
MARRAKECH – ALAC Strategy Session Part 2
Saturday, March 05, 2016 – 14:00 to 17:15 WET
ICANN55 | Marrakech, Morocco

UNIDENTIFIED MALE: Part of the meeting is meeting with Fadi Chehade. I don't think he needs a lot more introduction. He needs an exit. He's brought with him Rinalia, who you've also met before.

FADI CHEHADE: Renalia came with me. [inaudible]. Ali is happy because for the first time he doesn't have to put his headphones. I am very happy to see you all. For sure, our presence in Morocco has a special flavor. We are in a country that has a long heritage, and a country that meets African and the Arab world in a beautiful fashion. I respect the Moroccan's because whenever I meet with them, I always feel that they have dignity. They have a spirit that is so refined. Honestly, I love very much to come to Morocco, and see the people, and meet new people, and learn from them.

I thank before everybody, my friend Aziz Hilali, who is the one who supported me for two years that were very difficult years. I thank you very much for your love. I told Aziz that during the four years in ICANN, I have not visited a house of anybody from that community except his house. I went to his house because I have learned that he's inviting me for nothing but to be

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introduced to his wife, and his kids, and his wonderful family.
Thank you very much. I will never forget this gesture.

UNIDENTIFIED FEMALE: Our African friends and our Moroccan friends who are here, I would like to say hello to you all. My friends here speak English and French much better than me, but I just want to say that this is a historic moment. We're going through a historic time. For instance, I've only just learned that there's 2,200 people who have registered for the meeting. I was told this two minutes ago.

It's amazing. In Africa, we have 2,200 people who are registered for the meeting, so I'd say there won't be enough room for everyone in the room on Monday for the opening ceremony. I was just with Derrick who also told me that there's going to be 100 delegations for the higher-level meeting of Ministers. 100 delegations, 22 minister.

Let me remind you that back in Toronto, we had how many Ministers back in the higher-level meeting? Zero. Zero back then when I just started. We have 22 Ministers coming on Monday. It's amazing. I have to say I truly appreciate this time, and the community does so too.

Why now? There's a lot going on, but I'd say the reason we have so many people, and so many members of the community is

because ICANN is now an organization that's well recognized throughout the world. It's an organization that's seen as doing its job with the world's confidence. Everyone trusts us for life. It's truly a time that I'd say, personally, to me, and I'm sure for all of you, it's a moment of triumph.

Four years ago, I was at the WCIT in Dubai, and back then people were still wondering whether we were a legitimate organization that could do what we do. At this time, I think we should truly feel grateful towards the world. We should thank the world and all of you.

Now, the big problem at hand is that I'm asked to speak whether in Arabic on Monday morning or in French, for the opening ceremony that is, or both, why not? I'm not sure. I'm thinking about it. There is going to be plenty of delegates at that meeting. I've never spoken Arabic in public. I think maybe it's the first time I've done so today, but it's my mother tongue. I love Arabic very much, and I respect it very much. If possible, I am going to ask the board if they agree, I would at least like to say some words in the local language, which is my mother tongue as well. Thank you.

UNIDENTIFIED MALE: Very, very special thanks to ALAC. I will start with Olivier and take it to Alan, because these are the ALAC leaders who took me

through this process. On the board side, I will start with Sebastien, and take it to Rinalia. These four individuals opened my eyes to a community I did not understand. I did not fully understand who you are and how you fit into this very complex puzzle called ICANN. I must thank them, personally, because they were patient with me. They were tough with me sometimes, and that's good, that's important. If we don't have mutual respect to correct each other, what good is it?

I see Cheryl at the very end there. She was the first community member to actually look me down, and give me an instruction. I didn't know what to do with it. I don't know if she remembers, but I actually told my wife about that. I said, "Some lady came up to me and basically put me in my place." She said, "You can't say Asia, it's not Asia. There is more than Asia. Don't do that again." I said, "Okay."

I love that about you all. I love that about the sense of friendship but also collegiality that we have built together. I respect each one of you immensely, and I thank you for tolerating my quest to always strive. I'm a striver. I don't know how to settle. I don't know how to stop. It's my nature. I was just sharing with staff, I finished reading a book on the plane called, "When Breath Becomes Air" it's written by a 37-year-old Neurosurgeon who found out six months before he became a full professor at Stanford University in Neurosurgery that he's terminally ill. He

stopped operating on brains, and he wrote this little bit, and died. It's a remarkable book.

In that book he says something that I kept in my heart. He said, "We humans are built to strive." He then likened it in a beautiful analogy. He said, "If we stop striving, it's like a painter who paints a tiger without stripes. How will that tiger look like?" It's what makes us human is that we strive. You taught me to strive. You taught me to stand up when I made mistakes because I over-strove.

I must tell you, I learned a lot of things at ICANN. I told my staff I lost 10 pounds, and lost some hair, but I gained so much more. I gained so much more from all of you, so many, many, many, many, many thanks to each one of you I see around the table who accompanied me through these years. All of you, familiar faces.

Leon, who dealt with me through some rough times, God knows, with the CCWG, always a gentleman. Only once in six months when he was really, really mad, what did he do? He became a little cynical. That's it. He told me, "By the way, I'm about to become cynical because I'm really mad." These are good people. He gave so much of his family time, of his life, to serve our community. He will triumph this week, and we will celebrate him because of what he did.

We do our best, Leon, don't we? We just do our best, and the rest we leave to the community. Each of us does our best. We did our best, and you did your best. I watched you do that. Every one of you, Cheryl, everyone, Aziz, Julie, I've seen you over the years, everyone, Tijani. Really amazing people.

Anyway, I told my staff today, jokingly, that I'm leaving, but I will join ALAC when I leave. Heidi had paid me very, very handsomely for that. I said, "I will come back. I don't know how, but someday maybe I'll come back." But certainly if I come back, the only way I could come back is as a user because that's who I am.

[off mic conversation]

UNIDENTIFIED MALE: Individual member, here I go.

UNIDENTIFIED MALE: Your predecessor was at At-Large member, by the way.

UNIDENTIFIED MALE: Thank you to each of you one more time. Please do not spend the week – I know many of you are preparing things to say about me. I'm good, I'm good, I really am good. I'm already very rich with your tributes, so please let's just get our work done. We

have a big job to do this week. We have to finish the work that Leon and many people on the ICG have put so much heart into. I am confident we will finish this work. I am confident we will finish this work. We will finish this work on Thursday, March 10th, two days short of the two year anniversary of when Larry Strickling and I sat down at 2:30 p.m. Pacific time, March 14th, 2014, and announced to the world that the U.S. Government, after 20-plus years is going to end its stewardship of ICANN. We're almost there, folks.

Please, I'm going to tell you this because my board just had two hours on this. We are not done with the transition next Thursday. What we're done with is our work as the multi-stakeholder community. We celebrate that. We do not celebrate the transition as done, because it isn't done until September 30th at Midnight. There's work to still be done. Let's be respectful of that work. Let's be respectful, let's not be presumptuous. Let's not say things that make Larry and the U.S. Government see us as presumptuous. We should be respectful. There is a lot of work still to be done.

We can tell the world, we, the multi-stakeholder community, we've finished our work. I can put my head on the pillow, and we can say at the end, we have finished our work.

I asked Alan to manage the rest of this meeting, and thank you very much for having me here. I understand there are a number of, because we're in Africa, of African NGOs that are here. Can I just get a sense of who they are? I'd like to welcome them. If you could tell us who you are, and what NGO do you represent?

FATIMAH MORAN:

Thank you, Mr. CO for honoring us as Africans. My name is Fatimah Moran. I'm from Mauretania. I belong to the first association every in my country to work on new technologies. It's called Ethics and Citizenship. We've developed a big task on gender, which is called [inaudible] which has a virtual forum where we discuss many things among women, and then there is a learning platform to train leader women, and every woman from an NGO, we want to teach them to use the internet to gain visibility and to have further access into the outside world.

We work in French, but we were chosen as the best practice in ethics and gender in the Arabic world for training and research, because it's almost the first association ever to have worked on us. We work in French, since Arabic isn't a developed language online, in Mauretania in any event. Friday takes over. I'm going to leave you my new email address because I want you to contact my mom, who is the French teacher, and she's almost 90 years old. She's trying to learn to use her iPad. I'm going to get

her to contact you, but she's more advanced than we are she says. I'm going to give you my email address for that, thank you.

UNIDENTIFIED MALE: We'll turn it over to Dajani for the last word.

HAMZA DAJANI: Thank you Fati. Thank you very much for everything you've done. You said you're doing well, and there's nothing for us to do. There's no tributes to be paid. It's true that you're doing well because you're a dane [? 15:17] person. We've always accompanied you, we've walked with you throughout your work here, and that's what makes you happy, what gives you this good feeling as you leave ICANN.

The entire African community, and I can speak on behalf of the African community in that regard, will never forget you for a number of reasons. On the one hand, we have the African strategy, which isn't the only one I'd say because there was a soul in the work we did with the UN, that's what marks the difference, so thank you. I'm sure you're doing well, I'm sure you're happy, and I'm sure you're going to meet us one day and tell us, "I'm doing great." So thank you very much.

AZIZ HILALI:

I'd rather we have a single emotional moment so there won't be too many speeches. First, we wanted it to be a surprise, now it's no longer a surprise. I'm sure my ALAC fellow members know it, but Monday evening at 7:00 p.m. in the big tent, there's going to be an evening. It's the African showcase that we usually organize whenever an ICANN meeting comes to Africa. This time, we're going to dedicate our showcase to Fati. We're going to pay tribute to Fati. Every ICANN participant, so 2,200 people are invited. Everyone's going to be there. We're going to be giving speeches, of course, but that won't last much.

Renalia and Alan have two minutes each. We won't give them too much because it's the end of the day. Usually they have more time, but this time they'll only have two minutes, and that's so that we can have enough time for entertainment. We've already found two folklore groups that are going to come and perform for us, so we want it to be a celebration more than a time for emotion.

ALAN GREENBERG:

Thank you very much. I don't think anyone's ever given me more than two minutes, actually. Thank you, Fati, we will be seeing you again, of course, this week. If we can prep ourselves for the continuing discussion on CCWG recommendations. Thank you very much. We will be resuming on recommendation 3. At the

time we left, I believe, if my notes are correct, we had a speaker list of, I think, I may be looking at the wrong speaker list, Jimmy, Tijani, and Sebastien. Is that correct? Does anyone remember what you wanted to say? We can start a new queue if you'd like. We will start a new queue. Recommendation 3.

UNIDENTIFIED MALE: I already just spoke, so I will not take any time.

ALAN GREENBERG: You already spoke. Maybe we didn't have a queue then. We seem to have an echo. Is there anyone else who would like any comments on three? Three, if you remember correctly, is the breaking down of the bylaws into two different sets of bylaws, fundamental, regular, the regular bylaws will be changeable by the board, vetoed by the community if necessary, and the fundamental bylaws can only be changed with the very significant support of the empowered community. Going once, going twice, we have Seun putting up his bottle, which says he wants to speak. Go ahead, Seun.

SEUN OJEDEJI: Thank you Alan. I just wanted to ask, does implementing the bylaw of WH1 have anything to do with WH2? Is there any

dependency? Does most of the bylaw implementation of WS1 happen before WS2?

ALAN GREENBERG:

Very much so. The bylaws have to be implemented prior to the U.S. Government doing the transition for that mater. There is no choice but the bylaws will have to be implemented. Of course, any bylaw changes associated with work stream two will have to be done under the new rules of the new bylaw changes. If there was, for instance, a required change because of WS2 to the fundamental bylaw, it can only be changed with the support of the community.

Any further questions, recommendation 3? I see no hands. Is there nothing in the Adobe Connect? Then we will go on to the next one, please. It's recommendation 4. Actually, if you can go back to the previous slide on recommendation 3, the last one, it was the list of ALAC concerns.

The real ALAC concern at that point, on this one, is that to protect the fundamental bylaws, the empowered community must act. On the other hand, there's an implication that is if we need to change the fundamental bylaws because of some crucial thing happening in the world, the community must act. If the community does not act, there is no escape clause.

You can say, as I have, what happens if the rest of the community says, “Huh, I don’t care”? Well, I have raised that issue with a number of people, and the best answer I got is organizations can fail for many reasons. This is one of them. There are many things that bring organizations down, and many things have to work for organizations to work. We just have to have some level of faith.

Recommendation 4 is the big one. Recommendation 4 lists the community powers and describes them. It doesn’t describe how they’re exercised, that goes back to recommendation 2, which we’ll return to. It describes what the community powers are. The community can reject ICANN budgets, IANA budgets. The community can reject strategic and operational plans. We can reject changes to the ICANN bylaws. That implies, of course, that when ICANN bylaws are changed, regular bylaws, there has to be delays in place. You cannot make a change to the bylaws that takes effect immediately if it has irreversible effects, because that doesn’t give the community an opportunity to negate it.

We can remove individual members of the board. Each acNSO that elects or selects one or more members can remove those members. There has to be a reason to do it. The reason can be as substantive or as un-substantive as the organization chooses, but there has to be a reason, and there has to be an opportunity for the director to, I won’t say defend themselves, but explain

whatever it is. The community, nevertheless, has the unilateral ability to remove, should they choose to.

The NomCom directors can be similarly removed. They are removed by an action of the empowered community as a whole. We also have the ability to remove the entire board. It requires a substantial part of the community to do that. Clearly, if we ever got to the point of removing the board, this organization is not in good shape. The messages that that would send to the rest of the world are potentially onerous. Nevertheless, the power is there. Perhaps the threat of the power has more import than the power itself. It is one of the things that can be done.

There is a process if the board is removed, how the board is replaced. There is an instantaneous board that comes into place, and then that must be replaced by a permanent one in a certain amount of time. Just a little insight into one of the discussions held. We had some trouble coming up with mechanisms by which the board could be replaced immediately. Clearly, we cannot afford to have the organization without a board. The concept of removing the board, but it only becomes effective three weeks from now. If you don't trust the board to act on their own, how much do you trust them to act after you've removed them but they're still there?

One of the things we asked our external legal council is what do other people do? The answer was not that many organizations have the ability to unilaterally remove the board. Of those that do, most of them don't have a clause of how the board is replaced, either immediately or in the long term. It's there as such a ethereal threat, that it could never be used because the organization would be without a board, which clearly is not something acceptable. It's interesting insight.

We have the ability to change fundamental bylaws and the articles of incorporation. If those are changed, it requires an action of the board and the community. If the community does not act within a certain amount of time, the change does not come about. The community can initiate a binding independent review process. If the community believes the board has violated the bylaws, the community itself has standing to take action, and ICANN pays for it.

Lastly, the community can reject ICANN decisions directly related to IANA. If we feel the board is mismanaging IANA in some way, there is recourse in the community as a whole. That is essentially the summary of all of the recommendations. Most of them, six out of the seven, essentially override board action. One of them, the approval of fundamental bylaws requires positive action on which to take the action.

I'll open the floor. I see Garth to start with.

GARTH BRUEN: Thank you Mr. Chair. Concerning the greater community's ability to remove a board member, does that extend to our elected ALAC board member?

ALAN GREENBERG: Very much so.

GARTH BRUEN: The greater community could overturn our?

ALAN GREENBERG: No, no. The directors appointed by ACs or SOs can be removed only by that acNSO. The NomCom directors are removed by an action of the community as a whole. Jimmy.

JIMMY SCHULZ: Sorry, I do have a fundamental question to maybe have the whole discussion going through the recommendations a little bit faster. I think most of us have done enormous work, and listened to the last week's sessions. I've heard them afterwards, but twice. It might be interesting for all of us if we have a test vote now, so we see how a situation is in the room. One thing.

If we do agree on most of the points, maybe we can concentrate on those we don't have the same opinion, and favor it to go through everything we've already done a couple of times, and repeat the things we've already said repeatedly. Just an impression.

I'm coming now to this recommendation number 4 where I do have a question. Especially removing individual director, Cheryl was talking about that last week, where is purple pants sufficient or not. Are we going to implement hard lines where this is a reason to remove and this is not a reason to remove? Are there any things we can grab, or is it just well we feel we should remove someone? Do we have hard facts where we say, "This is a reason for removal, this is not a reason for removal"?

ALAN GREENBERG:

A bit of background. Under California law and, in fact, law of many places, if members for instance, and members often have the ability to remove directors. Stockholders have the ability of removing directors in some cases. In virtually all cases, they can be removed without cause. You don't even need to state the cause, you simply say, "You're gone."

In the interest of fairness and giving people an ability to "defend themselves" or "explain themselves" the rules that we have say the organization removing it or requesting the removal must

give an explanation. It does not have to be something which is verifiable or proven.

The example that was given in the slides was clearly somewhat whimsical or wearing purple pants, but the message I was trying to give is it doesn't have to be something which the rest of the community believes is onerous, but is sufficient for you to say, "If we are removing our director At-Large for instance, that we select the direction based on whatever we understood at the time. If now, we believe that was a wrong choice, we can remove them. It might, more likely, be for a very substantive reason, but it doesn't need to be.

I will say this with subject of a very, very long and complex discussions, what we end up with was a compromise. There are some people who simply wanted it to be as per the law in many jurisdictions. We simply say, "We're removing you. You're gone," and we don't even have to give a reason. Giving a reason made it quite interesting in some ways, interesting not necessarily a positive word. Because once you identify some reason, and we're not using cause, as a legal definition of cause, but reason. The director might have motivation to sue you. You've removed me as the director. I'm no longer employable, and therefore I'm going to seek restitution.

We, in fact, had some very difficult discussions with the ICANN board, and we now have indemnification clauses saying if the dually appointed representatives of an AC or SO make a statement, they are not going to be left subject to lawsuit. You can't stop that. In theory, they will be indemnified, as long as they're doing it in good faith. It's one of these compromises that there were a number of people around this table who were on quite different sides, never mind different sides in other parts of the AC and SO. That is the way it turned out. I think it is a reasonable compromise.

To answer your first question, we're not going through it in the same details we did in the review. I just skipped over 11 slides when I stopped talking about recommendation 4. We're just trying to refresh people's memory very quickly, and I'm trying not to spend more than a minute or so on each recommendation. If I'm spending too much time, and everyone knows, just tell me to stop, and I'll simply call out the number.

UNIDENTIFIED MALE: I understand and so does Tijani, and the test load.

UNIDENTIFIED FEMALE: We have 12 out of 15 right now, and Leon is out, but he will send a proxy to you if need be.

ALAN GREENBERG: Just to be clear, are you asking for a test vote on the whole package or recommendation by recommendation?

UNIDENTIFIED MALE: The whole package. We see where the problem is.

ALAN GREENBERG: You're asking us to stop this process for a second and just do a test poll of where do we think we stand?

UNIDENTIFIED MALE: Yeah.

ALAN GREENBERG: I'm willing to. Does anyone on the ALAC object? If anyone objects, then we will not do it. We have three people who are objecting, so sorry.

I don't know if Tijani or Alberto was first. Alberto, go on.

ALBERTO: Thanks, I'll speak Spanish. With regards to cause or no cause, this has already been dealt with. However, the procedures will need to be defined. If we want to remove a member of the

board, and we have appointed that member through a vote, than the proposal to remove him from the vote should be the same way. In many places, in order to submit the request, you require 50% of the vote, and to approve that request, you're required 70% of the vote. Thank you.

ALAN GREENBERG:

What threshold do we need to appoint someone in the case of the ALAC is a simple majority of those voting. For those voting, it is a superset of the ALAC. It's the ALAC plus the five chairs of the RALOs. The removal is done by the ALAC itself, and it is done, I believe, the proposal calls for a super majority two thirds, I think. That is specified. We, of course might choose to set a higher threshold. We could not set a lower threshold, though. Tijani.

TIJANI BEN JEMAA:

Thank you Alan. To respond to the question of Garth, to remove Renalia, as Alan said, we are the only constituency of ICANN who can do that. It will go through the empowered community. There is only one case that we may disagree with the removal of Renalia, and she might be removed. It is when the community proposed to spill the whole board, and ALAC disagree with this decision. In this case, Renalia will be removed, and you will not be agreeing with it.

Coming back to the removal of individual board members, there was a very long discussion, as Alan said. There was really a big concern because the first proposal was that any AC or SO can remove its director without reason like this. They decide today to remove him, and he will go. After a very long time of fighting, we managed to make this proposal of creating a forum for the community to discuss the issue. The AC or SO will not remove the director or directory.

They have to go through a process. The process has several steps. One of them is to convene a forum inside the director can come and explain why he disagrees with this removal, and where the AC or SO who want to remove him have to come and say why they want to remove him. This doesn't mean that this reason must be valid for everyone. Even if we all agree with that, if at the end the community decide to remove him, he will go because the final decision will be the decision of the SO or AC, but which go through the empowered community. The empowered community is altogether. Thank you.

ALAN GREENBERG:

Thank you Tijani. Just a clarification. You're correct, the empowered community can recall the whole board, including our director. There is nothing, however, to prevent us from naming our direct, Renalia in this case, as both the interim

director who takes place immediately, and the permanent replacement for Renalia. Although the community can nominally remove, we can put her right back.

Next I have Sebastien.

SEBASTIEN BACHOLLET: Maybe I've not followed all these discussions so well, but I was thinking that the process to which, as it's a new process to remove ICANN board member, who will need to have this discussion on how we will do that with an At-Large. It seems that it's already done. I don't get why we were not allowed to do it if we wanted, and if it's already now our bylaws.

Second point, Jimmy, I get your point. You want to have the temperature of the room, but I really feel that if we don't have this in-depth discussion prior to finalize the vote of each and every of us, it will be, how I can say that? Difficult to change our vote if we say now that we disagree, why we will change in [inaudible] discussion. I really think this discussion must be in depth, and allow everyone to make his final mind or her final mind. It's why I don't think that it's right timing to do that. If you ask that we do for each recommendation, what is the point of you of ALAC member, I have no problem with that if we do it.

Now, on the substance. I put my comments on the first document of this CCWG. I have done it again as a minority report on the second. I decide not to publish anything on the third one because I thought that it was time for a collective position. It's important for you to understand or to get that I disagree with removing the board, and individual board members in the proposal way of doing it.

We elect a board member for three years, it's quite a short time. History shows that when a new board member seems not to be at this right place, generally they go away by themselves. Maybe there are some people who think that after one year you know what is happening in the board, and you can remove a board member. I don't think so.

The discussion with Renalia to tell her what she's doing well and what she's doing wrong, I can tell you that we can't. 99% of her job is within the board, except what she says, or eventually what other board member says. Maybe don't trust them absolutely because they can't say what is really happening today in the bylaw or in the way of the board working, they are not allowed to do so. It's one of the problems.

Remember that the board itself can remove another board member. They know what is happening within the board. For the all board removing, the working group takes, I will say, the worst

case to take them all out, and to imagine that the next day a new board will be formed and will be working. We are giving the power to staff. We are giving the power to legal staff because they are the one who knows the organization and who runs the board, in fact. If we don't have the right people, and they can't be up to speed in one night, it's not possible because they will not know the last things, even if they were ex-board member, and they knew about house of bodies working, they will not know the last issue and what was the last discussion.

For example, if we decide to have a new board after this meeting, what they will know about the discussion with Larry Strickling. They will not accept through the staff. We will give the board to staff, and that's a wrong way to do. We can split in the different powers. It's why this one, I really disagree, and I think that we need to disagree with that because it's giving too much power to some people and especially to give, if it's happened, too much power to staff. Thank you. I'm sorry to have been too long.

ALAN GREENBERG:

I will ask people to try to make sure their interventions are short. Sebastien, you said something at the very beginning which I'd like you to clarify. You said, "If we already have the power in the bylaws to remove people, why don't we? Why can't we do it

already?” I know of nothing in our current bylaws that gives us that power.

SEBASTIEN BACHOLLET: You say that it’s already done. How we will remove a board member? You say that it will be just the ALAC. My point was I don’t think it was already decided. We will need to decide what will be our process to remove our board member. Like, the other [inaudible] will have to do that.

I get the impression, and maybe I misunderstood you, but it’s already done. It will be ALAC with 55%. Why, if it’s already in our rules, it’s in the rules, then it’s why I say I can do it.

ALAN GREENBERG: Let me clarify, then. If we choose to put rules in place on how we exercise a discussion to remove a director, those rules would be in place. Barring those rules existing, our standard rules for making decisions apply.

SEBASTIEN BACHOLLET: You may [inaudible] but here I will say we have rules to elect. If we choose to have rules, we need to take the same rules to different size of board member. We can’t say that where we take rules from another part of our rules. If we take one rule, it’s the

same one, and the 20 voting members must be take into account if we are doing that.

ALAN GREENBERG: I'm not envisioning us exercising this in the near future. We should have plenty of time to discuss it should we think we need special rules. I'll point out, however, it is the acNSO that is the empowered community to take action. I suspect that is a legal issue. We have Seun next.

SEUN OJEDEJI: Thank you, Alan. I guess you already provided clarification on the removal. I think what you're saying now is that right now we don't have a process to remove an individual board member on the ALAC bylaw. I think we should find time to discuss that later, during the implementation process, especially considering that during work stream 2, that would be the process to actually check SOAC accountability. We have to have that in place.

Then you mentioned something about if it's the SO or AC. I think when it comes to individual removal, it is the decision of the appointing SO or AC. Of the community forum, all those ones are just cosmetics, as far as I'm concerned. Thank you.

ALAN GREENBERG: I've put myself in the queue, but Tijani's first.

TIJANI BEN JEMAA: Thank you. I am a little bit confused. We are speaking about the actual rules for the removal of our director, or we are speaking about the removal of our director and the new accountability bylaws? If it is in the new, it is already in our mechanisms that the SO or AC who wants to remove his director, they have to approve this decision because, I don't know, 75% or two thirds majority. It is already there, and it is there for every SO and ACs. Thank you.

ALAN GREENBERG: Thank you Tijani. If I may? The ALAC could always decide, as I think Sebastien suggested, or maybe Seun suggested, I'm not sure, to come up with a unique set of processes by which we make the formal decision on whether to remove. The process that we'll be looking at in a moment on recommendation 2 of how we make all the decisions, there's a lot of decisions the ALAC will have to make along the way, and I'm assuming that unless we decide that there is some other threshold to be used, our standard threshold applies.

Our rules of procedure are pretty clear that we use a percentage of 50% unless the rules say otherwise. We could decide, that for

certain decisions, whether it's removal of a board director, creating a petition, or whatever, we should use a different threshold. That's a decision we can make in due time should we decide to even talk about it.

Other than that, these are simply decisions we need to make, and yes the AC and SO can remove, it's under the new rules, can remove a director with following the due process, which includes the community forum and blah, blah, blah. Just because we're not discussing each of the details every time we say it doesn't alter what is in the proposal. Thank you.

Any other speakers on this subject?

UNIDENTIFIED MALE:

Yes Alan, we may set any kind of rules to make decision, but for the removal of the board director, we may have an official, but it cannot be lower than what is in the new accountability mechanisms, which is, I think 75% or perhaps two thirds, I am not sure, thank you.

ALAN GREENBERG:

No argument there. [inaudible]

UNIDENTIFIED MALE: Yes, hello. I am a newcomer, and I do speak French. I would just like to give you legal advice because this is my job. When you choose or elect someone, you give them an amended term, and you have to choose if the term is a representative term or imperative term. If you have a representative term, it may be for three years, three years term is going to represent you. If you want to give him instructions, is it going to be called an imperative term. You're going to give him instructions how to vote, how to decide, what to do, you're going to tell him what to do, him or her what to do. If he doesn't execute your instructions, he's going to be destitute and replaced by someone else.

If it is a representative term, after three years, for instance a three-year term, he's going to be destitute by or removed by, not by you, but by the board he belongs to.

ALAN GREENBERG: Just for the record, directors within ICANN are explicitly not representatives of the organization, and do not and may not take direction from those organizations that appoint them. Once they are appointed, they are effectively independent to us, and the bylaws are very clear on that.

The current bylaws do not allow the removal of a director, except by board action. The board can remove any director and

most of the liaisons. The new bylaws we're looking at do allow the organization to remove people in middle of term. We do have about \$11 million legal bill advising us on this, so I think we're on reasonably good ground.

Anyone else on recommendation 4? Sebastien.

SEBASTIEN BACHOLLET: Thank you. I think that sometimes it is good to have new voices being heard, and it is great that we have other languages as well. We have some very qualified people in this working group, and we can find people to help us out around the table. [inaudible] thank you very much for your intervention. I think it was important for newcomers like you to speak and give us some ideas.

Your question is excellent. As of today, though, our fundamental law is the California law. The way it is implemented is quite different from the one we have in other countries. That's why ICANN was created that way, under California law, and this was a no-member not-for-profit organization. The board members, as soon as they become board members, they just take into account the interest of the corporation. We talked a lot about that, and we have those proposals, and studies why I do not agree with a few proposals here.

I don't want the community to have so much power but useful powers. Powers that are not bureaucratic, less bureaucratic. I'm afraid that we are becoming more and more bureaucratic, which is not good. We're going to create a monster. It's not good for end users because we won't be able to find people that are going to invest into the process, and try to understand how it works, and participate. That's really too bad. That's a collateral damage that exists here. Thank you.

UNIDENTIFIED MALE:

Quickly, I heard what Alan said and what Sebastien said, and I'm wondering is there still a problem? Is there still an issue? It seems to me like the issue is resolved. The removal can only come from the board of one of its member, and cannot come from the bottom.

ALAN GREENBERG:

I'll just remind people that the current set of proposals were developed over 15 months, and the people who participated in the process, including five formal members from this group, and several informal members from this group, went into this with many, many different positions. This is a compromise. It is not satisfactory to some of us. It is in some cases acceptable but not our preference, and I think that applies to pretty much all of us.

If we look at recommendation 4, there are aspects in it that almost everyone in this room would not have picked, and there are aspects that some of us loved. We've ended up with a compromise which most of us believe is not going to be damaging, and if not optimal, acceptable. Clearly, when we come to a vote, if we have to vote on this, then we will see if everyone agrees or not.

From my perspective, again, this was not everything I wanted to see, not the way I would've done it if I was king or whatever, but it is the compromise we worked out. It was a hard-discussed compromise. Any other further interventions on recommendation 4? Then we'll proceed to the next one which is recommendation 2.

Recommendation 2, not part two of recalling the entire board, is slide 31. Thank you.

Recommendation 2 is the process by which the various powers can get exercised. The overall process, and it does vary somewhat from power to power, is in general somebody, and it doesn't have to be, there is no specification of who it is, must petition through an AC or SO, and empowered AC or SO to take one of the actions. That can range from anything from rejecting a bylaw, rejecting a plan, rejecting a budget, recalling the whole board.

That AC or SO must, within a certain amount of time, take a decision, and again we come to the question of how do we take decisions. We must take a decision under our current rules using a 50-plus-1 vote, whether to proceed with that power. If we choose to proceed with that power, we need to involve the other ACs and SOs.

If a certain number of those ACs and SOs agree that there is merit to the recommendation, and essentially support the petition, we invoke a community forum. The community forum is a discussion among all ACs and SOs, and I would say all because it includes the empowered ones and the ones who have chosen not to be empowered. It will also include the board, with an opportunity, perhaps, for resolving the problem prior to actually exercising a power.

Should the community forum, at the end of it, and this typically will be a multi-day affair, probably teleconference. It could be face-to-face if it was co-existent with an ICANN meeting or some other event. Should the community decide to exercise the power, and sufficient ACs and SOs agree to exercise that power – we'll talk about the number in a moment – each AC and SO will have to make a formal decision on whether to exercise the power.

An AC or SO deciding to go ahead with a community forum, simply says there's enough merit to discuss it. That doesn't mean they're going to exercise the power. If enough of the ACs and SOs exercise the power without significant opposition and significant means, at least, too, then the power is exercised.

Now, there are some exceptions. If the power we're looking at is to approve a fundamental bylaw, we don't need a petition process. The board deciding to change the bylaw invokes the discussion process immediately.

If we're talking about removing a single director appointed by an AC or SO, although we go through the whole process, the thresholds only require that AC and SO to continue. We can go all the way to a community forum with no one else caring, and then that AC or SO, even if every other AC and SO says, "No, there's no merit in removing the director," that AC or SO can still do it.

The details vary. Next chart is just a pictorial. Can we go to the next chart? Thank you, I'm not going to describe it. This is just a pictorial of what we talked about. If we can go to the chart with the thresholds, it's a blue and white table. That's the one. That, for each of the powers, tells you how many ACs or SOs do you need to convene a community forum. You'll notice it varies from one for removing an ACSO director up until three for some of the

more onerous powers. It, then, talks about how many ACs and SOs have to support the action to actually exercise the power. Again, it ranges from one in the case of the removal of ACSO directors. For all other powers, it requires either three or four of the five ACSOs to exercise the power.

The more onerous powers, that is rejecting budgets and plans, removing the entire board, and rejecting IANA actions, require four of the five ACs or SOs to take the action. In any case, greater than – this chart is wrong by the way. I just realized. No one's ever pointed it out. It's greater than one objection in all cases, not greater than two. Sorry about that.

The only exception, and there is one exception, with less than two objection.

UNIDENTIFIED MALE: Yeah, it is less than two, yeah.

ALAN GREENBERG: OK, you're right. You can exercise it with less than two. My fundamental arithmetic is failing me at this point.

The only exception, and there is one, is what was referred to earlier as the GAC carve out. This is a complex procedure. And I am going to repeat it even though we have talked about it

before, because it is confusing. If the community chooses to take some action – let's back out. If the GAC give advice to the board, the board takes some action or inaction because of it. If the overall community objects to that, and initiates some community power, it was felt that since the GAC, in giving its advice, has a very strong power to require the board to negotiate and perhaps compromise.

They've already had, in English, I don't know how this translates, a good kick at the can. They have a strong input into the process. If the community objects to that, then it was felt the GAC should not be able to defend itself once again by objecting to the community power. Therefore, the GAC cannot participate in community powers that are attempting to oppose board action or inaction because of GAC advice. I don't know how that long sentence translates, but I hope it translated okay. Those who are listening in other languages can tell me.

That introduced a conundrum, a problem, because we are now left with only four ACs or SOs to take action. The CCWG, early in its process, said we do not want to require unanimity from anything. Therefore, if there were only four, and requiring four in some of the powers, and you'll notice, would require unanimity. So the proposal of the CCWG was to reduce the three to four. That was acceptable in many cases, but it was deemed to be not

acceptable in the case of not removing the board. The three ACs or SOs should not be able to remove the whole board.

Therefore, the proposal was to reduce the number to three. The board vehemently disagreed because they felt, and the ALAC agreed, as it turns out, that under no condition should we spill to remove the whole board with only three.

The compromise that was agreed to was if the community files an IRP, and independent review process, something we'll be talking about in a moment, and the IRP decides, the panel decides the board has violated its own bylaws, and the board does not remedy that immediately, the community can remove the board with only three. In every other case, the threshold stays at four.

There is a case where the board can be removed with only three ACs and SOs. It will only happen as a result of GAC advice where the board did something which was against the boards own bylaws. Presumably, if the board fixes it right away, the community will not invoke this power. Invoking this power takes a bit of time.

One would expect after an IRP decision the board would act very quickly to fix the problem. If it ever went that far, the board could, in fact, be removed by three, that's the only exception to

the old process. Sorry for the long description, and I'm opening the queue. I have Jimmy and then Sandra.

JIMMY SCHULZ: Thank you very much. I really like the idea of petitions, and that form of direct participation possibility for everyone. Did I get it right? Just to be honest and clear, every human on earth can start a petition here. Is that correct?

ALAN GREENBERG: I don't think there's a restriction. I think it could be every dog on earth as well, if they can write and submit the paper.

JIMMY SCHULZ: I accept everything we've been discussing already here. There's just one question, where is danger of distributed denial of service attack against ICANN. The petition might be more successful when we ever expect. If you get 1,000 to 10,000 petition a day, we don't have any filter to deal with it. Have you ever spoke about that or discussed that issue? I was a member of German Parliament of Committee for Petitions. They receive 10,000's of petitions a year. There had to be a special committee just to deal with petitions to filter them and concentrate them. Just a question, have you ever discussed that?

ALAN GREENBERG: I'll answer that if people don't mind. Yes, it was discussed. Remember, these aren't going to ICANN, these are going to the acNSO, so it's the ALAC that would deal with the 10,000 petitions a week or a year. Yes, it was discussed. It was honestly felt to be a very edge case. Honestly, how many people care? Things that we could probably dispense with pretty easily, but if it becomes a real problem, we would have to take some action.

The ALAC may take action itself in putting a rule in place about how we address petitions like that, or someone initiating a petition. I thin, in all fairness, we couldn't say if it comes from someone we don't know, we're just gonna reject it because that changes the spirit of the original intent. The original intent was to say we are open, we are responsive to the internet community. Yes, it could become a problem, and we would have to learn how to address it pretty quickly.

Sandra, I think was next.

SANDRA HOFERICHTER: I might be the only one in the room who has not yet entirely understood that GAC carve out. I understood the first part you said, that GAC is giving advice, board is acting according to this

advice, community is unhappy, can reject, and then the GAC cannot defend what they did advise. Is that right until here?

ALAN GREENBERG: They can defend. They cannot use their community power if it ever gets that far. They can certainly say anything they want, and present their case, but they cannot use an objection to try to defeat the action.

SANDRA HOFERICHTER: This is what we call the GAC carveout, and where also the board has constraints in this regard because we are separating one community at this point. In the second part, what you said, you said if the board violates their own bylaws, and I don't get that connection. What has this to do with the GAC advise? This was the point when I got confused again. Could you please? Because this is –

ALAN GREENBERG: I can try. Someone else may want to try following me. If the GAC gives advice, here's an example. The GAC gives advise that ICANN should require all gTLDs to do something stupid, put some content on everyone's websites, which is counter to the bylaws that says we don't control content. If the GAC gives that advice, if the board follows it, the rest of the community can,

among other things, take out an IRP, and independent review process. If that independent review process finds the board did violate its bylaws, as it would likely in the silly case I described, then we're in the situation where if the board doesn't fix that problem, the rest of the community could remove the whole board with only three ACs and SOs. It's such an edge case that it's not likely to happen. Did that do any better?

SANDRA HOFERICHTER: Yeah, but why does the board violate the bylaws if it follows GAC advice, even if it's stupid advice? I mean, following stupid advice, for the community, stupid advice, why is this against bylaws?

ALAN GREENBERG: Well, the bylaws say a number of things. One of the things the bylaws say is ICANN does not – or certainly the new bylaws will say ICANN does not control content on the domain names that are allocated under its processes. If you have www.Sandra.com, you can put whatever you want on www.Sandra.com. You might be violating someone's intellectual property, and you can be sued over it, but ICANN cannot tell you what to do. If the GAC says, "ICANN should require www.Sandra.com to put something on her website," and the board follows that advice, that's the situation we're talking about.

SANDRA HOFERICHTER: My last question for clarification, if the board did follow within the bylaws, and the community is unhappy?

ALAN GREENBERG: If the community initiates an IRP, and the IRP says the board was within its bylaws, then the limit is not reduced to three, it is still four. If the community wants to remove the board over that action, it requires unanimous decision of all four remaining ACs and SOs to take that action.

Essentially, if we do not like the GAC advice, and the board followed it because the board decided it was a reasonable thing to do, the rest of the community acting unanimously, which means the gNSO, the ccNSO, the ASO who have very different interests, and the ALAC all decide that we can kick out the whole board. It's not going to happen in my lifetime, but I'm old. It might happen in your lifetime.

We have Seun next.

SEUN OJEDEJI: Thank you Alan. For the objects, I think it should be greater than two, right? For the objects, I guess you are looking at the

support, and you are using the support section to reflect the objects, so the sign should be greater than two.

ALAN GREENBERG: Just for clarity, Tijani I think corrected me. What it is saying is the power can be carried out if you look at the case of rejecting a budget. The power can be carried out if there are at least four supporting the power, and less than two objecting to it.

SEUN OJEDEJI: Oh okay, objection, oh okay. Thank you.

ALAN GREENBERG: In the case of four and two, it doesn't make a lot of sense because there's only five total. If you look at, for instance, the case of supporting or rather vetoing a bylaw, if three support it and only one object, and the fifth remains silent, it would be exercised.

SEUN OJEDEJI: Thank you. I thought you were just trying to use that to show that a minimum of three is required to exercise the support. Just to follow up on what Sandra was saying, I like to just ask a question. If ALAC writes an advise to the board, and the board implements it, let's say it's something that the other part of the

community does not like, and it raises a petition. Does ALAC get to exercise its vote?

ALAN GREENBERG: Just for the record because us nodding our heads doesn't go on the record, the answer is yes we do get to exercise our vote, because the board may have accepted our advice, but they weren't compelled to follow the detailed process they are for the GAC.

SEUN OJEDEJI: As a follow up then, do I understand as well that the current advice, by advice means that both has the right to say no? And then if both accepts, it means that they made a choice, and from position by that process to actually accept that advice? Really I will say we have perhaps gotten past this GAC issue, but again, I like to retire my concern about this GAC coverage. Advice is on advice.

We have also, in the CCWG proposal, have a requirement that actually now requires the board to only act and go through that process you're referring to on consensus advice from GAC. I don't know why that is. I'm saying all this because GAC is also an AC, and I think reducing the power of an AC and considering that we, ALAC, will protect the interests of internet users should be a

concern. We cannot change this probably now, but I don't know how we're going to go about it to actually have views known on this particular issue.

ALAN GREENBERG:

Thank you, to be clear, advice is advice. The board is not bound to follow any advice. They are bound in the case of the GAC to follow a process in rejecting the advice. The whole rationale, remember, is if you recall there are words in the current bylaws which says ICANN is led by the private sector. There was large discussions in the CCWG on what do we mean by the private sector. Well, at the time that was written, it was private sector versus the public sector government. Now, in parts of the world, private sector means commercial business, and in parts, augmented by essentially non-profits. In other parts of the world and in other usages, it means everything except government. We clarified the words this time around to say it means everything except government.

There was a concern when ICANN was formed that it not be led by governments but governments would have the ability to input things into it. At the time ICANN was formed, it was not clear the governmental advisory committee was part of ICANN. It was, in fact, viewed by many as external to ICANN, completely

separate from ICANN, but giving advice into ICANN. That has evolved over the years.

The whole premise is that governments should not be in a very powerful place to control ICANN. We did not want ICANN control by governments, as is the rest of the telecommunications regulation for instance. That's the history. We've evolved as we've gone along, and this is the compromise that has satisfied various people. When we get to recommendation 11, and we should be moving along soon because we're going to run out of time, we'll look at that particular aspect of advice from governmental advisory committee in more detail. That's really all I have to say.

How are we doing on time in this session? Coffee break in 15 minutes, so we have 15 more minutes. Are there any further discussions on recommendation 2? We have Tijani.

TIJANI BEN JEMAA:

Thank you Alan. Jimmy, regarding the petitions, we will be receiving, as you said, a huge number of petitions. They don't have any value if they are not endorsed by one SO or AC or more. It depends on the power we have to exercise. If it is to remove one board member, there is a specific SO or AC who has to endorse this petition. The petition made by other people than the empowered community cannot have any consequence if

they are not endorsed by SO or ACs. Now, in Arabic for the rest of my intervention.

When the case of the GAC happened, and in reality it was a big problem for us because it was convoluted. The first problem was that it was said that there should be no possibility or power for the GAC to vote on something that they were the result of, or caused it. Then, people said why don't they agree between the gNSO and ccNSOs to have a policy that they send to the board, and this is their action?

Then, when we move to the power of the community, they should not participate in the voting, but they do. What of ALAC? We decided in ALAC, from the very beginning that everything related to the GAC we will not take a position with it, and this is exactly what we decided to do. Then we return now to the result of this issue. The result, at the end, we are trying to reach a situation where, for example, if we have to remove the entire board, we can remove them with a backup of three SOs or ACs that decided to eliminate the board.

For me, and for many other people, many other members from the CWG and from the other communities, all of them have not agreed that this is acceptable. However, the solution that the board has found, we have accepted it reluctantly, because there is no other alternative, and people have come to a stand still,

and nobody wanted to change their positions. Therefore, we wanted to move on. Hence, the solution was acceptable to a point, where we decided not to object in a way so that we can move along, thank you.

ALAN GREENBERG:

Thank you Tijani. Again, I'll give a little anecdote from along the way. It's associated with recommendation 11, but I'm jumping the gun. There was a position taken that a certain board decision was currently 50%. One group said 66%, the other group said, "No, it has to be 50%." There was absolutely no chance of moving. The difference is whether it is seven or nine board directors. I mean, if the whole board is voting, that's the difference between 50 plus 1 and two thirds.

The compromise ended up being 60%, which means eight directors. In fact, this kind of decision, if it's made at all is made with virtual unanimity. The bottom line is, to be blunt, it allowed people to compromise and save face because everyone lost a little bit. That's a good description of a lot of the decisions that were made. They don't always make complete sense. They're not necessarily harmful, and it allowed people to compromise.

Anything else on recommendation 2? We are a few minutes away from coffee break. How far away are we now? 14 minutes, so we

have enough time to go ahead to the next one if there's no more questions.

The next one is going to be a challenging one, I'll tell you full out. The next one is the recommendation 5, which is a large number of changes to ICANN's mission and core values, which has become mission commitments and core values.

The summary of this is there were a vast number of changes. Some of them to clarify issues in the mission, some just changing language. A lot of things were inserted by people who were very suspicious that ICANN would try in the future to move out of its narrow scope into other missions. There were worries that we wanted to prevent ICANN from expanding its power over gLTDs or ccTLDs.

Some of these changes were, from our perspective, very beneficial. They clarified things. Other ones, we felt pushed beyond the limit that we were willing to accept. This was the section that the ALAC has had most comments on in the various proposals. With only one real exception, basically we got most of the changes made that put it back into a position that we thought was agreeable. A fair number of our changes were supported by the board, which helped certainly. Remember, the board may be part of the community, but the board is also the entity that has to approve these bylaws. They were not likely to

approve bylaws that they objected to and felt would harm the corporation.

There no real practical way that we can go through all of them without putting up about 12 pages of documents on the screen. When we did the briefings, we suggested the people who wanted to, I won't say second guess the group that had studied this in depth, but wanted to review it in detail really had to go to the documents and look at it. I'm assuming that people will have done that if they have chosen, and therefore I don't think we can go into any more detail now. It could well be that someone has gone through those details, and has some issues they want to raise now.

We'll break for coffee in about 10 minutes, but we will start right now. If there are any concerns or questions at some level of detail, then we will take them. This is a complex issue. It is probably the one recommendation that potentially could have endangered ICANN most, because among other things, some of the drafts in earlier versions, we believe, would not have allowed ICANN to support its own contracts. That is the registry and registrar agreements could've been invalidated because of the changes and we felt very strong that that must not be allowed to happen. Clearly, the board also agreed with that.

There were a number of other parties in the group who wanted to be able to violate parts of the contract, and tried their best to get those things put in. It clearly was an area where there were multiple opinions. I will open the floor now. We're checking to see if the coffee's there now. If it is, we may break early. Some of us didn't make it upstairs in time to get the coffee last time before they whisked it away exactly on the second of the break being over. Open the floor, Cheryl.

CHERYL LANGDON-ORR: Thank you Alan. Because there doesn't seem to be a great deal of questions coming from your floor. I wanted to suggest that the amount of work that was put in by your five representatives as members on this committee was significant, capital S significant. In addition to that, we also had, just literally on this recommendation, an extraordinary amount of time in terms of person hours put into gaining, as Alan outlined, I think most of the wins we wanted to get. We were concerned about language. In most cases, with the exception of the inclusion of consumer trust, which is of course something we can still work on, that was really the only one we didn't manage to any inverted commas, get our concerns heard and changes made.

Whilst it is complex, it is a pivotal part of the next process. Unless you have extraordinary concerns, and unless you believe

that in some way, shape, or form, the work that your members and participants did for you on behalf of this, I would strongly encourage you to make this a “trust us” exercise.

Even if we were to reopen, and we can’t, but even if we were, we would not get a better outcome. We would probably get a lesser outcome. Contemplate that over the coffee break, perhaps Alan. Yes, it is complex, but this is one where many, many, many dozens of person hours went into getting, I think, hand on heart, the best deal we could get on this one. Thank you.

ALAN GREENBERG:

Thank you very much. I should point out to those who don’t know, Cheryl was one of the five members on the group. Cheryl was also one of the team leaders of a very significant part of the process of pulling together the work, and even when she wasn’t team leading on that, she was as one of the leadership team, heavily involved. As many hours as many of us put on this, her hours probably were doubled that.

CHERYL LANGDON-ORR:

Times three.

ALAN GREENBERG:

Times three. The Total number of hours that was put into the process, I'm trying to find the right column. Just give me a moment. The number of meeting people was 13,000. Typical meetings were two-plus hours. The overall CCWG put about 26,000 people hours of work into this. Plus an immense amount of work offline in email.

The ALAC group that was supporting the effort of the five ALAC members put in 1,750 person hours, a very significant part of the overall group, and our group is much smaller. When I say that we decided that we didn't like some aspects of the proposal or we decided to compromise, this was a huge effort that was put in by an awful lot of people, not just Greenburg and a few other people talking privately.

It says a lot to both the overall community for how much we put into it, and At-Large. That included a number of people who are not the usual suspects. A lot of people who doggedly attended all of these meetings and contributed, and that many of you would not recognize the names of. It was a long, heavy process. Do we have coffee? We have coffee here. Coffee will be here. I didn't realize that. I walked up last time upstairs to find out it wasn't there anymore. No one tells the chair anything.

UNIDENTIFIED MALE: Alan, you were mentioning that some of the changes contemplated would have amounted to nullifying registry/registrar contracts, and I didn't understand that. Could you tell me, briefly, what the background was? As a supplementary, if that was a concentration, preserving registry and registrar commitments, were there any larger compromises made?

ALAN GREENBERG: First of all, a specific example. The current bylaws, the bylaws will say that policy should be developed by a bottom-up process. That is in line with the current GNSO philosophy of policy and implementation. There was a working group that did a lot of work over the last few years of how do you recognize policy from implementation?

The reason the question came up is during the GTLD implementation, which was a five-year process, we discovered many problems, and in a few cases, the board took action to fix them. The most glaring one in some people's mind was because of GAC advice out of the Beijing meeting – well sorry, before that, the board had implemented something called public interest commitments. These post-dated the application process, and said that companies could make voluntary commitments, and they would be included as part of the contract.

Because of a number of GAC advises, the board had added some mandatory public interest commitments. Under today's rules, arguably, and there are differences of opinion, these public interest commitments are policy, and should have been developed through a bottom-up process. They were not. Therefore, if we didn't take explicit action to protect these contracts, one could claim that the public interest commitments violated the mission, and therefore were invalid. That's an example.

Another example is ICANN does not control content. Some applicants to TLDs made commitments as to what the content would be on their top-level domain. Because, for instance, in some cases they are sponsored domains and their sponsor required certain commitments, but they're now in the contract, but their content. Could they be invalidated? The answer is maybe. Who knows how the courts or whatever would decide? But they could be, those are examples.

I hope that answers the question. It's one of these complex things you can't answer in one sentence. Questions? Further ones? Nothing? Recommendation 6. Let's just look at what it is. Maybe we can do it real quick. I know what recommendation 6 is. We can't do it really quick. Recommendation 6 is reaffirming ICANN's commitment to human rights. We will not try to do that one before coffee.

15 minute break. We will be back. Let's give people a slight break. There's cookies here, but better food or different food upstairs. We will convene again. It is 14 minutes before the hour. Ladies and gentleman, we will reconvene at five minutes past the hour. Reconvene and start working then, so everyone has to be seated. Thank you.

Ladies and gentleman, you have had five more minutes than you were supposed to already. Please take your seats.

Ladies and gentleman, we are on recommendation 6. A bit of history on this one, international agreements on human rights apply to governments. Governments, on occasion, make laws within their country which require the respect of human rights. There are a number of different human rights. Although statements have been made regarding the CCWG and the amount of work that has been required of us, ICANN probably doesn't have to worry about slavery rules, maybe. I said maybe. That's a big of a joke for anyone. All of this work is, sadly, voluntary, and we have agreed to do it. Aside from the lawyers who have made a lot of money on this. I would volunteer for that kind of pay.

Up until now, the IANA contract has been with the U.S. Government. The U.S. Government is subject to require to obey the international treaties that the U.S. has agreed to. In theory,

should ICANN ever have done something, which in the view of the U.S. Government was allowing one of its agents to violate human rights treaties, they could have taken some action. They never have. Some of us are dubious they ever would, but it was theoretically possible.

With the removal of the U.S. Government from the discussion, there were some people who felt ICANN must, in its bylaws, explicitly support human rights. Now, ICANN already says in its bylaws that they will follow applicable international treaties and local laws, but there was a strong feeling among some people that we must, in our bylaws, mention human rights.

There was a concern among many people that inserting a statement saying we are following human rights, without understanding what that meant in ICANNs context, was an invitation to, if not, real operational problems, than dealing with what might be a large number of frivolous lawsuits or IRPs.

Bodies defending human rights around the world often are very active and very well funded. There was viewed as the potential for people saying that, as an example, we violated someone's freedom of speech rights by denying them a TLD, or by putting in place rules that did not allow them to register a domain name, or by allowing them to register a domain name which, implicitly,

in its name, violated some human rights, or sounded like it was violating human rights, we could be subject to lawsuits.

There was not a lot of fear that we would actually be guilty of anything, but that doesn't mean that there were opportunities for people to try to take action against us, which could divert a lot of money and energy. That was some of the fears.

The people who supported those feelings said, "Until we understand exactly what we mean by human rights, and can define it so that we protect ourselves from the frivolous-type action, we should not mention human rights in our bylaws." There were compromises that were suggested that said, "Well, we can mention it, but saying you can't take any action, or they don't come into effect or something like that," and in fact, although that would protect us from IRPs, which are our own process, that doesn't necessarily protect you from court action.

A court can decide that if you put the words human rights in your bylaws, and said you're gonna define it, and then five years later you haven't defined it, tough. We're going to assume it's there. There were a lot of scenarios people concocted. Maybe they were real things that could've happened, maybe not, I'm certainly not the judge of that. There were very, very strong feelings on both sides.

We ended up coming up with compromise language. It is on slide number 48, next one I believe. Now, and I'll read it if you don't mind because the wording matters in this case. It says within its core values, ICANN will commit to respect internationally recognized human rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking enforcement of human rights by ICANN. This bylaw will not enter into force until number one, a framework of interpretation of human rights is developed by the CCWG accountability as a consensus recommendation in work stream 2, including approval by the charting organizations, and the freedom of interpretation on human rights is approved by the ICANN board using the same process and criteria as we are to approve these recommendations.

Now, this is not necessarily the final wording of a bylaw, this is the instructions to the lawyers to craft a bylaw. The example I gave, which may or may not be right, I suspect a bylaw should not reference the CCWG accountability, which is a group that exists completely outside of the bylaws. I mean, it's not mentioned in the bylaws anywhere. Then to mention work stream 2 of it is completely out of context in the bylaws, but they need to convey this message.

Now, what this says is, and it's not uncommon in bylaws to have a clause which does not take effect until something happens. That is a reasonable thing. Now, there's a reasonable chance that once we develop the freedom of interpretation on human rights, we will replace this bylaw with something else. But, until we do, that will be the trigger event that makes this enforceable. Essentially, this is saying, "We are about human rights, but we don't have any bylaw provisions associated with it until we figure out what it means." I'm giving a very liberal interpretation of this.

As I said, this was a compromise that was accepted by the people who were vehemently against including anything about human rights and those who were adamant that we had to include something on human rights. It's not perfect for any of them, but this is the compromise we agreed to, and the CCWG has agreed to. I'll open the floor. Shiva.

SHIVA:

Compromise bylaw language looks somewhat acceptable, but is there a possibility that rather than make it part of the bylaws, with this language, CCWG accountability, and work stream 2, and all that, which is necessary to convey the idea, either by mentioning them by names or otherwise. Instead of making it part of the bylaw, or an interim bylaw, could this be a statement

by ICANN or some other peripheral document wherein ICANN could say it as an annex to the other documentation, that it commits to look at it in work stream 2, and it commits to respect human rights within its core values or whatever? Why should it be part of the bylaw?

I have a small company, and I don't have a bylaw that says that my company will respect human rights, but does that mean that I'm free to violate human rights? So it does not have to be in the bylaw, I mean, at least in this stage, it does not have to be in the bylaw at all. It could be in a peripheral document. Thank you.

ALAN GREENBERG:

We have a large stream of people who have put their hand up. I will give you two very quick answers, which may short circuit some of this but maybe not. Are you free to violate human rights? It depends on the laws of your country. So whatever laws you're subject to, those apply. Would we consider making a statement saying we promise to do something, essentially is what you're saying. I cannot tell you how many hours were devoted to discussions like that, including exactly that proposal. This is what we ended up with. It is not going to be reopened. We can reject it or accept it as we wish.

I have a speakers list. The speakers list is Tijani first. I believe this is the right order. If anyone vehemently objects, tell me. I have Tijani, Vonda [? 01:51:07], Cheryl, Terry, and Hajar [? 01:51:09].

TIJANI BEN JEMAA:

Thank you. I'm going to speak in French. I wanted to tell you, and Alan you did sum it up. I wanted to give you a few ideas, how did we come up with it? Why did we arrive at that point? When we started our discussion about a year and a half about, two years ago, the same people who asked for human rights to be included in our work, personally explained that there is no reason to put human rights in our work because we have nothing to do with that content. We don't work on content. We're dealing with names, and numbers, domain names, ISPs, and nothing near the human rights can apply to that.

For several months, a majority of people agreed with me, and we did not work on human rights. After a while, more and more people became stronger and many people asked about this human right issue. One of my problems is that many people wanted to have an interim bylaw, and why do we need that? Why do we need an interim bylaw? We have other very important points crucial for us that we were supposed to work on in work stream 2, and we didn't do interim bylaws for those points. Why for human rights in work stream 2, why do we need

an interim bylaw for human rights? People said, “If we don’t have it now we’ll never have them, so we have to do it.”

Many, many issues came up, like, if we put them as is, with no explanation, one day we can be told do not accept this domain name because the owner of this domain name doesn’t care about human rights. We do not deal with content, with the content of those domain names. That’s not our problem. So we added, regarding our mission, but our board didn’t want to talk about human rights in our mission. They were concerned, and I said it has nothing to do with the mission of ICANN, we have to put it as a core value, not in our mission statement.

As of now, we could apply human rights on things that go farther than the mission of ICANN. This is not acceptable. That’s why I did a minority statement. The final result we have now is the minimum possible consensus because many people were adamant about it. That’s all we could do. It’s acceptable, however, I would have liked for the human rights to be applied saying that it’s not to go farther than the mission of ICANN.

ALAN GREENBERG:

Thank you Tijani, Vonda?

VONDA: My understanding is whatever is right in there, don't matter, because they are in United States, so under that law. They need to follow what the treat is signed there. Whatever it say, it's compromise not compromise. I do believe that for me, anything is acceptable because the law that you wrote this is not the bylaws itself. Because ICANN cannot sign the treat of human rights treat. They have accepted just to United States law, so whatever is right for me, it's okay.

ALAN GREENBERG: Thank you Vonda, Cheryl?

CHERYL LANGDON-ORR: Thank you Alan. This is an important issue. It is not, however, an important issue, as Tijani, I think, pointed out that is a basis for the requirement of IANA transition. The majority of the work rightfully belongs in work stream 2. There is no attempt to undervalue the importance to some members of the ICANN community of this issue. I think anyone who is getting concerned about this matter needs to keep it firmly in mind.

However, if you reject this part of the proposal, it will, I guarantee you, cause significant negative reaction, and will destabilize the process as a whole. Whilst it, absolutely correct Tijani, it's the wrong thing in the wrong place at the wrong time,

it is what it is, it's one of those we have to just get on with at once.

Steven, I wanted to pick up a point that you raised because it's an interesting possibility. ICANN, the entity, the board on behalf of ICANN the entity could very well make a core value statement, and this would become a null issue. It has not, as yet. Could it? Possibly. Should we encourage it, post-documentation to do so, or consider that as a possibility? Why not. That doesn't mean that this aspect does not need to be supported and go through because it's part of a package. To cleave out this would be very destabilizing indeed. Thank you.

ALAN GREENBERG:

Thank you very much, Terry?

TERRY:

I will speak in French. I listened with much interest to the declaration of Tijani. I promised him to just take a break. I am [inaudible] by his adversaries, that's what lawyers do. I'm going to disagree with him. But seriously, more seriously, for a lawyer, the IP addresses, the digital addresses, are not very fascinating yet. They are numbers. They are figures. For now, lawyers do not know how to deal with that. However, I am much interested in the internet of objects, and the future of internet.

If we go from numbers to names, the lawyer becomes interested because names are subject to protection or ownership. So possibly, some legal entities, human rights for instance, another example well known, literary property copyrights, intellectual property, commercial names, brands, all types of data and names that are already protected.

Therefore, what I want to say is be careful, be careful not to go too far. This is what you said Tijani. If we are forced to do something, we do it, but we don't go too far. If we agree for one type of names or denominations, why not the other, why not another type, and where are we going to stop? Where do human rights stop? The universal declaration of human rights? Yes, there is a text, but in the world we have many states that do not respect human rights. You can go in front of those courts, and ICANN doesn't respect the human rights of my country, so where do we go? How far do we go? We have these issues of rogue states. Be careful, just like Tijani said. Let's be careful how far we go.

ALAN GREENBERG: The next speaker is Hajar.

HAJAR:

I would like to speak in Arabic. I would like to intervene, since this morning I wanted to intervene because the recommendations attract a certain number of problems, especially when it comes to the expansion of the internet world, and your doubts in that expansion. When we talk about the expansion of the internet community, we are guaranteed, in an indirect way, the accountability and responsibility of ICANN and also with regard to the bylaws, there is the issue of the role of the internet community.

You talked about the strong objections in the community of the internet. Today may have a force of a proposal of a position, and we're talking about the problem of human rights. Can we recognize this system with its defaults, with its problems, or can we define it as required by the interest of ICANN? In general, we have to be, based on principal, we have to act on principal. We understand the role of ICANN in achieving a threshold, or a lower point of stability for the institution.

However, there are core values, which are the human rights. There is a legal issue that we cannot ignore, in my opinion. There is a hierarchy of rights, and we have a certain number of laws. With a bylaw, we cannot go against the law of the country. The law of the local state has a stronger application than the bylaws. It is our legal issues that we have to take into consideration, and I apologize for speaking too fast.

This is true, however you wanted to get to a middle solution or a compromise. So you are afraid that you are not going to achieve stability, and not respect human rights, and as a result, you will have a problem with the laws of your country. As a legal person, I would like to say, in general, in these decisions we must act based on principal. Thank you very much.

ALAN GREENBERG: Thank you very much. Comment from staff.

UNIDENTIFIED FEMALE: Hi, this is [inaudible] staff. Can we please try to slow down a bit when we are speaking? Because the interpreters are having some difficulty sometimes. Thank you very much.

ALAN GREENBERG: Thank you. Not withstanding the slowdown, can we please start using a two minute timer? We have a limited amount of time, and people must respect the two-minute limit that we normally have. I was in the queue, but I'll take myself out, and Neal you're on. If you can introduce yourself, and who you are, and you have your two minutes.

NEAL STANOVER:

Thank you very much Alan. First, I would like to thank ALAC for welcoming me in your midst. I am Neal Stanover [? 02:05:46] I am chairing the cross-community working party on ICANNs corporate and social responsibility to respect human rights. I worked with several of the colleagues here in the cross-community working group on accountability and especially in working party 4 on human rights, and that was very enjoyable and constructive. So first, also, thank you for that.

I'd like to respond even though I haven't heard Mr. Tijani's first intervention, so sorry about that. I think I can agree with many of the things that have been said here. Having a lot of lawyers here, I think what we are thinking about here is that having a human rights framework is also about risk. Let's try to understand on what human rights ICANN has an impact, and developing such a framework, but first developing an understanding will help us defend us against any possible risk. Let it be totally clear, states have the responsibility to protect human rights. This is not the role of ICANN at all. It should not be, and it will not be, and that's also not a door that this bylaw text is opening.

There are standards for companies to respect human rights. There are different ones. Let's not rush into that. I think we should, first, start with – and there are models for that within the cross-community party we're working on a standard for a human rights impact assessment. If we could start off with that,

and then we have an analysis of the playing field, and then we could see what models could fit on that, whether that would be the global compact, the UN guiding principals for businesses and human rights, or something else. Then we can see and fit that to the specific case that ICANN is.

Let's also not be too afraid here, because a lot of big companies have already done this. Adidas, Nike, Nestle, a lot of very big banks, and there's also an IT guide for the ICT sector. We're not pioneering here. There is a field, there is experience, there are experts, and we're working on this with the community, and we're not seeking to expand ICANNs narrow mission and scope.

I think that with this we can strengthen ICANN, and we can also strengthen the global internet that is dear to us all, and especially to the users. I really hope to work with you on that. I would also really like to continue the discussion with you Monday in the session on the cross-community working party on ICANNs corporate responsibility to respect human rights, and these are a lot of presentations and discussions. Then Wednesday, there's also a working session where we'll set what we'll do up to next meeting and how we'll structure that. For both, you are more than cordially invited.

ALAN GREENBERG: We do normally charge extra for advertisements. Next speaker is, I'm afraid my eyesight is not good enough, the young woman beside Julie.

FATIMAH MORAN: Fatimah.

ALAN GREENBERG: I'm sorry, I just can't see. Thank you, go ahead.

FATIMAH MORAN: I am in between the lawyers, and we heard the lawyers, the technicians, and my advise the one of a militant. When I talk about human rights, I think we talk about an approach, a spirit, a culture of respect of human rights. This approach could be an inclusion in the higher instances and leading instances, and also the implementation, decision-taking process. We're not only talking about laws, but we're talking about decision process, and to be including, and to work with equity. Thank you very much.

ALAN GREENBERG: Thank you very much. Alberto.

ALBERTO: I'm going to speak in Spanish. Very quickly, and going back to the same issue in less than two minutes, here's what I want to say. Lawyers, it usually seems we work alone, and IT people it seems they are used to work on their own too. I'm happy to have listened to the chair, and to see how the team is working because this is a multi-disciplinary team where we are actually going to act, lawyers, IT people together, and fans, and activists and well. This is the only way we can work these issues. If we do not work with the multi-disciplinary team, where each person understands the part of the other, we will not be able to have a good impact. This has been done properly so far. Thank you.

ALAN GREENBERG: Thank you very much. Holly.

HOLLY REED: First of all, I'd like to say we're already grappling with human rights in central privacy. You talk about content, well it's not just content. If you look at the WHOIS issue, it's been going on for some years. It is about the publication of personal information. It didn't start out that way, and it's absolutely that way now. It is a working group that's going to take years. That said, I absolutely support the wording that is there now, because we do not understand, and certainly wouldn't want to ride into anything permanent. The extent of what the human rights issues

are. Apart from privacy, I can't think of any. There may be something, but I'd like to think down the track when we understand the extent to which that term has content meaningful for ICANN, fine, but don't put anything stronger in there now. Thank you.

ALAN GREENBERG:

Thank you very much Holly. I put myself back in the queue for two short reasons. Number one, to address Tijani's comment, because I think it's important that people understand what the pros and cons are. The original wording of this said, "within its mission," and it was changed to core values. I supported the change, and the reason I supported the change is nothing in the core values can violate the mission. It doesn't expand the mission. Saying, "within its mission," would imply that human rights is part of our mission. Our mission is, in fact, not human rights, our mission is names and numbers. That's why I, in fact, did support it.

I will do my own advertisement, however, now. Clearly, the interventions on this indicate people are rather passionate about this. You'll notice the reference to work stream 2, and the framework of interpretation. That's a lot of work that's going to be done. It's going to take a while. If you are, in fact, interested in it, participate. Don't just critique it after it's finished. That's

my advertisement. We have Seun. I don't think I have anyone else in the queue at this point. Holly, are you back? And Seva [**02:13:54**] after Seun.

SEUN OJEDEJI:

Thank you. I just wanted to get a clarification from Neal. The cross-community working party you're referring to, is that the same working party for WAP4, or is there another group entirely? If there's already work ongoing, I think perhaps the CCWG should just give the work to those people, and then their WH2 troubles can reduce by one topic. Thank you.

ALAN GREENBERG:

Thank you. It is a separate group. It has nothing to do with the work party within the CCWG, although I suspect they participated in the work party within CCWG. How we handle it, whether we delegate or not, will be part of work stream 2 discussion, and I don't think we want to have it here. I did have Seva. Go ahead.

SEVA:

Apart from the concerns expressed about legal costs associated with proclaiming adherence to human rights, there is a much bigger possible concern that human rights is not quite a multi-stakeholder topic, but more of a regulatory topic, if I can convey

that idea. It is in the realm of inter-governmental organizations. Inter-governmental organizations have been traditionally associated with the regulation of human rights. The more we get into human rights, the more there is room for inter-governmental organizations to intervene, or comment on ICANNs work and its performance.

This is just a thought. I don't know if I'm correct in all these assumptions. You could explore it a little, and if there is some validity, maybe think if there could be such a concern as well. Thank you.

ALAN GREENBERG: Thank you very much. Do we have anyone else in the queue? Neal would like one final word.

NEAL STANOVER: Not sure if it needs to be a final word, but I would actually kindly disagree and say that if we carefully scope what our human rights impacts could be as ICANN, and clearly show how we address that, then we've mapped our risks in shirt for redress so that there is no reason of countries or inter-governmental organizations to make a claim about human rights. Because then we can point to our policy and our work and say, "No, we've done our homework, we've done it."

Actually I think prevention is always better than reaction. For a lot of human right issues, as in privacy, we have been reactionary, and then you need to find out the vehicle after the case had already happened. This is our chance to be proactive and understand what our risks and opportunities are.

ALAN GREENBERG:

Thank you very much. Let's keep in mind we're talking about approving this draft bylaw, which was developed with a huge amount of compromise. The discussion on what we do in the next phase to actually map it out is not one we really should be having here. As I said, I welcome everyone to participate in it when it happens, but let's not try to foresee what it's going to say. That discussion, too, is going to have many people on different positions strongly pushing for whatever they want or don't want. Leon?

LEON SANCHEZ:

Thanks Alan. You practically said what I was going to say. I really encourage everyone to keep the focus on this slide we have in front of us, and to not deviate the concept because we are not trying to regulate human rights within ICANN. Rather, we are trying to build the framework of interpretation so that all actions in the realm of ICANN mission and core values respect human rights, which is completely different from regulating human

rights, and it's also very different than enforcing or protecting human rights. I think that as long as we have this clear, we could perfectly support this recommendation.

ALAN GREENBERG: But let's keep our focus on this recommendation, not what will be developed next time, please. Sandra.

SANDRA HOFERICHTER: Thank you Alan. In reply to what Neal said, I just want to not make a clarification but refer to what you said what you said we define at once what could happen or what are the kind of human rights we might look at ICANN in order not to expand it, and in order not to get inter-governmental organization watching us, which I find might not be such a bad idea.

I would just like to remind us that seven years ago, before the New gTLD program started, we did not expect that impact in terms of human rights as we know it now. We might have processes in the future, or programs in the future which might bring an additional component also in the human rights area. The way you said it, we do it once and then it's done. At least this was the way I understood it. Maybe I give a wrong assumption. I think this will be an ongoing issue, although not one of the core – we might discuss this. I think it will be an ongoing process, an

ongoing standing committee which has to deal with, as ICANN evolves, also evolving this issue on and around human rights. Thank you.

ALAN GREENBERG: And Hadir [? 02:20:26].

HADIR: In my opinion, the issue of human rights needs precision. When we're talking about human rights, or the relationship between ICANN and human rights, this means that the role of ICANN is to protect human rights. This doesn't mean that ICANN should protect the human rights. When ICANN protects the human rights, it doesn't mean that ICANN will not implement it, or the laws of the country. Mr. Alan mentioned a legal point that is very important, and now the most important example, in the future, somebody might complain, one of those who file a claim regarding domain names, and they don't receive those domain names.

The problem here is in your relationship with the judicial system. You cannot, as ICANN, prevent people from filing lawsuits and complaining about ICANN in front of the judicial systems. ICANN cannot hold on and implement these bylaws in order for it not to implement the laws of the country. Thank you.

ALAN GREENBERG: Thank you very much. Any other comments? One more, Carrie [**02:22:36**], go ahead. You don't have to look guilty.

CARRIE: Once again, I'm going to go back to what Tijani had to say. He said that his problem was already taken care of and resolved with the working group, which means that in a classic domain name with three parts, where can we see a problem with the www, no issue, unless if I go to the dark web, and maybe there's going to be an issue there. The domain name, the denomination, the term, the domain name, this is not really our problem because it's taken care of and managed by the registries and registrars, and we have different countries that are in charge as well. What remains? The .com, the suffix, and the generate names. That's maybe where there might be an issue for ICANN.

If I want to create a new domain name, which is .nazi, maybe that's going to be an issue. Tijani explained the situation well, and I think the working group went farther, and really worked well on the domain names.

ALAN GREENBERG: Last call. All right, we have another 12 minutes. Let's see if we can do one more recommendation before we adjourn.

Recommendation seven. Is the recommendation on strengthening ICANNs independent review process. The independent review process, the IRP is the process by which ICANN, rather bodies, can essentially ask an independent review body to look at what ICANN has done in a certain instance, and consider whether its bylaws have been violated.

The process that we have right now has been used a number of times. The most recent one is the .africa one where we've seen another stage in the process today or yesterday. The process was viewed by pretty much all parties, including the board, as being deficient. There were certain aspects of it which were simply viewed as not sufficient. Moreover, the new empowered community within ICANN does not – parts of the empowered community do not have access to the IRP. So the community itself cannot claim that ICANN has violated its bylaws. It would have to be a harmed party.

The revision to the IRP fixes a large number of the perceived failings with the current IRP. It addresses a number of issues that were brought up by the empowered community, and specifically to allow the empowered community itself, essentially, I won't say to take ICANN to court because it's not a court, but to invoke the IRP. It has similar results to what the current one does, that is, all it can do is make a judgment that ICANN has violated its

bylaws. It cannot recommend what the remedy is. ICANN must go back and fix the problem.

There was fear, at one point, that if we had outside bodies addressing the problem, the community lost control over how it made its decisions. It stayed the same. It is only identifying that a violation has occurred. It has been subject to a huge amount of work, and one of the areas within the IRP where there has not been a lot of controversy, that is the various bodies, both including ICANN legal, the board, various people within the community, have worked together to hopefully craft a better process than we have right now.

The ALAC, in a number of its comments, made some very small comments with regard to particular aspects of it. Those aspects have been completely resolved at this point, and we have never really critiqued the overall IRP itself. We have not had any problem all along, and I'm not expecting a lot of discussion at this point, but I'm opening the floor to it. Going once, going twice, go ahead Terry.

TERRY:

Alan, if we have an IRP regarding a specific issue, and the IRPs report, or the reports in any event, say that there has been an infraction in ICANN rules, what would happen then? What's going to happen after that? That's the question I'm asking you. I

mean, ICANN is not bound by the expert's report is it? Oh okay, so that's serious.

ALAN GREENBERG:

Refer to Leon, but my recollection is this is a binding IRP. The board can choose to not follow it, and then we could take ensuing legal action against the board, or remove the board, or use one of our other powers. Yes, the board, I believe, is bound to honor the request and honor the opinion that we have violated our bylaws. Again, I'm far from an expert on this. This is one of the few areas where there has been close to unanimity among the various parties that this is a good thing. I'm not sure I'm going to second guess it. Leon's a lawyer in his own right. He may have an interesting answer. I don't know.

LEON SANCHEZ:

I have nothing much to add to what you have said, Alan. I mean, we define this as the crown jewel of the whole accountability process. Yes, you are right, the IRP output would be binding to the ICANN board of directors. Of course the ICANN board of directors could choose not to follow the IRP output, but that would put them into a position into which A, we could spill the board, or B, we could take them to court. I think that should cover the need for an IRP.

ALAN GREENBERG: I will point out in the few cases of IRPs that we have had, where the finding was ICANN has violated its bylaws, the board very quickly took action to try to remedy the perceived problem. The net result, I don't think, is very different.

Any other further comments? We're on a role, oh sorry, Tijani, go ahead. We're not on a roll.

TIJANI BEN JEMAA: Thank you very much. May I remind you that the IRP, which we're discussing, does nothing but check whether ICANN has respected its bylaws, or whether it's respected its articles of incorporation. If you will, the content will not be verified by the IRP. It merely checks whether ICANN has respected its bylaws and its articles of incorporation in doing what it's done.

ALAN GREENBERG: Further comments? Recommendation 8. Recommendation 8 is improving ICANNs request for reconsideration process. The request for reconsideration process is a process by which the board reviews an action of the board or of ICANN staff. The current reconsideration process has been around since the beginning of ICANN. There have been, I believe, about 175 requests for reconsideration. The vast majority of them

associated with the New gTLD process. The number of requests for reconsideration which resulted in a change, Cheryl's saying five, I didn't think it was that large. Four or five.

The vast majority of these requests have been denied. One of the reasons is that the grounds for making a change was simply that ICANN has not followed its due process. The reconsideration never looked at the substance of the issue, but just did we follow our roles.

I'll give you a personal editorial comment. I find it rather unusual that an organization with this many people and this many complex rules in all but a few of 175 cases have always followed our rules exactly. Very few organizations I know of follow their rules that carefully. Nevertheless, that is the finding.

There was a general feeling within the community that this was a very broken process. It was very broken because number one, the grounds for reconsideration should have been larger than, "we didn't follow our process," that more substantive things should be considered. Number two, the evaluation of the complaint would go to the ICANN legal department for evaluation, and they would do the first evaluation. And they had a strong incentive to say, "No, we didn't do anything wrong," as you would imagine.

The new process widens the scope for reconsideration significantly. It recommends that someone a little bit less partial than ICANN legal department do the initial evaluation. Again, it is one of the things that has been pretty well universally agreed to, including the people who have lost reconsideration requests, and the ICANN board who also were bound by the former rules, but didn't feel they were particularly applicable, but nevertheless were bound by them.

Again, this seems to be a win-win situation. The ALACs only comment was, "We have commented a number of times in the past on the problems associated with the reconsideration process, and we're delighted that it is being adjusted." I think that's about the substance of any of our comments. Open the floor. Vanda.

VANDA SCARTEZINI:

Just to agree that we need to really rephrase all the process. I have been share of the reconsideration committee. In that time, I need to go to [inaudible] lawyer too because I found something looks completely wrong, but you know, in the end everybody convinced me – I am not a lawyer – convinced me that was not wrong, and it was because ICANN lost in the justice. It was not a clear process to follow up, so it needs to be rebuilt, really.

ALAN GREENBERG: I'll disagree. By the way, Vanda said she was chair of the reconsideration committee when she was a board member a number of years ago. For those who don't know, Vanda was on the ICANN board. I'll disagree, it was very clear. It was very poorly written to be a functional policy, but it was exceedingly clear. It wasn't written to solve the kind of problems that people thought it should be able to solve. Hopefully the new one will. Any further comments?

The next one is substantive enough, I don't think it'll be controversial, but substantive enough that we will defer this one to our next session on the CCWG. It turns out we are actually exactly on time to end it, and I'll turn it over to staff for any final housekeeping.

HEIDI: Thank you. Just to note that the next meeting will be in this room, that is the At-Large review working party, so priority for the members, but everyone is welcome to join. Following that, at 18:30 until 19:30 there's a civil society networking event. That is in the [inaudible] And then at 19:30 is the ALAC dinner. That will be at the [inaudible] also at the [inaudible] Palace. All of these have been sent to your inbox by [inaudible] so you'll have the details there.

CHERYL LANGDON-ORR: Heidi, where is the [inaudible]?

HEIDI: It's in the [inaudible] Palace Hotel.

ALAN GREENBERG: It's in the hotel?

HEIDI: That's what the note said.

ALAN GREENBERG: All right, sorry. I thought it was, yet, another walk outside. Will we be meeting in the lobby five minutes before and someone will take us there? Hint, hint?

HEIDI: I will ask [inaudible] if she is available.

[off mic speaking]

ALAN GREENBERG: Again, I thank our valiant interpreters for the marvelous job, even when people speak very, very, very, very, very fast. I thank

our technical staff. I thank all of you. I particularly thank the people who are not normally part of this group for participating, for interacting with us, for giving us your opinions. It is really, really nice to not only hear the regular voices each time, and it certainly adds a lot to our conversation. Thank you all. This meeting is now adjourned. The At-Large working party will convene in 17 minutes.

[off mic speaking]

ALAN GREENBERG: Thank you to staff? Why would we want to do that?

[off mic speaking]

ALAN GREENBERG: As I said, I'm still learning this game. Thank you very much to staff. Thank you [inaudible] for marvelous service. Thank you to you, thank you to you and Ariel who have been trying to follow my erratic instructions versus timers. Thank you.

UNIDENTIFIED FEMALE: I was going to say that. Thank you very much Ariel for your great support.

ALAN GREENBERG: You're not allowed to criticize the chair on your first day. Yeah, you have to wait until tomorrow to criticize the chair. Thank you all very much. We'll see you at the next meeting, and when we reconvene the ALAC tomorrow morning. The ALAC and regional leaders. I thank you all. Could I ask someone to Skype Olivier and tell him he's supposed to be in this room right now?

[END OF TRANSCRIPTION]