerce and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability, and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.”

That's the paragraph itself. It doesn't refer to reviews are anything. The reviews are in paragraph 9.1, etc., but that's the paragraph 3. Is that one that you were referring to, Garth?

GARTH BRUEN: Yes, absolutely. Thank you. I know that the language is there. I know that the language is everywhere. My concern is that one of the appointed clergy is not reading from the same hymn book.

OLIVIER CRÉPIN-LEBLOND: We do have Christopher Wilkinson. I'll let Christopher speak, and then we'll come back to Alan.

CHRISTOPHER WILKINSON: The consumer trust and competition label seems to mean different things to different people in the ICANN staff environment. I just want to report that some time last year, a coordinating group was set up under the chairmanship of Jonathan Zuck essentially to design and prepare an index of metrics that would be collected by the staff in order to be able to assess in due course the performance of the New gTLD Program.

Those metrics were agreed in the working group, and it was also agreed that ICANN would conduct economic studies, one of which I believe has been completed. ICANN would conduct economic studies in order to provide a baseline of assessments which could be used to compare the performance of new gTLDs under several respects, including competition, consumer trust, consumer choice.

As an economist, I have found the methodology rather flaky, but I've endorsed the work to be done as the best job that was available, bearing in mind that in terms of implementing the AoC commitments, this kind of infrastructure of data will be necessary.

That being said, there are two further developments. Tomorrow morning starting at 8:00, if you look at the meeting schedule, there is a data workshop on competition, consumer choice and consumer trust review. And since I participated quite extensively in the work that was done last year and earlier this year, provided I don't oversleep, I do intend to go to the data workshop tomorrow morning at 8:00, which should hopefully provide us with some more concrete information as to who is doing what and what the schedule is for this ability.

The next phase is that...

OLIVIER CRÉPIN-LEBLOND: Christopher, if I could ask you to....

CHRISTOPHER WILKINSON: Yes, very quickly. Just two more words. It's important. The next phase, which was announced in the Board meeting with the registries and registrars earlier today is that the Chairman of the Board and the Chairman of the GAC will appoint the members of

a formal review team on consumer trust and consumer choice and competition.

I've already indicated to Alan and Olivier that, should At-Large so desire, I would be prepared to continue the work in this particular field. But the details of the schedule and how this is done and what the precise mandate is remain to be seen, bearing in mind that the staff have a gift for writing the mandate of such study groups and working groups in such a way as sometimes just to exclude that part of the analysis which, in fact, objectively would appear to be the most interesting and important. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Christopher. Next is Holly Raiche.

HOLLY RAICHE: He said exactly what I was going to say.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you. Alan Greenberg?

ALAN GREENBERG: Just in regard to Garth's comment, I'm not particularly surprised if there are people in ICANN, even senior people, who haven't read all the words properly. One of the whole purposes of this

accountability measure is so that if indeed that becomes an obvious fact post changes, we can do something about it.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you. Well, the discussion will take place tomorrow then, as you said, so our members should be very much alert to what is being put in there. And I haven't seen anyone saying that we should not have all of what's number 3 of the AoC. Quite the contrary.

ALAN GREENBERG: Let's not have consumer trust.

OLIVIER CRÉPIN-LEBLOND: Okay. I hope doesn't go on the transcript. Alan was just being sarcastic in the background. Okay.

ALAN GREENBERG: I didn't have my microphone on, so it doesn't count.

OLIVIER CRÉPIN-LEBLOND: Well, you might hear in the background. Right. So next is individual Board member removal. We could go into the different models, but you're going to write this thing. So individual Board member is the next one. We've actually

discussed this quite extensively in our previous meetings. Concerns have been made of turning Board members into politicians, etc.

But it looks as though the working group has worked towards putting some kind of a method that doesn't allow individual SOs or ACs to kick their Board member out of the Board on a moment's notice because they just felt like it without any reason. But then again, things might have moved.

Let's first start with Seun and then over to Alan afterwards. Seun Ojedeji?

SEUN OJEDEJI:

Thank you very much, Olivier. I think one of the updates that I was given the other time was that all the engagements we've had with the SOs and ACs included a Board member. I've actually tried to raise this point of individual Board member removal process currently proposed by CCWG. The response from them has been quite positive, which is an indication that they're actually comfortable with the current process that has been proposed. That does not remove the fact that the appointing SO or AC initiates [inaudible] process. We need to face that fact.

Personally, I think so long as everybody is fine with it, all the SOs and ACs are fine with it – including the Board, most importantly, because that is the place where I think this process could have impact on – so long as they are fine with it I think I’m personally also fine with it. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Seun. Alan Greenberg?

ALAN GREENBERG: Well said. There are people in this group, and a few others, who are passionately against it for reasons that they believe wholeheartedly. There are others, particularly in the GNSO and probably in other parts of the community, who are just as adamant that the appointing body must be able to remove that person.

The Board were in the former group, and now the people on the Board who have been most vocal are saying they’re happy with the thing. It may be the one thing that we’ve largely settled on. Let’s stop talking about it before someone changes their mind.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Alan. What I have heard is that in a designator model, if one is looking at that now, at the moment,

in effect, the ALAC and all the appointing bodies to the Board are designators or can be understood as being designators. We all appoint directors on the Board. We apparently all have the ability to take directors off also, although it's not printed in the bylaws in any significant way. That's one thing that I've been told about it, but no one has ever even thought about it.

At the end of the day, I think the issue itself might be a non-issue because if we don't our Board member to stay on the Board, then we'll just appoint someone else the next time when it comes down to renewal. Alan?

ALAN GREENBERG: Yeah. We could have the right, if it was written in the bylaws, but there is no process in the bylaws to do it.

OLIVIER CRÉPIN-LEBLOND: There's no process as such. It's another one of these legal things with different lawyers saying different things.

ALAN GREENBERG: Yeah, no provision.

OLIVIER CRÉPIN-LEBLOND: California law, etc. Yeah. I don't see anyone putting their hand up. Alan Greenberg's card is up. No? Okay.

UNIDENTIFIED MALE: Attention for the record. Are we ready for beer?

OLIVIER CRÉPIN-LEBLOND: No, no. We still have one more.

UNIDENTIFIED MALE: More punishment ahead?

OLIVIER CRÉPIN-LEBLOND: One more, human rights. An important topic. I'm not sure who brought this up? It was Seun? So, Seun, could you please take the floor?

SEUN OJEDEJI: I will not claim to have followed the working party dealing with human rights very closely. I don't know the current status of where they are right now as to the [inaudible] or the text to put into the bylaws for human rights.

However, from the onset of setting that working party up, I've had a concern. That's bringing in human rights issues, by the way, I'm a fan of human rights. This has nothing to do with the fact that maybe I'm not being civil enough. It's just that the role of ICANN is called technical coordination. I happen to be more

versed within the numbers community, and in our bylaws we don't have such provisions for human rights in our bylaws.

I will also note that I don't think IETF has something like that as well. If we start introducing such at the top level and such is not reflected or agreed upon by this specific operational community, I think it's going to mean a lot to us, to the Internet, and to the role of ICANN as itself.

There's lots of interpretations [that this could bring] once it is introduced into the bylaw, and I don't know how it can be avoided. So it's my motion – I think it should be discussed. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Seun. I have some points of view, but let's open the floor. We start with Harold Arcos.

HAROLD ARCOS: I'm going to speak in Spanish. I want to share with you what we have discussed in our list in the field of human rights. One of the proposals, as you're familiar with, is the introduction of this into the bylaws. If I recall properly, there has been some discussion – a legal discussion – on the California law that goes against this proposal.

So if I may suggest one of the proposals, one of the aspects, we should or we might support from ALAC is the actual inclusion of this topic in the bylaws because we are used to understanding human rights as just a matter for governments within the states, but nowadays, if we are targeting to have a modern, current ICANN, we should consider an organization, a corporation, responsible for its relations with end users, which is eventually the purpose of our existence here. I think it is an extremely important matter that ALAC should be supportive of.

Of course, taking into account this legal dispute, the legal controversy, of the [fiscal domicile] in California, I think this is a proposal we should be promoting. This is what I wanted to contribute. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Harold. To provide everyone with a bit of background, there is actually a Human Rights Working Party that takes place that works in ICANN. I was actually part of that working party. I know that Leon Sanchez is now involved with this, and there will be a meeting of that working party – is it tomorrow or the day after? Tomorrow.

Traditionally, I think the At-Large community has not been against this initiative. I don't think we've actually discussed it really openly very much. But the report which [Kyla] is looking at

the moment is one which has been released or published recently, and I think that it will be presented at this ICANN meeting. It looks at ICANN's corporate responsibility to respect human rights.

The first draft or a previous draft of this report was presented by the...Is it the current chair of the GAC? Wolf would probably know more about the things. It was presented. I can't remember who the author was and so on, but it was presented. There was, of course, Nigel Hickson and other ICANN staff were there who also acknowledged this [inaudible].

WOLF LUDWIG:

Actually, just for clarification, it was an initiative by the Council of Europe. As you said, it was Thomas Schneider, Lee Hibbard, and I forgot. Monika, yeah exactly, who were the authors at the beginning, etc., and then [the few let in].

OLIVIER CRÉPIN-LEBLOND: Thank you. And the Council of Europe has been taking part in GAC discussions for quite a while and have had a human rights agenda for this. So let's start with – we'll start with Holly. I'm starting to be a bit tired. We'll start with Holly and then move on to Alan. Holly Raiche?

HOLLY RAICHE: Thank you. First of all to point out that the time for the meeting tomorrow was 12:45 to 13:30, and it's in Liffey wherever the hell it is – Liffey A.

Just to report back though, yesterday, and Christopher was there, there was an informal meeting by GNSO. The topic really was human rights in ICANN. I think what the meeting came to realize is really one of the main human rights that are relevant to ICANN was privacy. That discussion pretty well started to get at the WHOIS conflicts working group, the privacy-proxy services. So it became very much a privacy issue, but in the end, it was acknowledged that stuff goes further. So there's already been discussions taking place. By the way, that meeting was not on the agenda.

OLIVIER CRÉPIN-LEBLOND: Thank you, Holly. Next is Alan Greenberg.

ALAN GREENBERG: I can summarize what I think is the current state. There is no disagreement that human rights should be referenced in the ICANN bylaws. There were a number of options that were provided. They varied based on one says ICANN should respect human rights and the other ones cited a number of specific documents. There was pretty strong among a lot of people that

our bylaws should not cite specific documents. Documents change over the time, and it was just a bad way of going.

The only difference there is at this point... So I think we pretty well honed in on the simplest one. The only issue that – concern some people have, and I’m among them, is if we make a global statement that ICANN must respect human rights and we now have an IRP (Independent Review Process) that allows a group of arbitrators or a group of panelists, to question to decide whether in any given instance ICANN has violated someone’s human rights – has violated the bylaws, we now set up a situation where someone can claim that their human rights have been violated because they weren’t given a specific domain name or TLD or something.

If the panelists are convinced that their human rights were indeed violated, they could effectively change the policy under which TLDs are allocated. So if I ask for a completely irrelevant .greenberg and I’m denied it on some terms and I get the panelists to say my human rights have been violated because I don’t have freedom of speech and I can’t use my own name as a TLD, that effectively sets a precedent.

I believe we need more specificity as to what kinds of things it applies to, not the more generic statement. I don’t think I’m in the majority at this point, but that’s my position.

GARTH BRUEN: Does this concept of corporate responsibility extend to, say, ICANN investing a company that is enslaving children or entering into an agreement with an entity that has a documented horrible human rights record? Is that what this...?

OLIVIER CRÉPIN-LEBLOND: Yeah, thanks, Garth. I believe you mean with regards to this report. I haven't had a chance yet to read the report. No doubt it will be discussed, and I encourage you to go to that session and ask that question. Alan Greenberg?

ALAN GREENBERG: I don't think the bylaw provision does because to go to an IRP, you have to show you have been harmed. And to show you have been personally harmed by us having our reserves invested in some company, I think that would be outside of what one could ask the panel. I am not a lawyer, certainly not a California lawyer, but that's my gut feeling is it wouldn't apply.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. And just to make it clear, of course, you're answering with regards to human rights component of the CCWG Accountability, which is what we're talking about. I was

just referring the actual publication from Article 19 and the work by the Council of Europe. These two are, of course, related obviously since this is going to give rise to something but we don't know what yet.

Seun Ojedeji, and then we'll have Christopher Wilkinson, and I think we need to finish this meeting except if you all would – oh, and Annette Muehlberg. Sorry. I did have you. In fact, we'll start with Annette because she was before everyone else.

ANNETTE MUEHLBERG: I'm a little surprised about this discussion, because actually it was also ALAC who pushed this and cooperated with GAC in these issues and we were really pushing the privacy issue strongly and we engaged very much in WHOIS and so we actually were really happy that the GAC started to work on this.

So I think, looking at the past, for those who don't know me, I was the former, former, former ALAC chair. So I'm a little surprised, and I think actually we could be happy that there are steps taken direction. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you, Annette. The discussion is taking place because there are a lot of new people around the table, and we're not all

synchronized. And I guess it's a good thing to get synchronized on this. Seun Ojedeji?

SEUN OJEDEJI:

I want to first say that the documents referred to, I have actually forwarded to the ALAC list so that anyone can take [inaudible] copy and read through.

I just want to strike a distinction. I don't know how much support or work ALAC has done in the past to actually push for this, and I don't know the rationale behind it. I think there's a difference between privacy and human rights. We need to clarify.

I definitely will be in support of... So privacy is part of human rights. So when we talk about privacy, we should deal with that separately and not find a way of bringing in – human rights, the scope is just so much, and I just think we need to be careful.

The more we expand the mission of ICANN, the more we actually add to the fiduciary [duty] of ICANN Board and the more we will find it difficult for them to be able to respect or get to do what the community wants because it will be subject to interpretation. That's just what I wanted to clarify. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Seun. Having been part of many of these debates at IGF, at regional IGFs, and at some sessions at ICANN, I think we've just about opened a box which we could actually spend a few hours discussing if you do wish to miss dinner and anything else.

I suggest that we close meeting after Christopher. I don't see any consensus on the human rights topic yet, especially pertaining to the accountability because it probably needs to be gelled up a little bit more. I know that they are working on this, and we'll probably have to play it by ear tomorrow.

I do note, as Annette mentioned, that the ALAC was supportive in, and I guess is still supportive, of the human rights agenda, but we have never taken a formal vote on this as far as I can remember. Alan?

ALAN GREENBERG: If we did it when Annette was chair, I don't recall it, and I was around during some of that or all of it. I don't remember which. I don't recall us ever taking a vote on human rights. The position on human rights has varied over the years, depending on who has been on the ALAC. I don't think anyone has said, "I'm against it." But how adamant one is in supporting human rights I think has varied person to person, but I don't recall a vote.

OLIVIER CRÉPIN-LEBLOND: Christopher Wilkinson, and then finally Wolf Ludwig, Christopher?

CHRISTOPHER WILKINSON: Thank you. Just very quickly, to warn you about the presence of a couple red herrings swimming in this pond. During the early discussions of the human rights topics in the CCWG, the question was raised about the human rights of corporations. For those of us who thought that human rights were about human beings, we were a little bit surprised to encounter this argument. I think for the moment it has disappeared or sunk without trace, but I believe the red herring is still swimming around there somewhere.

The second point that was raised were the human rights of the employees of ICANN itself, particularly regarding employment rights. I have absolutely no objection to maintaining the appropriate employment rights of the employees of ICANN, but the argument was made that at present the employment rights of the employees of ICANN derive, essentially, from the fact that ICANN is a contractor to the United States government. And the question arose as to whether or not, when this contractual relationship was terminated, this would affect the employment rights of employees. I think that's a relevant question for the

human resources department within ICANN, but I wouldn't discourage anybody from allowing it to emerge as a red herring in the bylaws, etc.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Christopher. A note that in the IANA stewardship transition process, the proposal from the IETF, the proposal from the RIRs were rather thin and straight to the point. Hearing what is now being discussed in the CCWG Accountability that relates to the CWG IANA, it seems we are leaving no stone unturned.

Wolf Ludwig, you can close the discussion. Wolf and then Alan, of course. I can't say no Alan. Wolf?

WOLF LUDWIG: Just a short comment of clarification. I remember the early days, and when I suggested in our first year strategy a closer cooperation with the Council of Europe or European institutions – let's put it that way. There was in brackets human rights mentioned. I was almost killed by the former At-Large director, [Rick Eshenhart]. He wanted to delete it. He wanted me to delete it and I insisted saying, "Well, I don't care what you think about it. For us Europeans, this is an important issue." And I insisted on keeping it in.

Over the years, I have faced and [lived] quite a lot of frustrations here at the ICANN level, At-Large level, etc. But one of my great moments was when this Council of Europe paper from Thomas Schneider and Lee Hibbard, etc., suddenly got such recognition not only in the GAC but also in other constituencies, and this was one of [the hours] of big progress. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Wolf. Finally, Alan Greenberg?

ALAN GREENBERG: I decided to add something at the end of the meeting to either your horror or amusement, depending on how you view things. In light of the discussion we had, there was a really long intervention yesterday in the CCWG on how you couldn't get rid of a director without cause because you certainly couldn't fire an employee without cause. You would have to go to a tribunal and a judge, whether in fact there was a reason for getting rid of an employee. California is one of the few jurisdictions around where you fire without cause, period. To your horror or amusement, as you see fit.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. And with those wonderful words, I think it's time to close the meeting for today. Thank you. I think our

colleagues on the CCWG have a little bit more of an idea of where to go towards. This call and this meeting is now adjourned. I know it's not the last one of the day, but I will still thank the interpreters and the staff for being here at this late hour. Thank you.

[END OF TRANSCRIPTION]