MARRAKECH – CCWG-Accountability Engagement Session
Monday, March 07, 2016 – 13:30 to 15:00 WET
ICANN55 | Marrakech, Morocco

LEON SANCHEZ: Okay. So welcome, everyone, to this engagement session on CCWG accountability. We have our rapporteurs with us. We have some new faces, some usual suspects in the room as well, and the aim of this session, of course, is to walk you through the process that we've been following in trying to build a proposal that will enable us to enhance ICANN's accountability after the transition takes place.

So if we could please pass to the first slide.

So as you see on your screen, when the transition process began and ICANN convened the larger community to begin working on a proposal to be delivered to the NTIA so that it could be further reviewed and hopefully approved by the U.S. government to finally hand this stewardship on the DNS to the wider Internet community, a series of concerns were raised. And these concerns related to what would happen once the transition took place and the U.S. government ended its historical contractual relationship with ICANN, as this relationship has been perceived

as a back-stop with regard to ICANN's organization-wide accountability.

So as a result of these concerns, ICANN launched a second process parallel to the CWG and the rest of the communities' activities within the ICG to try to address these accountability issues, and a group was chartered by different organizations. Six organizations chartered this group. And we began our work in December 2014.

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So as you see, this time line tries to illustrate how, since December 2014, we began working on the issue of trying to enhance ICANN's accountability, and you can see the parallel time lines here.

We have, of course, the announcement from the NTIA in its willingness to release -- or to end the contract with ICANN. That was made in March 2013. And -- 2014, I think. Yeah. 2014.

And then ICANN convening the larger community to build this proposal of transition. And then the linkage, of course, with our CCWG and accountability.

So what we did was to -- I repeat -- do parallel work alongside with the other communities -- the naming communities, the number communities, and the Internet Protocol community -- so that we could address the different concerns and the dependencies that the CWG had raised throughout their work.

So with this, we divided our work, and can we please pass to the next slide.

We had a very clear goal and this goal was that we should expect to deliver a proposal that would enhance ICANN's accountability towards all its stakeholders. And this is very important because what we're seeing here is a multistakeholder effort that has been undertaken by not only the community within ICANN but also many participants from outside the ICANN community, but that in a way are affected or may be affected by the different actions that ICANN undertakes in its management of the DNS.

So to organize our work, we divided these issues into two work streams, the first work stream being those mechanisms that needed to be in place or committed to within the time frame of the IANA stewardship transition. By this, I mean the essential accountability enhancements that the community decided or identified as being essential to being placed before the transition even took place.

Then we also identified another working stream, Work Stream 2, of course, and this would be focused on addressing accountability topics for which a time line for developing solutions and full implementation may extend beyond the IANA stewardship transition.

So this Work Stream 2 is supposed to take place once the transition is implemented, but we are already planning and we are already kicking off this part of our second phase of work.

So we had a meeting on Friday, a face-to-face meeting of the CCWG at-large, and there we began designing our working plan for Work Stream 2.

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As I was trying to highlight at the beginning of my intervention, this has been an unprecedented multistakeholder effort. We have had more than 200 people working on this working group.

There has been a fair distribution between geographical regions, although we recognize and acknowledge that we still need to get more people from Latin America and Africa to get involved in this effort.

However, you can see that there is a fairly uniform distribution between North America, Europe, and Asia-Pacific, and this, of course, illustrates how the multistakeholder community has been involved all around -- from all around the world.

We have had also 111 mailing list observers. We have exchanged more than 12,000 emails on the mailing list. Believe me, this is a lot of email.

We have held more than 205 meetings or calls, and these involve more than 400 hours in meetings.

If you multiply these by the number of people that have participated in this effort, you'll get thousands of man work hours -- man and women, of course, work hours in this effort, so it is a huge multistakeholder effort.

Can we please switch to the next slide.

Thank you.

 So what is the product that we have delivered out of this huge effort?

We have delivered a final proposal on Work Stream 1 recommendations, so these refer, as I said at the beginning of my intervention, to those issues that need to be addressed before the transition takes place in order to enable this enhancing of ICANN's compatibility.

So this core proposal is comprised of 52 pages and it also has 15 detailed annexes of the proposed recommendations, and we included a summary for the benefit of everyone's reading, and we also have 11 appendices to these documents.

So you can see that this is a quite large document, but it has already been translated into the different languages that are used within the ICANN community. We have posted translations in Arabic, Spanish, French, Russian, Chinese, and Portuguese, and there is the link. You can write it down so you can take advantage of downloading the document in the language that best fits your need.

Can we switch to the next slide.

And at this point, I am delighted to say that so far we have received approval from three out of our six chartering organizations. We have received approval by the ALAC, the ASO,

the SSAC, and we're still waiting to hear from the ccNSO, the GAC, and the GNSO.

Hopefully we will have their approval as well by the end of the day after tomorrow. And we have also received confirmation from the CWG stewardship group that the dependencies that they identified have been properly addressed and that our report meets their expectations in regard to the different dependencies that this cross-community working group also identified in regard to ICANN accountability.

So I'd like to walk you through, in a very quick manner, so we can open the floor after I begin my intervention to comments and questions because what we're here to do is to listen from you and to try to explain if you have any doubts on what we've done.

So our first milestone for this proposal is based on four building blocks. These four building blocks could be thought of as four elements that are the principles: The independent appeals and review mechanism; the ICANN board of directors and; the empowered ICANN community.

If you think at the principles, we think of them as our constitution, so what we have done with these -- with these

principles, which are our bylaws, of course, our constitution, as I said, we have proposed that we add new mechanisms, we add the Affirmation of Commitment reviews to these bylaws, and we also establish a commitment for ICANN to respect human rights.

Now, this is very important because we need to understand that respect is not the same as enforcement, so just -- I will just let you think of it and will continue to explain the rest of the elements.

So we also have designed an independent appeals and review mechanism which is an improved IRP, and I have Becky Burr with us, and the rest of the rapporteurs, which, of course, will join me in a moment in trying to expand this explanation. And we also have the ICANN board of directors, which if you thought -- if think of the ICANN board of directors, you can say it's the executive power. The independent appeals mechanism would be the judiciary and the empowered ICANN community would be the legislation body. And these committees have now been empowered with seven community powers. So we are looking at a new ICANN, from a certain point of view. We need to look at this new stage in ICANN accountability as the continuity, of course, of the work of many people that have been behind this proposal.

So at this point I would like to benefit from the participation of our rapporteurs, so if -- Jordan, I believe that you are the expert in the principles. Or is that you, Becky? Becky, could you please help us expanding a little bit the explanation on the principles.

BECKY BURR: Thank you.

As many of you probably know, ICANN's current bylaws include a mission statement and a statement of core values. One of the principal things that we did early on in this process is to go through those provisions and to attempt to clarify ICANN's mission statement and to codify its core commitments to the community with respect to the manner in which it carries out its mission and its values that inform the manner in which it carries out its mission.

So one of the proposals that we have brought before the community is a revised mission statement and a statement of commitments and core values. I'd like to emphasize that this is not intended to change ICANN's mission in any way, but to clarify it and to provide a template, a standard against which ICANN's behavior can be measured from an accountability perspective and principally through the independent review process.

The mission statement includes -- it is explicitly a statement of enumerated powers. That is, ICANN has the powers that are articulated and it does not have other powers. It expressly provides that ICANN will not regulate services that use the Internet's unique identifiers or the content that they carry or provide.

It also affirms ICANN's authority to enter into contracts in service of its mission.

There are updated definitions about ICANN's scope of authority with respect to names, numbering, and protocols and the Root Server Advisory Committee as well.

The commitments and core values have been modified to ensure that we have incorporated the specific commitments contained in the Affirmation of Commitments explicitly. And we have identified a commitment to human rights in the mission and principles.

As I said, this is not intended to change ICANN's mission. It is intended to provide a yardstick against which ICANN's actions and inactions can be measured and to ensure that the

community is clear about the role that ICANN will continue to play in the future.

LEON SANCHEZ: Thank you very much, Becky. Coincidentally, you are the expert in IRP as well.

And I would like to welcome our co-chairs, Mathieu and Thomas.

I would like to hand it back to you, Becky, so you can walk us through the IRP.

BECKY BURR: Thank you. As most of you know, and I'm sure all of you know, we do have an independent review mechanism in ICANN that is provided for in the ICANN bylaws. We -- the CCWG proposal contains significant enhancements to the independent review process that, in effect, complete the three-legged stool of good governance here by providing an independent judiciary for ICANN.

This is very much intended to be a limited review based on evaluating whether ICANN's actions or inactions are consistent with its bylaws and articles of incorporation.

In addition, there's a provision for an independent binding review for the CWG stewardship proposal.

Primary differences, instead of going out and getting three arbitrators from a commercial body at any one time, there will be a standing panel of panelists, independent review panelists, who will develop expertise in ICANN -- in ICANN's constitutional documents, as it were, and who can apply those documents and evaluate ICANN's behavior against those over time in an informed way providing both continuity and the availability of precedent both to guide the actions of panelists in the future but more importantly to reduce disputes and differences in ICANN by providing meaningful guidance to the ICANN community in their actions as they go along.

The panelists will be selected by the community and confirmed by the board of directors. We lay out the kind of expertise that we are looking for. Diversity is something that -- on this panel both geographic and cultural diversity but also importantly diversity in legal traditions and linguistic diversity for our panelists.

The standing -- in the case of a dispute, the panel of three panelists will be selected from the standing group: One part --

one member chosen by each of the parties of the dispute and a third chosen by the other two members.

We provide for a right of appeal to the full-standing panel in the event a decisional panel -- the decisional panel is challenged. And there are certain safeguards to prevent abusive use of that process.

The decisions of the independent review panel will be binding on ICANN to the maximum extent permitted by law. That is a decision and a change from the current status. And we hope that this will -- there are also provisions -- the community has the power to bring an independent review as the community. It is also -- independent review process is also available to individuals or entities who are substantially affected by ICANN's actions or inactions.

Now, it is very important to get the details of this process right. And the CCWG has formed an independent review panel implementation group that is -- reflects a diverse group of individuals. And we will be working to put together the rules of the road and the details in the next few months for the independent review panel. Obviously, the bylaws creating the independent review panel will come before the community for

consultation in the standard way in which the board deals with bylaw changes.

LEON SANCHEZ: Thank you very much, Becky, for walking us through the IRP results and what's ahead of us with regard to deciding new bylaws.

I would like to handle it now to my co-chair Thomas Rickert so he can walk us through a couple of enhancements that our group has produced.

THOMAS RICKERT: Thank you very much, Leon. And an apology for being late for this meeting. But we spoke at the high-level governmental meeting, and we thought that not all co-chairs should leave that meeting before that session was over.

I'm going to speak to the next two slides, and then Mathieu is going to finish the slide deck. You know that we have these four component parts of ICANN's accountability system and the ICANN board of directors is a very important one of those.

We will surely see a much clearer role for the ICANN board with the refined mission and core values. So it will be easier for the

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board to find its way through what's inside, what's outside the mission.

Also, we are -- we have worked on how the board should react to GAC advice because that's been a very, very sensitive topic in our group. So the relationship between the board and the governments, in particular, was a matter of high intensity when it came to discussing these.

And you will have noted -- or you can go through the transcript -- that this very point is being discussed at the high-level meeting quite a bit. So we will continue to have GAC advice as we do today. But the GAC advice system is changed in a way that we are now having a 60% threshold should the board wish to reject GAC advice. And then the negotiation process to find a mutually acceptable solution would be triggered.

Also, we have clarified -- and it's important to mention that this is a clarification for the board and not for the GAC. So our group is not in any way prescribing on how the GAC should come to its decisions. But the process to find a mutually acceptable solution will only be triggered in cases where there is GAC consensus, meaning that there is no formal objection. And that's, basically, the consensus definition that you find in GAC's operating principle number 47 today.

That is to ensure that we meet what is enshrined in stress test number 18, i.e., in order to avoid that there is excessive governmental influence on ICANN's operations.

Next slide, please.

The empowered community is a very important component of the accountability infrastructure. And I'm sure that Leon has mentioned at the outset that when our group started to work, the big question was now that the U.S. government considers to release its authority over the IANA functions, where should we put that authority? And the answer was we give it to the ICANN community.

So of the seven SOs and ACs form the ICANN community. And we think this community has a place for everyone. It is designed in a way that everyone from Internet users, consumers, to big corporates and governments can find their place to make their voices heard. And this empowered community only comes together when it comes to exercising the community powers that you see on the screen. So in no way are we suggesting that the empowered community should have a say in ICANN's day-to-day operations. Ideally, you would never notice that these

accountability enhancements and these community powers exist. So that is only for cases where things go wrong.

But, in essence, we would have the empowered community to come together to exercise the community powers on the budget, strategic plan/operating plan. It has the authority to veto changes of ICANN standard bylaws. It has the power to approve changes to fundamental bylaws. And you might ask yourself, what's this two -- what's this demarcation between the two sets of bylaws? In fact, we're going to have one set of bylaws. But there will be two kinds of bylaws in there.

So the bylaws that are of less importance, if you wish, are standard bylaws. And the ICANN board of directors can resolve on changing those. And then the community has the opportunity to veto that change or reject that change after the fact.

But for very, very important pieces of the bylaws, i.e., on the mission and core values, on the existence of the independent judiciary and some others, we thought it was important to make it even harder to change those. And, therefore, the community's approval is required before those bylaw changes can be enacted.

So illustrate this, we thought it is important for us to ensure that the ICANN board can't just say, okay, we're going to remove the independent review process because that would take away one of the most important tools, the crown jewel, out of the accountability ecosystem. And, therefore, you see these two different sets of bylaws.

Then two community powers dealing with the board of directors. One is the power to remove individual directors, and one is to recall the entire board. Then the community can come together and exercise the power to have an independent community -- independent review process for the community that is on top of the IRP that can be deployed by aggrieved parties. And then there is one additional community power to reject ICANN board decisions relating to the IANA functions reviews.

Now, what's important to mention is that this is a finite list. There are no additional community powers that can be used. And we hope that these will be fully transparent to the ICANN community because what we've done is we've made an engagement process mandatory for the ICANN board.

At the moment, the ICANN board is engaging with the community on a voluntary basis and rightfully so. When it

comes to the adoption of the budget, before the board takes a resolution on that, it will communicate with the community. And we thought it was useful to have a process which we call the EEE approach. And that consists of three stages. That is: Engagement, escalation, and enforcement.

And engaging with the community is important to lower the risk of friction between the community and the board. So, ideally, this engagement phase would be efficient enough so that the board fully understands what the community wants and crafts its plans or its budget accordingly. So we will never hopefully see the escalation phase.

But should there be a need for an escalation, then we have it, and it consists of different stages that have to be gone through. At various stages, the community can decide to stop the process should there be no sufficient fraction inside the community to go further.

And we have different thresholds for escalating for the different community powers. You can read all those in our report.

But I guess it's important to mention that there's a long way before the community needs to enforce a community power. So there are different stages.

And for some of the community powers, we would have an IRP at the end of the day. For some, the community can move to board recall immediately should the board ever choose to ignore the community's wishes.

So I think I should leave it there. We can drill into more detail, should you have any questions on this.

But for the time being, I would like to hand over to Mathieu.

MATHIEU WEILL: Thank you very much, Thomas. This is Mathieu Weill speaking. I'm the ccNSO-appointed co-chair. Like Thomas, I want to apologize for joining this meeting late. The schedule was a little bit tight. And I suppose you could say we were too long in our presentations in the high-level meeting or maybe it wasn't us being too long. That's what happens in these days.

So I think you've just had a high-level view of the various proposals. We're getting into more process-oriented aspects now. The first one, which is absolutely fundamental because our group has only been part of a wider set of initiatives to deliver the IANA stewardship transition proposals, is that our proposals had to comply with a number of dependencies,

highlighted by the CWG stewardship. And we are delighted to confirm that these dependencies have been reviewed and confirmed by the CWG stewardship.

So we got a green light here. And I won't go into the details of exactly what was required by the CWG. But suffice it to say, it was really something that in all dimensions of our proposals, it is ever present. And it was very difficult to unfold the package of the CCWG accountability recommendations and just say we're going to do only the CWG because it's everywhere in the accountability framework.

And I think it's important to remember that this set of proposals we're providing is really very much of a package instead of something you can cherry pick as you move forward.

Next slide, please.

So where do we stand in terms of time line? Obviously this is a critical part of the week here in ICANN Marrakech. We have delivered our supplemental proposal on February the 23rd to the chartering organizations. There are six chartering organizations. Three of them have already indicated their support formally: ALAC, ASO, and SSAC.

And the three remaining ones, we are expecting their answers, their feedback, by -- we are Monday -- today, tomorrow, or Wednesday at the latest.

We will reconvene as the CCWG accountability group on Thursday morning. We intend, if everything goes according to plan, to submit our board report, so transfer -- hand over the proposal to the ICANN board at the first order of business basically on Thursday.

Once that's done, the ICANN board has to consider the proposal. And, luckily, if everything goes well again, hand it over to NTIA to commence a new phase in the IANA stewardship transition process where the United States government and Congress will have to review the proposal and hopefully approve it in time for the transition to take place. That's the transition, the next steps.

The next slide is a reminder that although the work stream 1 proposals are a significant package of accountability enhancements, they are not the end of the road. Accountability is a continuous journey. There is continuous ways to improve accountability.

This is not the end of ICANN's improvements and far from it because many of our proposals are actually here to ensure that

there is this continuous improvement in place for ICANN's accountability.

And as a group, as a cross-community working group, we've identified seven items of improvement that we are planning to work on once work stream 1 is completed. And they are on the slide here.

They are the improvements in diversity at all levels within ICANN, in the membership, in the leadership teams in the various organizations that support ICANN the improvements to the SO and AC accountabilities. Obviously, they are being empowered. They have new powers through these work stream 1 proposals. And that, obviously, as usual, raises the need the greater accountability improvements with this organization, although there's already some -- a recommendation of ours that addresses this.

There's improvements required in terms of transparency. They are spanning from improvements to the document information disclosure policy which is currently existing to improvements of transparency of ICANN interactions with governments. And there are a few other areas that are already identified.

As was mentioned earlier by Becky, the bylaws will mention a commitment to human rights, but there's a lot of work remaining on the framework of interpretation for that commitment to human rights. And that's one of our work stream 2 items.

Many discussions on jurisdiction are also needed. This is a multifaceted discussion. It is anticipated that the most traction could be given to the questions of jurisdictions for contracts within the ICANN framework. So that's really the strong focus that we are anticipating on jurisdiction.

Many are also calling for upgrading but also reviewing significantly the framework -- the bylaws that mentioned ombudsman function in the context where ICANN has significantly changed since this function was introduced I think in the early 2000s. And that's also some of the work that's ahead of us.

Now, having said that, clearly work stream 1 completion is our top priority. But we are also remaining strongly committed to deliver on these enhancements that have been called for by our group, although they have not been identified as having to be in place by the time the transition takes place.

And with that, I'll move to the next slide, which is basically an invitation for you to comment and take your questions bearing in mind that what we think is important with our proposals, it's a group effort. It brings the improvements that are -- that must be in place before the IANA stewardship transition can take place.

And it's -- not the least of the benefits, it secures the ability for future improvements. And I think this is extremely important to remember. There's -- this ability to secure future improvements is absolutely critical. And, of course, you will see here -- and I think it's a proper reminder of the four building blocks that form the foundation of our accountability framework. Thank you.

And, Leon, will you take their questions.

LEON SANCHEZ: Of course, Mathieu. Thank you very much. And I see Brenda is helping us handling remote questions. We will, of course, open the mic for anyone that is present in the room. And we invite you to, of course, build a huge queue with questions at the mic.

Brenda, can you please ask the question from our remote participant.

REMOTE INTERVENTION: Thank you, Leon.   I'm Brenda Brewer, remote participation manager reading a question on behalf of Lori Schulman.

How will the permanent independent panel be chosen as ICANN's Supreme Court? It will serve a critical role. Thank you.

LEON SANCHEZ: Thank you very much, Brenda.

Thank you very much, Lori, for your question. I would like to ask Becky if you could guide us through this process.

BECKY BURR: Thank you. We discussed this quite a bit. It is obviously critical, and the report contains a description at a high level of the kind of expertise and qualifications that we expect the panelists would have. We also contemplate an affirmative outreach to potential panelists around the world to ensure that we reach qualified candidates who reflect the kind of diversity both geographically and linguistically and diversity from a legal system perspective as well that we would like to have on the panel. So we will have an affirmative outreach to identify interested and qualified panelists.

And then the proposal is that the slate would be selected by the community and presented to the ICANN board for confirmation. So it is -- it follows a kind of identification and consent -- a collaboration with the ICANN community and the ICANN board to ensure appropriate messaging about the source of authority.

LEON SANCHEZ: Thank you very much for this very detailed answer, Becky.
And as I was telling you at the beginning of my intervention, we have delivered our proposals to the chartering organizations for their review and hopefully their approval.

But there's a question out there, what would happen in the unlikely event that we get our proposal rejected by the board? And for this, I would like to handle to Thomas to explain to us what is the process we would be following in the unlikely event that the board chooses not to accept our proposal.

THOMAS RICKERT: Thanks very much, Leon. And thanks for the question, Avri.

Our charter speaks to that. So, basically, it does say that if the report is submitted to the board, the board will consider the proposal contained in the report in accordance with the process outlined in its resolution of October 16th, 2014.

And that board resolution details that in cases where the board believes that the proposal is not in the global public interest, then it must vote on that. So 2/3 of the board need to establish that they think that one or multiple of our recommendations are not in the global public interest. And then a dialogue with the CCWG would be entered into.

So a rejection by the board would not necessarily be the end of the world, but it would require the group to get back to the table and try to find solutions with the board.

But what I can say is that we have been reassured by board members that they don't see any issues with the report. So we don't expect any issues with this.

Also, I guess, that we will likely see the proposal being passed on to NTIA later this week. And I trust that the board wouldn't have engaged in this planning should they wish to reject this at the very last minute.

LEON SANCHEZ: Thank you very much, Thomas.

And I'd like to state on the record that the board members that have been following the work of the CCWG have been quite involved throughout the process. They have provided their input in a timely fashion. So we would like to also thank the board members that have been part of these efforts.

We have no more remote questions. And I don't see a big queue forming, so I would definitely encourage you.

And I'd like to handle it to Steve because I think you want to add something.

STEVE DelBIANCO: Thank you, Leon. Steve DelBianco.

Thomas, when he was giving his explanation of process, suggested that U.S. congressional approval was necessary and anticipated as part of the process in the months ahead.

I wanted to put a little bit of color on that. When the transition was announced, the U.S. Congress was, of course, keenly interested in the administration's plans to do the transition and held a number of hearings. I testified at two of them.

And then during the course of the summer, Congress actually drafted legislation, and it passed one of the chambers. And the legislation simply said that NTIA should give Congress a report and in that report certify that NTIA's four conditions have been met and then -- and this is so important -- certify that the bylaws changes that the community has approved have been implemented at ICANN. And that would show that the community's accountability plan and IANA stewardship transition have been accomplished and that NTIA's informing that of Congress would give Congress the confidence to know that the community's wishes have been honored.

And we're very happy that members of Congress have been following so closely. In fact, staffers from the key committees have attended each of the last four ICANN meetings to follow things. I'm sure they'll hold hearings in the weeks following these meetings. So they are backing the community, which is the most we could ask for from any congressional body.

Now, that particular piece of legislation would have required that Congress would have had 30 days after they received the report to indicate a "no" in order to say it's not agreeing with NTIA's assessment. That legislation didn't pass the U.S. Senate. So there is no active legislation that would control the report and require approval by Congress.

You can expect them to have hearings. They will ask the very same questions about whether we have properly taken care of the stress tests and whether ICANN has implemented what the community approved. There isn't necessarily going to be an up-or-down vote after NTIA produces its report on how well we've done. Thank you.

LEON SANCHEZ: Thank you very much, Steve. Speaking of stress tests, I would like to point out that both Steve and Cheryl have been in charge of running the multiple stress tests on our proposal and they have done great work with that.

And I see Avri is on the mic. So Avri.

AVRI DORIA: Thank you. Avri Doria speaking. I was asked a question in constituency the other day.

I was asked a question in constituency the other day and was ashamed to admit that I did not know the answer. And so I'm coming to ask that question.

In terms of the IRP changes, are we doing anything about who has standing within an IRP because I guess within the current IRP there are severe limitations as who has standing before the appeals committee either to bring an issue or to respond to an issue and participate. So I'm wondering -- and I know I'm even on the IRP team and embarrassingly I haven't the faintest idea what we're doing in that regard. So please, thanks.

BECKY BURR: Thanks. So we are retaining a standing requirement which is quite typical that any individual or entity that is materially harmed by an action or ICANN -- inaction of ICANN alleged to be in violation of the bylaws or articles of incorporation. We do have a provision, however, for community standing, so the community will have standing through the empowerment process and that is a change that brings it. In addition, we will clearly articulate -- although I think it's probably the case now -- that in the event that there is a possibility for serious harm, serious prospective harm, to -- to seek the help of an independent review panel to preserve a situation and to prevent harm. So there is a kind of injunctive emergency prospective freezing the situation kind of standing. But the material harm standard is being preserved. So it's not a -- a fundamental change in that. Material affect standard, anybody materially affected.

LEON SANCHEZ: Thank you very much, Becky. I see Padmini Baruah at the mic, and I would like to remind those raising questions to please state your name for the record and then for the benefit of the transcript. So Padmini, please.

PADMINI BARUAH: Thank you. For the record, I'm Padmini Baruah. I'm a student of the law and I work currently for the Center for Internet and Society. I have two small comments here to make.

One is to provide an update on the statistics that we had pulled out on the DIDP since Dublin in ICANN 54. Shortly, now there are 102 requests that have been responded to as for 4th March. Of these -- and I fully recognize the constraints within which this policy operates but just statistically. Of these 11 have been responded to in a manner that is fully and totally positive and has the complete disclosure. But that's about 10.8%. 56 of 102 have been partially responded to and partially -- it's been obscure. And that's 54.9%. And 35 of 102 have been blanket denied for whatever the reason. And that's 34.3%.

That aside, recently what I was working on more was trying to understand the reconsideration process because what I tried to

do was appeal a couple of the DIDPs that were denied to me personally. And that got me looking into this important appeal mechanism, and doing what I do best, I did yet another statistical analysis of all the reconsideration requests that have been publicly put up on the ICANN Web site. And those statistics fascinated me even further. So just to take you through those, there are 144 responses posted on that page. Of those 118 have been denied. That's a whopping 81.9%. Six more were withdrawn by the person who had filed the request. We were unable to find publicly available responses to 8 out of those 144 requests, and one of those dates back to 2000. There's still no response to that. And the most recent ones are probably still being processed, those are from 2016.

For about 12 out of those 144, which would be about 8.3%, either the reconsideration committee or the Board Governance Committee has responded favorably or the basis of the action itself has been resolved and therefore there hasn't been the need for reconsideration.

Now, the summary dismissal part has been exercised, as far as I could tell, in two cases, and six reconsideration requests dealt with the Documentary Information Disclosure Policy, and all of them were denied. And finally, there does not seem to be a single uniform timeline that binds the processing of these

requests. The number of days that it takes for a response to emerge has ranged from 7 days, which is the least, to over 100 days, and I think there was one that spanned over 200 days or something.

Now, this flies in the face of the wording of the bylaws article 4 section 2 which says that an attempt should at least be made by the committee to respond in 30 days.

Considering that, and I think CCWG accountability has put in a lot of thought of creating a wonderful IRP process however, the IRP process might not necessarily be accessible to someone like me who lacks the finances or, you know, the knowledge in those regards.

So the reconsideration process is a first step of appeal, and I think it is absolutely important that the process be made more independent, more efficient and that there be more clarity about the grounds on the basis of which requests are denied. Thank you.

LEON SANCHEZ: Thank you, Padmini. Mathieu.

MATHIEU WEILL: Yes. Just to thank you for all the work you're doing on collecting data and actually providing objective analysis of the accountability mechanisms that are currently exist. We hope we can count on your continued engagement in the CCWG for Work Stream 2 because we are certainly in need of working on the basis of facts and actually demonstrating that our improvements are making a difference from the perspective of the parties that require review or reconsideration. So thank you very much. And please keep on sharing this data on our list. That's extremely important.

PADMINI BARUAH: Just a quick counterpoint, and thank you for your very kind words. A quick counter. It just struck me that probably a reason why that could be the case is because the appointment of the BGC, as far as I could tell, isn't independent from the Board so therefore, I don't know how independent this mechanism is. And my understanding is quite limited, so if a little bit of clarity could be provided on that, that would be so great. Thank you.

MATHIEU WEILL: So just to make sure everyone is on the same page on the reconsideration request, recommendation number 8 in our proposal suggests -- actually recommends improvements that address, among other things, this particular -- these particular

issues, the delay as well as the independence in order to enhance the process.

LEON SANCHEZ: Thank you very much, Mathieu. Becky, I think you want to add something.

BECKY BURR: Yes. I just want to add that we heard a lot of comments about the DIDP and a review of the DIDP itself is part of Work Stream 2, that there will be a thorough review of that. In addition, the recommendation 8, as Mathieu said, provides greater clarity with respect to guidelines and clarifies the grounds for rejection, broadens the basis for bringing it.

In terms of the question about whether the reconsideration is sufficiently independent, I just want to say the purpose of reconsideration is literally to go back to the people who have made a decision, get them to reconsideration. So independence in that sense is not -- that was not the -- the sort of -- the primary focus of the enhancements. Rather this is an opportunity to really reengage with the decision-makers and get them to rethink their decision. Therefore, we have to have the other processes in place, the independent review and those kinds of things to provide an alternative, an independent option.

LEON SANCHEZ: Thanks, Becky. Steve.

STEVE DelBIANCO: Padmini, you said that you were keen to see the financials and books and records. So let me also point you to recommendations 1 and 2, paragraphs 52 and 53. What we have in the bylaws is that the community as designator will have document inspection rights equivalent to that which a member would have if we were organized as a membership corporation under California law. And that includes your -- the ability for a single AC or SO to ask for inspection of books and records that are similar to what that law would have given us as a member. So that would be the first stop at seeking to see books and records, rather than have to do a reconsideration and follow a long process to get there.

LEON SANCHEZ: Thank you very much, Steve. Thank you, Klaus, for patiently waiting for your turn. Please, go ahead.

KLAUS STOLL: Don't worry, it's interesting to listen. Steve, let me talk to you directly.

LEON SANCHEZ: Your name, please.

KLAUS STOLL: Thank you for --

LEON SANCHEZ: Your name.

KLAUS STOLL: Klaus Stoll, NPOC and CSG. Sorry. Steve, thank you for your helpful explanations with regard to the Congress. For the benefit of the people who are not familiar with the U.S. Congress, I think it would be extremely helpful if you could let us know if there are any ways for the U.S. Congress basically to stop the transition. And how, and if there is anything we can -- we can do to avoid that. Thank you.

STEVE DelBIANCO: I'll try to give you a quick answer, Klaus, because while it does not happen often, the U.S. Congress does occasionally pass laws, and they could do that. So they could actually pass a law, and that would require both houses and quite a bit of procedural and public relations hurdles to get over, but it could pass a law, if it were so inclined, to perhaps prevent the

expiration of the contract. And I'm just being imaginative here. I don't anticipate that. I think Congress will exercise its proper oversight, ask a lot of tough questions, because they weren't consulted and involved when the administration decided to start us down this path in 2014. But they're involved now, and they're very attentive. But I think they're asking the right questions.

KLAUS STOLL: Thank you. That's great.

LEON SANCHEZ: Thank you very much, Steve. Thank you, Klaus. Are there any other questions in the room? I don't see any more questions in our Adobe Connect room. So going once. Okay. Okay. Well then, with these we have finished 15 minutes ahead of time. So we thank you for attending this meeting. And we remain open, of course, for any questions or comments that you maybe have after this session, and we invite you to join, of course, the rest of our meetings and hopefully our work in Work Stream 2. Thank you very much.

[END OF TRANSCRIPTION]