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Wednesday, June 28, 2017 – 10:30 to 12:30 JNB
ICANN59 | Johannesburg, South Africa

BART BOSWINKEL: Ladies and gentlemen. Thank you. Welcome back. We're going to reconvene. This was supposed to start at 10:30. I think after a very good discussion on in the previous session, we need to go do to the next, yeah, complex topic around the rejection action, approval mechanism, and the approval action [inaudible].

STEPHEN DEERHAKE: All right. Good morning. I'm assuming that some, if not all of you [hint, hint] attended the Community Approval Forum yesterday at 8:00. This is a subset of the slides that were presented there with regards to the fundamental Bylaw change that Chris was advocating. I'm going to skip this one, skip that one.

We are operating under this particular section of the Bylaws. What he wants to do here is make a change to move the reconsideration request stuff into a new Board committee out of the Board Governance Committee.

There's no change to the procedures we're handling, reconsideration requests. It's merely administrative change so that these reconsideration requests can be better managed by

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the Board. The mechanism that is dictated in the Bylaws for community approval of this proposed fundamental Bylaws change is the 21-day decision period that begins at the conclusion of ICANN59 and due to the way the Bylaws are written with regards to the lack of uniformity with UTC, this period ends at 6:59 in the morning UTC on the 21st.

The criteria for approval of a fundamental Bylaw change are that at least three AC/SOs need to approve and no more than one disapprove. The lack of a decision by an AC/SO is not considered either a yes or a no vote. It's just an abstention.

This is the timeline as illustrated by ICANN staff. Our role in this approval action is strictly clerical. In rejection in other actions, it is not strictly clerical, so this applies only to approval actions. The particulars here, if you want to actually go read all this stuff.

And so my question now for you guys is are there any questions, comments about this proposed Bylaw change, and if so, can we hear the questions? Because we do have Chris here to answer, as well. I don't want to recreate the form from yesterday. We only have about 10 minutes for this part of this session. And then I want to take the temperature of the room and see what the room feels about this Bylaw change. So I don't know if there are any questions. There are no questions. Are there any comments? There are no comments.

Do you guys have your cards ready? Excellent. Can I see a show of green for those who support this proposal to move the reconsideration process out of the Board Governance Committee and into a new committee? Show of green. How many greens do we have? Bart, can you count? Thank you. Hold them up.

Are there any who oppose this particular idea? And are there any who abstain? Two abstentions. Okay.

Now, a small minority. Okay. I wasn't really calling for votes. All right. That's it for this session. Thank you, guys. We're now moving on to the second part of this particular session, which is –

BART BOSWINKEL: Katrina, go ahead.

KATRINA SATAKI: Yeah, which is dedicated to rejection, actually. May I have the remote? Yeah, thank you.

So as I already mentioned yesterday, rejection actions are even more complicated than approval actions, so today we'll try to walk you through part of the rejection action thing. And in order

to make it clearer to you, we decided to have a little bit of fun and have a play.

So basically, what we'll try, we'll try to simulate the process of rejection action and squeeze it into 25, 30 minutes in hope that for you it will be easier to understand. Again, I will ask you not to look into your computer screens because it's really a complicated thing. If you miss one part, it'll be quite difficult to catch up.

So, as I already mentioned last time, at least when I read ICANN Bylaws, I look almost like that apart from the [inaudible]. But it's really not an easy read and those who have tried, they can vouch for the truth of this statement.

So at this moment, we have no idea what we're doing. Actually, those people on the play also don't know where it goes, but we'll try to walk this path together.

So, first, let me remind you about Empowered Community. As you know, according to the new Bylaws, we have this Empowered Community and it consists of five decisional participants: the GNSO, ccNSO, ASO, ALAC, and GAC. In case of approval action, we need three of these decisional participants to agree and not more than one to abstain as you remember from yesterday.

In case of rejection action, it's a little bit more complicated. Empowered Community has a – technically they nominate somebody to represent their community and by default, it's the Chair. But as always, he can select anyone to represent them on this administration. In our case, it's Stephen. The Council nominated Stephen to be our representative on EC administration.

So what are these actions that call for rejection? Here you see the list of them and while I think probably one of the – every year, we see ICANN budget, IANA budget, operating plans, strategic plans, so probably those will be the ones who have the highest risk of triggering rejection action thing.

So how it all starts? First again, there's an event, then we have 40 days' public comment period, then staff report, then Board Directors decide, notifies Empowered Community Administration, and that triggers whole process. ICANN has very nice explanation of how Empowered Community works and this is the diagram from that explanation.

So, first step, a petition is initiated in an SO/AC. In our case, somebody decides… [Here's] a petition. Sends a petition to the ccNSO Council, Secretariat [e-mail], for example. Then next, this petition must be accepted by the SO/AC. The next step, we need to inform Empowered Community Administration and this

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petition needs support from other SO/ACs, those are the remaining four. Then there is a conference call held with ICANN Board to discuss the petition. At the next step is community forum to discuss the petition, Empowered Community makes clear what they want. They want to use the community power and at the end, we just inform the community informs ICANN Board of its decision, whether to reject action or basically not reject it.

As you can see, at any of these stages, the petitioner may withdraw the petition so to stop process. Of course, this is a little bit simplified version. In reality, it's a bit more complicated with different ifs, but for the time being, let's stick with that.

To make it, again, easier for you to understand, we have here some basic things that terms that are used in the Bylaws. At the moment when you understand the principle, how those terms are informed, then it becomes much easier. So for example, here, one Board of Directors decides makes decision, ICANN Secretariat notifies Empowered Community Administration and decisional participants about this fact.

This is called Rejection Action Board Notice, that piece of information. And the moment when it's received, [inaudible] received is called Rejection Action Board Notification Date. We some logic here, right? We have a Board notice and Board

notification date. This is the beginning of the process. You see this red arrow will indicate the process. Okay, it's a bit faster than expected, yeah.

So the first period we have here is Rejection Action Petition Period, and it's 21-day. During this time, as you can see here, it ends approximately here. During this time, the SO/AC within an SO/AC you can submit a petition and SO/AC must decide whether to accept the petition or not.

Next step then is Rejection Action Petition Support Period. When you seek, when the SO/AC seeks support from other decisional participants, and it's only seven days.

Next period is Rejection Action Community Forum Period. Again, it's 21 days. It's when we discuss things.

And then we have Rejection Action Decision Period, which is, again, 21 days and during these 21 days, we at the ccNSO must come up with this final decision to proceed with the rejection action or not.

And finally, there is EC Rejection Notice to the Board, which basically is yes or no, pretty binary. If it's yes, then the action is rejected. If it's no, then clearly, the action just continues. I see a question here.

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UNIDENTIFIED FEMALE:	When you say 21 days, is it calendar days or working days?
KATRINA SATAKI:	Thank you. Those are calendar days. Yeah, 21 days. As you see here, again, we start with 21 days. During this period, we have to decide who and how can submit request a petition, then again, during the next seven days, it's either we support somebody else's petition or we seek support from other DPs, and then again, 21 days, 21 days, and finally, the decision.
	There's a question. Annebeth, I can give you the mic.
ANNEBETH LANGE:	It says here on point two that it should be accepted unaltered by the SO and AC. That means the Council.
KATRINA SATAKI:	That is the question. Yes. They were discussed approval action and that's a little bit different. Basically, yes, that's the question is about how are we going to accept petitions.
ANNEBETH LANGE:	Yeah, okay.

KATRINA SATAKI:	Because please take into account that first, we need time for the petitions to be submitted and then approve them or not. Yes, please.
PAULOS NYIRENDA:	Paulos from Malawi. Stage one. Who can make – who can submit petition? Is it as far as the ccNSO is concerned, is it a member? Is it –
KATRINA SATAKI:	That is another question and we hopefully will find the answer to this question. Thank you. Danko.
DANKO JEVTOVIC:	Question. Step number three. If I understand if our ccNSO supports the action, then we have to inform the others and they have week, seven days to support this further. So week to inform them and for them to get their support, so it's –
KATRINA SATAKI:	It's not only that. It's first. Yeah. First. During 21 days, we decide whether we support petition or not within our own community. CcNSO receives petition and decide whether to support it or not. Then seven days if we, for example, support petition and we submit it to the ECA, then we seek support from other DPs, so

other decisional participants have seven days to support our petition, but it can be other way around.

If within 21-day some other decisional participant come up with a petition, then we as the ccNSO have seven days to decide whether support it or not.

DANKO JEVTOVIC: Okay, so this is like three times as shorter period then for only decisional. So for the others, we have to inform them and okay, that seems to be [critical].

KATRINA SATAKI: Oh, yes it is. Sebastien?

SEBASTIEN PENSIS: Hi. Sebastien Pensis, .eu. I have a question about how many SOs or ACs need to support the petition? Is there a minimum requirement?

KATRINA SATAKI: Somebody [inaudible]. So there's at least one in total, in total three, but I think it must be one, at least one that's [suggest]. Yes, Sam.

SAM EISNER:	I'm Sam Eisner with ICANN Legal. During this beginning part, so after there's the first 21 days when one of the groups submits a petition, typically, you only need one other group to support it to continue the process, but then the thresholds at the end about the decisions are different, but you need one other group to raise their hand with you in order to continue along the path to the community forum.
KATRINA SATAKI:	So basically at this point, during these seven days, you have to find at least one other supporting you and at the end, before when ECA comes up with the final decision, you need at least three out of five. Okay? Is this… Yes, please.
ABIBU NTAHIGIYE:	Abibu from .tz. During those 21 days, what determines that the SO has rejected or has accepted the petition? I'm saying within the SO, what determines that we have accepted or rejected the petition in terms of member? Members of the SO like ccNSO. If we decide what determines in terms of votes or something like that within the SO.
UNIDENTIFIED MALE:	Is it the members who determine? Is it the Council that determine? What's the voting threshold?

KATRINA SATAKI: That we're going to look into to see that we have only 21 days, and that's for everything. Yes, Stephen.

STEPHEN DEERHAKE: To summarize this process, there's 21-day period after ICANN posts a Rejection Petition Notice for a community member, in our case, the ccTLD, to write a petition that has to meet certain criteria. Some are more complex than others based on what the rejection involves. Submit that to the ccNSO, presumably the Council. Presumably the Council if that's the way we decide to make this has to either accept or reject that petition and they also have to ascertain that it meets the requirements for what's being petitioned for rejection, and then the next step, which is the step three on this slide, the ccNSO has to elicit the support of their petition by at least one other decisional participant within the time period in section three on the slide, which is seven days, so it's really complicated and it has very, very tight timeframes.

In the event that the petition is not adopted by another SO/AC, the process stops.

KATRINA SATAKI: Okay, thank you. So, is that part clear? Yes? Let's move forward. So, again, remind, let me remind you that our process takes 66

days. Unfortunately, we do not have them. Here, we have in more details explained whatever we talked about, so during the first period, rejection action petition period, 21 days. CcNSO receives a petition so Council can, for example, if Council rejects petition or Council accepts petition, so and do we go to 10% ccNSO members asking for ratification. And definitely too late for ccNSO members to vote.

Here next period. We seek support from other decisional participants, other decisional participants submit a petition if they submit a petition. Again, we have seven days and the Council, for example, can decide does not to support the petition or support the petition and there's no time even for ratification vote. Only seven days.

Next, during Rejection Action Community Forum Period, which again, 21 days, ccNSO Council must inform community, solicit views from the community, and perhaps submit if that's the wish of ccNSO members. TLD community can participate in discussions, share their views, submit comments to the Council or somehow contribute to the discussions during the community forum. Again, during these 21 days, Community Forum Period.

CcNSO Council could possibly… Well, we can retract at any time, just can decide that no, okay, probably this petition should not be supported anymore. So, Council can reject the action or

probably does not decide what to do. Abstains, basically. What should be the role of the members? There's no time. Again, there's no time for all the ratification votes.

And at the end, we have Final ccNSO Rejection Action Decision. We have basically here this is the place where we have same 21 days, we have to come up with the decision in case of approval action. So, it would be really wise to use the same mechanism for the final decision, the one we select for approval actions. And that's why now after we have the play, we will go through all three alternatives again and then, again, we think which one is the most acceptable to the ccNSO members.

So is it clear? If it is, if there are no questions at this point, let's move on with the play – and actually, really believe me, we have no idea how it's going to end but we hope that it will help us to illustrate the process. Bart, I give the floor to you.

BART BOSWINKEL: It's almost by deliberate that people do not know what they are supposed to do in the roleplay because it illustrates, say, the situation we're in right now, that just a few people I think in the ICANN environment who really grasp the situation.

So, what we'll do in this roleplay is just follow the line that Katrina just explained with some live illustrations. And the way

it's set is I'll read the storyline, we have a referee, somebody makes a mistake, you will see a red card if things go well. You'll see a green card and if there is more debate needed or more investigation needed, you will see a yellow card.

So here we go, this storyline. ICANN Fiscal '19 Operating Plan and Budget was developed and posted to the public comment page, as it should be. After reviewing the public comments, several changes were approved and incorporated into the proposed document, so the Operating Plan and Budget for Fiscal Year '19. On 28th June, 2018, at the end of ICANN62 in Panama City, the ICANN Board adopts the Budget Fiscal Year 2019, so it's almost a similar situation as we have right now, a little bit more extreme because this is at the end of the ICANN meeting. The Board informs the ECA and the decisional participants, who have already left. It is at the end of the Panama meeting and back home.

ICANN Secretary sends the Board Rejection Petition Notice to the Empowered Community Administration and the decisional participants read in copy. This triggers the 21 days for the Rejection Action Petition Period. For your information, Katrina as the Chair of the ccNSO received the Board Petition Action [inaudible] Notice Saturday with respect to the Fiscal Year '18 Operating Budget, the Operating Plan, and what was the third

one? And the IANA Budget. So these are all documents that go, so it's effectively mimicking what [will] happen right now.

UNIDENTIFIED MALE: Sorry, Bart. I'm a bit lost. This is an internal ccNSO petition or someone from another SO?

BART BOSWINKEL: This is… triggers it.

UNIDENTIFIED MALE: Oh, okay. Triggers.

BART BOSWINKEL: This triggers it.

UNIDENTIFIED MALE: I was more lost than I thought I was. Thanks.

BART BOSWINKEL: Yeah, I know. Just wait. So, on day one, so what I'll do is I'll go through the course of the process that Katrina illustrated. On day one, we have because, say, some people were still around and the Council knew what was happening, on day one, the Council needs to take some steps and we have some Council

members in the room, so that's Demi, Abibu, Maureen, and Young Eum. You were aware of this so is there a spokesman who is able to explain what you as Council discussed and knowing and preparing and what kind of actions you proposed to take? So that's Council [that] instructs now.

Is there a spokesman? Demi, you want to be the spokesman? Do you have any idea what are your next steps? Because you need to trigger the whole involvement of the ccTLD community [inaudible]. Otherwise it is.

UNIDENTIFIED MALE: Not sure I'm totally aware of the [process]. I understand that at this point, we have to accept or reject the petition that came to us before sending to the whole Council.

BART BOSWINKEL: Please note this is a red card. This is day one of the process. This is day one of this kicks off. Effectively, what you should do is inform the community that they are able and the Council could [do it] itself to send a petition to the Council. It just trigger, it's a trigger. Okay.

KATRINA SATAKI: Sorry. One intervention. Probably we should explain what petition is. So, what is this thing?

BART BOSWINKEL: Let me go to the next one. Yeah? On day three, we have an individual. Allan, from a weird country, who will submit a Rejection Action Petition, and Allan, what are your considerations and what does it include and what you think the Council should be aware of?

ALLAN MACGILLIVRAY: Well, I'm very concerned that the ICANN budget has a significant increase of funding allocated to travel and that ICANN's overall revenue growth, its rate does not support such a level of increase, and therefore, this increase in travel I'm very concerned is going to crowd out and compromise ICANN's ability in other areas, in other projects in particular, the outreach it does for improving ccTLD infrastructure and technological capabilities.

How am I doing?

BART BOSWINKEL: You're doing very well. So, now a question.

ALLAN MACGILLIVRAY: I read very well.

BART BOSWINKEL: Yeah. Now a question. Are you related to a ccTLD? Are you related to CIRA?

ALLAN MACGILLIVRAY::   Well, yes I am but I'm not submitting this petition in my capacity as a CIRA employee, but certainly, I became aware of the opportunity to file a petition through that but I haven't talked to anyone else at the company.

BART BOSWINKEL: So, it means, effectively, you submit this in your personal capacity not related to CIRA maybe to another organization. Okay, so –

ALLAN MACGILLIVRAY: I've been very active in the community and I'm very concerned.

BART BOSWINKEL: Thank you. That I think addresses [some of it]. Yeah, go ahead.

UNIDENTIFIED FEMALE: One other clarifying question. Did you submit any comments about this in the public comment forum about the budget?

BART BOSWINKEL: Yeah, go ahead.

UNIDENTIFIED MALE: So, just in case, the Twittersphere has now taken off because it believes that ICANN's budget has a massive increase in travel and Allan is objecting. Can we just have in the record that this is a hypothetical? Thanks.

KATRINA SATAKI: This is all hypothetical.

BART BOSWINKEL: So, let's continue. So, you Council, you receive your first petition. I hope now it's clear what a petition is. It's somebody from the community who has submitted a previous comment during the public comment period with a concern specifically around the budget and say that petition needs to build on the previous comment. But that's for future and for further detail, but that's petition one. Okay, now we go to day six.

We have the SOP. All of you know we have the SOP, which is working on the ICANN Budget and Operating Plan now for quite

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some time. And they start to submit a very strong petition – they had some very strong comments in the public comment period and now they want to submit a petition. Go ahead, Giovanni [as Chair].

GIOVANNI SEPPIA: Yeah. I understand that as SOP Working Group, we would indeed like to submit a petition and it's because not really about specific budget issues but because in the previous round for fiscal year '18, ICANN committed to start prioritizing actions against the budget and the prioritization of actions that has been included in the Fiscal Year '19 Operating Plan and Budget, according to the SOP, is not meeting the community wishes and the community priorities. So, that, of course, translates into budget figures associated to these actions to be supported and the SOP is not, let's say, comfortable with the way prioritization of task and budget has been made.

I understand that the SOP would like to submit the petition. I also understand that there is jargon and wording in the Bylaws that says that should be an individual, so the petition should be submitted by an individual, so understand it's a matter of interpreting the concept of individual in the ICANN Bylaws.

If I were in the European environment, that goes to the European Court of Justice, but I don't know where it goes here. Thank you.

SAM EISNER: Thanks, Giovanni. So, Bylaws do say individual and one of the things that we've seen across the different groups because while you're the first group to do a roleplay and I was really excited to be invited to be here as part of this today, the other groups are fighting through the same issue right now. And so one of the key things, if you look at the Bylaws, you'll see when we're describing the Empowered Community in there and the role of the decisional participants is that anything that happens within a decisional participant itself – so within the ccNSO as a decisional participant – is subject to the internal rules and procedures that you choose to put in place.

So for example, the GNSO, they have a team that does like what your SOP Group does here, and they've been doing drafting of processes around it, and they've actually defined for their purposes that while somebody… there can be an individual starting within their stakeholder groups or constituencies, that they actually expect for purposes of the GNSO internal processes that it's the stakeholder groups or constituencies for all but I think the Board removal one, which really is about making sure there's no additional process that happens before it.

But they've said that stakeholder groups and constituencies qualify as individuals for the purpose of bringing it to the groups,

so it's kind of like that thing we've all heard and at least in the U.S. law, if you have a legal person isn't just a person, right? A legal person is an individual, it's a company, it's anyone with a recognized identity. So, I think this is one of the things that you have some flexibility to do as long as you have something clearly documented for people to understand if I want to do this, what is the process I need to do it through? And I think that's the focus and you can take some flexibility in terms of making sure you've defined what you mean when you say individual so that people who are coming to the ccNSO understand how to use the internal processes at the ccNSO to achieve that result.

GIOVANNI SEPPIA: Thanks a lot, Sam. So, I understand it's sort of internal matter of the ccNSO to decide that. Can I just play a bit of the devil's advocate and say that I believe there should be a sort of consistency because if GNSO interprets individual in one way and ccNSO in another, I don't know if in the long term there might be issues with this from a legal perspective? But I would suggest maybe that the ccNSO looks in what the GNSO and others have interpreted and eventually adjust the internal procedure accordingly. Thank you.

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BART BOSWINKEL: Thank you, Giovanni. And I think the Chair of the GSE will take this into account in her further deliberations around it.

GIOVANNI SEPPIA: Thank you again.

BART BOSWINKEL: Okay. Thank you, SOP. Now we go to day 14. As you know, we have a 21-day period and the Council is abiding to its internal rule. They want to allow the ccNSO community itself, or the ccTLD community, to at least be able to ask for ratification. Effectively, meaning the ccNSO will abstain.

So, again, sorry Demi and 40 others. Have you considered this? Because now you need to decide whether to accept or reject the petitions.

UNIDENTIFIED MALE: I understand we have just six days to take any action on the petition. Of course, this is day 14, no?

BART BOSWINKEL: Yeah, this is day 14. Effectively, you need to decide now if you want to allow the ccNSO members to ask for a ratification. Say that is the normal process.

UNIDENTIFIED MALE: Yes. It's a tough decision because I think if you call for a voting in the whole community, probably you have just part of the community voting and maybe this is some way extortion into result. And the other way, I think the Council has some responsibility and has also the temperature of the community more or less at hand. Of course, the ccNSO Council can make wrong decision of that also, but between a very rapid consultation to the community, that I don't think we'll get to solid result, maybe we can defer to the Council to make the decision. And if the Council did it wrong, probably the community will take steps after that.

BART BOSWINKEL: So, this is day 14 within the decisional or, say, within the petition, what is it called? Petitions Period. Yeah. Now, the interesting thing is because if you recall this is right after an ICANN meeting in June, mid-July, the Council need to take a decision mid-July. So, for this particular storyline, the ccNSO Council has decided but with the smallest majority possible and with the smallest quorum possible because everybody was on holiday. That was day 14.

And to understand this, the quorum rule of the ccNSO Council is 10 Councilors need to be present, so at least the smallest

majority, at least one Councilor from every region, and as I said, some were on holiday since mid-July, so they couldn't participate in the rejection in the decision making itself.

So, what happens next? We're in day 14. We have a ccTLD manager who was on holidays in Panama, Annebeth. And what do you do on day 19?

ANNEBETH LANGE: Thank you. Well, I send you a petition. It's nothing in the rule as far as I can see that I have to do it on day one, so I still have two days. So, the rationale for my petition is that according to the data, the ccTLDs contribute $1.7 million USD to ICANN budget and according to the adopted ICANN 2019 Budget, the revenue from voluntarily contributions paid by ccTLDs is $5 million, and it's not clear for me how this amount is going to be collected from the ccTLDs and what impact it may have on the ccTLDs.

BART BOSWINKEL: Go ahead, Sam.

SAM EISNER: Sorry. I raised my yellow card not because I think that there's any violation of process, but I wanted to flag that this is another place we're having some view of what other groups are doing

might be helpful. So, for example, in the GNSO, I understand that they're actually developing their petition process to take into account their decision time, so there's a requirement of how long they need to give notice of so that they can have their proper vote, etc.

And so within the GNSO, for example, there might be internal rules that there's not a full 21-day period to submit petitions by an individual, but there's a full 21-day period for the GNSO to receive that petition and act on it in accordance with their timeframe, so that's just a point of information.

But one other clarification about your petition: had you submitted a comment about that concern in the public comment process?

ANNEBETH LANGE: No. I'm afraid not.

BART BOSWINKEL: So, back to Council. You received a petition of the ccTLD manager on day 19 and you have one more day to deal with this. What are you going to do? Noting you have some quorum, maybe Abibu, you want to speak to this.

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KATRINA SATAKI: You see, it's really difficult to be Council member.

ABIBU NTAHIGIYE: Well, the challenging issue is that I can't recall the internal process within the Council and those circumstances.

BART BOSWINKEL: You're right because [inaudible] and I think so your suggestion of detailing how the petition needs to be done is very, very important. That's the [inaudible]. Haven't done so. The Council hasn't do so. Okay. Let's move forward because otherwise this takes too long.

The next step because I was going to… this must be an opportunity if you would stick to the internal rules because you see, it's very messy if you don't have rules, that some members could ask for a ratification vote. Effectively, that will mean the end of the participation of the ccNSO. They need to abstain. That's, again, an important reason for the discussion later on.

I just want to go over it. The ccNSO has supported a decision, other decisional participants' petitions, and the Council decision was initially not to reject but I made a mistake. My counting was bad so the majority did support the petition, so it moves forward and they were in time and were delivered to the ECA.

Now we're going to the ECA and we're given this, and say the end of the Petition Support Period triggers the Community Forum Period, and this is where the ECA has a particular role, as you recall from this morning's [inaudible]. And one of the major aspects is how are you going to organize the community forum? Because yesterday, we had the first one but in this case, there is quite clearly a need for discussion. Stephen, you received all the petitions now. It's up to you. What are you going to request?

STEPHEN DEERHAKE: Because this is a petition, rejection petition involving the budget, we do not have under the Bylaws the capability of requesting a public forum at the next ICANN meeting, which would be since this was just the June meeting, October, so we cannot push this off to October because it's a budget-related rejection petition. Therefore, we cannot have a face-to-face meeting, as much as that would be useful, we will instead have to do this via a teleconference with public participation. We will have to schedule that request ICANN staff to schedule that.

BART BOSWINKEL: But say for argument's sake, this is a budget issue. What you see from your role as an ECA, you have a very split community. You got two decisional participants, [favor] of the budget in certain areas and other decisional participants opposing, so what you

see as an ECA, you got divergence in the views of the decisional participants. I understand that the Bylaws prohibit, but say in your role as… Would you try to push for intercessional face-to-face meeting given the importance? I don't know.

STEPHEN DEERHAKE: I don't think so.

SAM EISNER: The Bylaws specify that the community forum, unless it occurs a tenant to an ICANN public meeting or unless it's on the issue of Board removal, there's to be no scheduling of a face-to-face. It just says that it's supposed to be done remotely using remote participation facilities and everything, so there's really not an opportunity to request a face-to-face unless you have the opportunity to push it to the next ICANN meeting.

UNIDENTIFIED MALE: If the timing was such that all this was happening so that we had an ICANN public meeting within the time constraint of the rejection forum period, then we could do one at the quote next ICANN meeting, but the next ICANN meeting would have to fall within that 21-day period.

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SAM EISNER: That's exactly right. I agree with that.

BART BOSWINKEL: Now the final step before we go into the continuation of the discussion from yesterday, the Board received or say as the Board, ICANN Org received the instruction from the ECA to organize the community forum. The Board sees this and sees the divergence in the community and there is a risk that the community forum as a conference call or remote participation will not resolve or will not come to a resolution with the risk that the budget is rejected.

Put it the other way around, your assessment is the risk of rejection very high if there is no face-to-face meeting. Do you go for something [inaudible].

UNIDENTIFIED MALE: Yeah, okay, so well, because I'm a really good Board member, the first thing I'm going to do is ask Sam a question. So, Sam, under the Bylaws, there's no – with everything that's happened up to now, the only way there can be a face-to-face is if we let there be one. Is that right?

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SAM EISNER: So, with a budget one, there are really only two situations where there's no opportunity to push the community forum into a face to face, and that is on the ICANN budget and the IANA budget on the annual budget cycle. Every other power has the ability to be pushed to a face-to-face ICANN meeting and so there's really no provision in the Bylaws that says that the Board could override the ECA or the Board could request the face to face. There's nothing in there that says that with the budget, if someone so desires, they can request a face-to-face community forum.

UNIDENTIFIED MALE: Okay. So, let me make sure I understand. The budget timelines are set and in order to meet those budget timelines, there's no convenient ICANN meeting for which to have a face-to-face discussion. And so you either don't have a face-to-face discussion or you find a way of having a face-to-face discussion. And what I'm being told is that there is a high level of likelihood that without a face-to-face meeting, the budget will not be accepted.

Now, is it correct, then, that the budget must be affirmatively accepted or is a lack of consensus in this community forum, does that mean the budget actually goes ahead?

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SAM EISNER: So, I think that there's a point of practicality that we should probably let people know, which is the ICANN – so, Xavier Calvez, ICANN CFO, is working with the Board Finance Committee for future years, so we hope to never actually see a budget presented to the Board three days before the fiscal year ends again. We know that we're going to start working backwards so that we allow time for the community process to happen. So, there actually is a possibility, who knows, that there might actually be a Board decision on a budget in sufficient time to happen at an ICANN meeting because the Board is actually going to be taking action on the budget earlier.

So, some of this is a little bit of the hypothetical but we're in this process right now. But we are actually in the middle of the petition phase right now for the FY '18 budget and IANA budget and so this is a real possibility that there could be multiple petitions submitted. And so one of the things that's important to also recall about the community forum is that the discussion doesn't just happen at the community forum, so there's an opportunity for multiple levels of conversation to happen, so there can be a conference call requested. The ECA didn't request a conference call on the fundamental Bylaws because it seemed pretty straightforward, but you can have a conference call where people can come together and start talking and then there's also the opportunity for people to be submitting comments and

questions into the ECA prior to the community forum, so there's actually some possibility for dialogue before the community forum. There's no restriction on whether or not the Board could answer them or ICANN Org can answer them, or people could answer each other.

UNIDENTIFIED MALE: Just my question before I make my decision, as correct as the rejection action community forum, whether it's face-to-face, not face-to-face, if that doesn't reach consensus, does the budget proceed or not?

BART BOSWINKEL: The community forum ends, we'll say with community forum, whether it's face-to-face or [inaudible] it ends because it's [inaudible] after 21 days. After that point, that's where we are right now and then I hand over to Katrina, is that's when the decisional participant needs to decide to reject the rejection petitions.

KATRINA SATAKI: Please speak into microphone.

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BART BOSWINKEL: Oh, sorry. Then the decisional participants need to decide whether to reject or accept the petition.

UNIDENTIFIED MALE: So, the fact that… okay, so the actually community forum itself is a step along the road of the decision participants deciding, and what you're telling me is that… it looks your advice would be that it's likely that if there isn't a face-to-face meeting to hash out some of the problems that exist with this issue, that the budget will be rejected. And now you're asking me to make a decision.

Okay. So, I think the answer, just to give you a clear answer, and then you can move on. I think the answer for me is relatively simple. There are three things we can do as a Board. The first thing that we can do is to say the Bylaw says that you can't have a face-to-face meeting, you can't have a face-to-face meeting. The second thing we could do is we could say we're going to pass a resolution to extend this year's budget as an interim budget until such time as the community has an opportunity to meet at the next ICANN meeting. We can do that. That is a [inaudible]. Yeah, you want to say something?

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SAM EISNER: So, the Bylaws actually specify the effective date of the budget and so the effective date of the budget is takes into account the other parts of the Bylaws, and so we'd have to test to see how much is specified, but there is the gapping resolution that you could do, which is putting the caretaker budget into effect because that's something that's [inaudible].

UNIDENTIFIED MALE: Yes, so you can do that. And the third thing that we could do is notwithstanding the fact that the Bylaws say no, we could find a reason, we could find a way of calling, let's call it an extraordinary ICANN meeting. Now if you want the straightforward answer from me would be I would need to be really convinced because, frankly, this is really setting a massively ridiculous precedent. That would mean that every time there is a petition, we'd be getting exactly the same advice. But that said, I think those are our options.

BART BOSWINKEL: And to be the good thing is the budget and as you said, what was the other one? Say the budget and the IANA budget are the only ones where you have to stick to the 21-day community forum and you can't have, there is no face-to-face meeting within, it will not be extended. Is that correct?

Okay. That's just the end. Now we're at the end phase and I want to close this part, hand back to Katrina, be able to continue the discussion from yesterday about the role of the members and the Council in the final decision-making stage. So, this is all about the decision making.

KATRINA SATAKI: Thank you but I see a question. Yes, please.

PABLO RODRIGUEZ: More than a question. Thank you. This is Pablo Rodriguez from .pr, for the record. More than a question, I would like to bring to the attention of all of you that perhaps an infographic or some kind of illustration device could be created in order to show us the different steps and, for example, a rejection has been – an event has triggered this process, so what is the particular Bylaw that says that we should do blah, blah? The next step, this is what we need to do and this is the Bylaw that supports that next action, and so on and so forth, and that way we know who in what particular group has to do what, and that would be very helpful. That would clear at least some of that confusion, that fussiness.

SAM EISNER: Thank you, Pablo. I don't know if you've seen the process flows outside in the hallway, but one of the things that we've done is we made sure that each of the Empowered Community powers are process flowed out there, and then the next step after that is to translate those into manuals, to do exactly what you're asking, and so we've already started that work. Take a look out in the hallway because you'll see. I mean, they're long, they're a little bit cumbersome, but we're starting to try to do that. We know from the ICANN org side, we need to give some help to distill it a little bit more easily, and so that's what we've already started.

BART BOSWINKEL: And Pablo, if you go back to the slides Katrina used at the starting is a very good starting point because once you get the logic in the Bylaws of the naming of all these periods and what is happening, then it becomes easier to read. I don't say it's easier read, but it's easier, but I really want to take this and maybe at the end we take more questions because now this is what the next phase is the real important part of this is to inform the GSE and Council how to move forward.

Thank you those who are sprung on this morning to take a role in this illustrative storyline.

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KATRINA SATAKI: Yeah. Thank you. So, I hope this exercise was useful at least to understand what needs to be taken into account when we talk about rejection actions of petitions and our role in this process.

So, again, now we're at the last statement we have to make the final decision. Again, 21 days. And we have to decide whether we support the rejection action petition or we object to it, or at this point we do not have an opinion and we just abstaining.

Okay. Here we have some more information about all the parameter that our vital to the process and, again, let me remind you about the internal process according to the rules of the ccNSO. Again, 66 days. We have only 21. Again, stages and alternatives. Alternatives, we discussed them yesterday. If you remember them, I will assume that you do not. Therefore, I will remind you again of three alternatives.

Alternative one. We trust the Council. As you know, we all have voted, we have nominated people to the Council. We have 15 Councilors from nominated and selected by ccTLDs, three per each geographic region. We have three Councilors nominated by the NomCom, so this is really diverse group of people and we as a community have entrusted them to make decisions on our behalf. But, of course, we also have some powers, we have powers to overrule their decision, and we also have the right to have members vote.

Alternative one. Alternative one in order to make it within 21-day period, we have consultations, we have Council decision, but we skip. We as the community say, "Okay, we trust the Council. Yes we know the risks but we're not going to ask for a ratification vote, we're not going to ask for members vote." Effectively that will mean that yes, we trust that Council listens to the community and takes into account majority view.

Alternative 2, we make a consultation period a little bit shorter. We don't have much time because we want to have this opportunity to give 10% minimum. That is minimum requirement – 10% of our community the right to basically, in this case, veto Council decision.

We won't have time to know what the majority of ccNSO members know because we'll not have time for members vote. So in this case what we do we do not trust probably the Council that much, but we trust that 10% of our members will be – well, probably they will not be as diverse as the Council but at least we trust that they will be the conscience of the ccNSO and they will overrule the unruly Council.

Alternative 3, we skip consultations, we skip Council decision. Council does not decide therefore there's no need for the community to ask for a ratification vote. We go directly to members vote. It's electronic with ballots but some slight

change from our rules. We have only one round of voting without quorum requirement. So we do not require that at least half of our members do vote.

Regardless of the number of votes casted, we take the majority view and we proceed with that, so it's either we reject or we accept rejection action petition. Well, technically yes we can abstain so we can have three possible outcomes of the vote. Yes, please. I see a question.

GIOVANNI SEPPIA: Hi, Katrina. Thank you. Giovanni Seppia, .eu. I'd like to ask you and I'd like to ask probably Sam if this has already been decided or managed by other SO/AC and if yes, the way they have approached it. Thank you.

SAM EISNER: Thanks, Giovanni. The only SO/AC that I know for sure has been trying to tackle this issue of decision periods that don't align with their full decision periods is the GNSO, and they're actually in the process of trying to identify… kind of expedite the processes for certain types of decisions and so they're doing the same kind of thing. Theirs of course isn't as complicated as yours and doesn't require external consultation but they have

actually started defining certain things that will happen on shorter time frames that aren't part of their regular process.

STEPHEN DEERHAKE: To add to that, ALAC appears to have with the way they're organized the ability to react to this timeline.

NICK WENBAN-SMITH: It's Nick Wenban-Smith of .uk. I realize that possibly one of the least helpful answers when asked for directions is to reply, "Well, I wouldn't start from here." I just wondered about the current process, if we could go back to that slide, because it seemed to me that the current process is workable unless there's a 10% veto. And for something like most business for this, there should be a way forward without having to change the processes, to reverse engineer them into the Bylaw timeframes. Does that make sense?

Sorry, Katrina, my question was the current process, not one of these three alternatives but the current process is that the Council will make a decision which will stand unless there's a 10% veto and I'm curious as to why we need to change it for now.

KATRINA SATAKI:

Because the current process takes 66 days if yes, of course. If there isn't, it's fine, yes. And that's a follow-up… Okay, what would be the suggestion then and which alternative? Or we just go with the… Current process basically would mean this is basically alternative 1 but finished as this one.

We can hope that we don't have veto but technically according to the rules, the Council decision comes into force 7 days after it's been adopted, which means that if we have 21 days period, minus 7 days so we have 14 days. But still we have veto so this is this. This is basically the current process. Yes, you can hope that you don't have veto but we still have to allocate time for that so this is – alternative 2 is basically current process without the right for the community to have a vote. Now that's fine, so you support alternative 2 basically that means.

But that's what you're saying. This is alternative 2. Because we need a decision, whatever it is. So Council decides, if you want to keep 7 days, it must decide according to this timeline. It can abstain of course, yes. In any case, it can abstain, yes. I see that Jordan has a question.

JORDAN CARTER:

I don't have a question. I want to say what I think about the options. Is that okay?

KATRINA SATAKI: Absolutely.

JORDAN CARTER: The good thing about the Council making decisions in some way in this is that it guarantees the geographic representation of the regions, whereas if we go to alternative 3 where it's just a member vote with no quorum rules then five ccTLDs could make a decision for all of us and they could all be from Europe or they could all be from Africa or they could all be from ASIAPAC, and I definitely think that's a terrible idea. So I think alternative 3 is a bad idea and I think we should have the opportunity to object to the Council's decision. I think alternative 2 is the best of these three options and I say that as someone who voted for alternative 1 yesterday but I've been thinking about it overnight. I think we need the geographic balance that the Council provides, but we need to have the opportunity to protest and stop it if we really, really don't like it, so alternative 2 seems the best one.

KATRINA SATAKI: I understand your point of view but with your arguments, I don't see a difference between a members vote and members veto

because if you say in this case 5 ccTLDs can decide – okay, 17 in this case – but they still can be from the same region.

JORDAN CARTER: But the difference is that there's going to be a decision and most people support the Council as they voted for the Council, and to veto a Council decision is a much more difficult thing to bring yourself to do than to forget to vote on something you're being asked to vote on, so I don't think they are the same problem.

KATRINA SATAKI: Okay, thank you. Stephen.

STEPHEN DEERHAKE: Having consulted with the ccNSOs historian in residence, in the 17+ year history, the ccNSO membership has never overridden a decision of Council so I agree that I think alternative 2 is the way going forward.

UNIDENTIFIED MALE: Yesterday I also voted for option number 1 but I'm rethinking alternative 2 and maybe 10% is the threshold we can move a bit up if we're afraid that only 17 can—

KATRINA SATAKI:	We cannot do that. We cannot do that. That's in the rules.
UNIDENTIFIED MALE:	Sorry.
KATRINA SATAKI:	We can increase the number of members, by the way, yes. If we increase the number of members, 10% automatically will be a larger number.

Yesterday we had 9 for alternative 1, 9 for alternative 3 and it makes it really difficult for the Council to proceed. Therefore, now after hearing all the arguments, I think you should sleep at night, Jordan, but if you don't, you prefer to think about alternatives, that's good, very responsible thing to do. Thanks for encouraging us. I hope that others also thought about these alternatives one way or the other. May I ask for the show of cards now?

We have alternative 1, Council decision, so in this case we trust the Council but we have certain risks. Yes, Council is diverse but we cannot object. Nevertheless we trust that Council listens to the community. So who supports alternative 1?

[Duncan], you just said that you supported alternative 2. No, that is fine, that is fine. Do we have a number? 7, thank you.

Alternative 2. Basically our current process when 10% of our community, not necessarily diverse group of people, not necessarily representing the majority of the membership. Nevertheless, maybe they do represent views of the community. So who is supporting alternative 2? [inaudible], what is this? Okay, thank you.

And who is supporting alternative 3? We go directly to members vote. Please raise your green cards. Two. Nobody was sleeping. Everybody was thinking about alternatives.

Okay, thank you very much. That is a clear indication that we know which way the community wants us to move, so thank you. Sorry, Jordan, we clearly used time for your session. Yes, Bart.

BART BOSWINKEL: Thank you very much for this session. Just an announcement on the agenda: This next session will be split in two: the accountability session first around the update by Jordan and after lunch we go on with the accountability session on Work Stream 2.

The topic on the ccTLD financial contributions that was scheduled for after lunch will be reduced in time. The only thing that will happen this afternoon is Becky Nash and Xavier Calvez

will provide an update on the procedures and the overview with respect with the current financial contributions.

The reason is the rule of good have organized this and chaired this session is not at this meeting and we thought that given the importance of the topic it needs to be prepared by the person who has done the most thinking about it in preparation of this meeting.

So that one will be deferred to the Abu Dhabi meeting and it will be on the agenda in the Abu Dhabi meeting. So the financial contributions discussions by the ccTLD themselves, that bit of the meeting will be deferred to Abu Dhabi so after lunch you'll just hear about the current state of affairs and some of the procedure for invoicing, etc. That's it, so back to you, Jordan.

JORDAN CARTER: Thanks Bart. Good afternoon, everyone. This will be a little bit of a different session. I'm afraid we don't have any role playing to go on. This is about the accountability improvements to ICANN that have happened in the course of the transition which is Work Stream 1 and the work that is ongoing now in the CCWG Work Stream 2.

All we're going to do now before lunch is get David McAulay from Verisign to give an update on the last big remaining chunk of

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work from Work Stream 1, which was the improvements and changes to the IRP process. I can't even remember what IRP stands for. Independent Review Process, which is a way for the community to challenge decisions of the ICANN Board and the ICANN organization if required.

David is the Chair of the IRP Implementation Oversight Team, the group that was put in place to work with ICANN to implement the new Bylaws provisions about the IRP.

What he's going to do is he's going to run you through the current status of that work and take any questions just so you're clear about how this important accountability mechanism works. And of course one of the questions that's going to come through our PDP that we've been talking about for a while now is whether the IRP in future might be a useful appeal body for ccTLD delegations and modifications and so on.

So how this works is of general interest to us as people involved in ICANN and it may become even more important for us in the future. I'll hand over to David to take us through the update.

DAVID MCAULAY: Thank you, Jordan. My name is David McAulay and I am the lead of the Independent Review Process Implementation Oversight

Team, and I'm speaking on behalf of the Implementation Oversight Team in presenting these slides.

What this will amount to is a review of what IRP provides for, what things have been accomplished, and what steps need to be undertaken. And in addition to what Jordan said about the potential for IRP being something that you might want to consider as you go through the delegation, re-delegation PDP process, in addition all of the SOs and the ACs will have a role in finishing some of the establishment steps for the IRP – and I'll get into that a little bit later.

In this slide you can see it's just a statement of the basis for IRP and the IRP is now in effect as of October 1st of last year the new IRP but I'll refer to it as simply IRP extinguished from the old one.

It's in the Bylaws. It's Section 4.3. It's a rather extensive section of the Bylaws. It does have a lot of nuance in it but for those who are interested in more detail, that's where you want to go.

What I'll talk about today is what the purpose of the IRP is, what the main pillars, the main parts, constituent parts of the IRP process is, and then a few miscellaneous provisions at the end.

The IRP purpose – I've got the slide up. It's really from Section 4.3A for those that would like to take a look, but the top bullets are really the ones that get at it. The purpose of the IRP is to

ensure that ICANN does not exceed its mission and that it complies with its Articles and Bylaws, and I'll refer to the Articles and Bylaws. That's the standard by which the IRP will measure things and it empowers the community and claimants within the community or claimants anywhere to enforce compliance with the Articles and Bylaws.

The remaining bullets are fairly self-explanatory but it does indicate at the bottom of this slides that the IRP can also be used to ensure that ICANN enforces its rights onto the IANA Naming Functions Contract and it provides a vehicle for customers of IANA services and PTI services to have a forum to go to.

The IRP's purpose you can see there. Where it sits in the hierarchy of ICANN dispute resolution mechanisms is at the top of the hierarchy. It starts this process on dispute resolutions, starts with the Ombudsman's office. An immediate step could be a complaint to the reconsideration process, reconsideration review process under ICANN's Bylaws. This is at the top of the hierarchy. This is really the arbitration forum that's at the end of the rope. If you can't get things resolved here, I guess you'll have to resort to court.

The purpose of the IRP also, this is a statement that what the IRP is meant to provide is accessible, transparent, fair, efficient, and consistent resolution process. And that word just is an important

one. There is a provision in the Bylaws that talks about the fundamental fairness and so there is sort of a due process standard in there as well.

The second bullet talks about the fact that IRP is getting a final resolution of internal disputes and that they are binding. This is another important part of the whole process and it will lead to precedential decisions that can build a history of helping to have predictable dispute resolution vehicles. And it's meant to be an alternative. It's meant to be a less expensive alternative also to civil litigation.

The main pillars that I referred to, there's a new standard of review. There is a standing panel of arbitrators that will become the standing panel of the IRP, and there are rules that will decide how cases are brought and judged and that's as everybody I think knows procedural rules are extremely important in using these kinds of facilities.

The first panel is a new Standard of Review. That's done. That's dusted because on October 1st of last year when this new Bylaw was passed, this Standard of Review went into effect, and this is a substantive Standard of Review as to whether ICANN, meaning the Board members or staff, exceeded the Articles or the Bylaws.

That's in effect now and this IRP is different than the one that preceded it because the former IRP was really a review of

process. It was a review as to whether ICANN had [hued] to the internal processes it had in reaching a decision. It was not a substantive examination of the merits of the decision itself, whether it was fair and just, the things we just went through.

It's also noted that this new standard of review includes claims from expert panel decision below. This really relates to the New GTLD Program. I know many of the ccTLD registry operators are looking at new GTLD applications themselves.

There are panels below that deal with string objections, string similarity objections, legal objections, community objections, those kinds of things. There was no appeals mechanism. Now there is. Under the new Bylaw there can be an appeal to IRP.

The new standard also specifically addresses reviewing ICANN decisions that may exceed the Bylaws or the Articles in how they respond to a request for documentary disclosure under the DIDP, and the new IRP can cover claims brought by the Empowered Community, and it also deals with service complaints regarding PTI and non-enforcement of contractual claims.

Specifically excluded from the IRP, Empowered Community challenge to the results of the PDP if the SO that was engaged in developing the PDP does not sign on to the challenge. And then you'll see claims relating to ccTLD delegations and re-

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delegations are not reviewable at IRP. Internet Numbering Resource claims and claims with respect to protocol parameters were similarly excluded.

This slide is one more bit about the substance of review and it talks about the nature of the review. This is an objective de novo review. That's important because if someone's bringing an IRP claim that they're not satisfied with the results of the Ombudsman's office, if they're not satisfied with the results of the reconsideration request, if they're not satisfied with the results of the expert panel below, the IRP doesn't look at the decision below giving it a presumption of being correct. They start objective de novo from the beginning, from scratch review with the IRP.

The next pillar is the standing panel. This is the establishment of a standing panel of at least seven professional arbitrators from around the world. There are provisions in the Bylaws talking about the qualifications and it includes things like geographic diversity.

There will be a Secretariat for supporting the IRP. Currently there is one that's called the International Center for Dispute Resolution that may be retendered. That's up to ICANN.

This particular slide talks about putting the panel in place, establishing the panel. Part of that is doing an expression of

interest and putting it out to the public. For people around the world that feel like they would like to do this and are qualified, it requires legal qualifications, arbitrations experience, things like that, to apply.

That Expression of Interest is something that the Bylaws give that role to ICANN organization and so they're involved in that. The IOT team that I'm leading, we're assisting in that effort and it hopefully will be done soon. I've said that several times before but it is moving forward and it should come out soon.

The next couple of things here involve Supporting Organizations and Advisory Committees and that is when people apply to become panelists, it's the SOs and the ACs in conjunction with ICANN that will review them and vet the applications and basically put them in two piles – those that are qualified and those who are not qualified.

And then from the qualified pile of applications, it will be up to the SOs and ACs alone – no, ICANN does not participate in this – alone to nominate people to be the panelists. It's an important job and ICANN Legal and ICANN Policy are currently working on ways to assist the SOs and ACs to act together to do this to discharge this function.

We in the IOT team don't have a formal Bylaw role here but we have offered to assist. We are becoming well-versed in the

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Article 4.3. I'm not so sure what that says about us but we are offering to assist and it's important and it's also important that this move forward, so I encourage you as you go back to other constituent groups that you participate in to mention this and to say this is coming and it's coming fairly quickly, I would hope, and to exchange ideas, get ready, talk with ICANN Legal or ICANN Policy members that you know and say, "How are preparations going? We're looking forward to getting involved," etc. ICANN Board does have a role on the nominations in that they get to confirm them and they cannot unreasonably withhold confirmation.

Here's some detail in this slide about what the panelists will be doing. They'll have a five-year term. There are specified ways they can be removed that are fairly restrictive. Things like corruption and things like that. There are Bylaw provisions saying how analysts will be independent from SOs, ACs and ICANN. That's a requirement.

Having said that, panelists will be trained by ICANN with respect to the DNS system and they're expected – a thing that would help quality a candidate is knowledge of the DNS system.

Each individual case will be heard by a panel of three members. Those results are appealable to the full standing panel. Bylaws target – this is not a hard date – they target IRP resolution within

six months. We are currently working with another subgroup of Work Stream 2 that's called Cooperative Engagement Process.

When an IRP is filed, people are encouraged to get involved in the Cooperative Engagement Process with ICANN to see if they can settle the case, and we're working now with that group to figure out timing and what effect that will have on the six months. But that's in train, we're working on that now. And ICANN IRP decisions can be enforced in court now if needed.

Rules of Procedure are important and our group is up to our elbows in working on the Rules of Procedure. The initial draft of the Rules of Procedure was put out for public comment. Our group then had those public comments received and analyzed and we're working our way through them. The four bullets at the bottom of the slide are the rules that we've had the most discussion about and it's been back and forth quite a bit. These are fairly involved.

One is the time within which a claim must be filed or be lost. The second is the retroactivity of both the standard of review and the rules concerning the IRP and whether or not either or both of those are retroactive in any respect.

Joinder of interested parties is another rule that we're looking at. For instance in review of an expert panel decision below, that IRP claim will in almost every case be brought by the loser of the

case below while the winner of the case below is somebody that may want to be joined in that IRP. Those are the kinds of things we're looking at and challenges to consensus policies.

A few miscellaneous points about the IRP process. I mentioned the Cooperative Engagement Process and I should also note that in addition to that, if a case cannot be settled, there is a conciliation effort that's required and what that means is, "Okay, if we're going to IRP, if we can't settle it, let's at least try and narrow the issues that are the IRP."

I'm trying to go from memory here—one of the bits on that slide was that ICANN has a duty under the Bylaws to at least look at the provision of financial support to parties to be engaged in IRP if it's a legitimate request for IRP. If they are otherwise unable to participate, it's sort of an exhortation to ICANN to come up with some kind of funding device or help, assistance in that respect.

And there was another bit on that slide that doesn't come to me right now. Oh, that was the last slide. What I'll do to wind this up is simply to say that the IRP is in effect now. The rules are coming, we're working through those. The standing panel is coming. It's going to involve this community and the other SOs and ACs so please, please be aware of it and look for ways to get that process underway.

I look forward to helping if we can and this is a very good new IRP. It will be a valuable tool in the community and because it will have precedential effect, it's my hope that over time it will be used less frequently. If there's any questions, I'd be happy to take them.

JORDAN CARTER: Okay, thanks for that run-through, David. Does anyone have any questions or comments for David about how this process is going? I can start with one which I don't think you mentioned but when will the ccNSO know when it's going to be asked for nominees for the panel?

DAVID MCAULAY: The Expression of Interest document that ICANN is working on and under the Bylaws, it's ICANN"s role to release an Expression of Interest document. I can't tell you when that will be released. I'm hoping personally that it'll be released soon. The document's actually ready and my principal contact has been Sam Eisner and she's been very good, supportive.

The document is basically ready to go but in order to get various communities organized to work on this together, that's where the ICANN Legal and ICANN Policy are working to come up with some way to do that.

The thought is until there is a way forward there, at least scoped out and envisioned, it would be perhaps unwise to release the Expression of Interest document because the effect would be people will apply and then hear nothing back for a long period of time and may lose interest.

And so the two, both the Expression of Interest and the working on nominations, the two sort of fit together and I'm hoping it will be soon but I don't have a date for it, Jordan.

JORDAN CARTER: Does anyone else have any questions for David?

DAVID MCAULAY: Excuse me, I do have one more comment that now. Thank you for the slide back up. I wanted to mention that the IRP IOT, a team that I'm leading, we expect to in our report suggest ways for our own status to be reviewed.

We were created as a creature of CCWG and Accountability but now that the Bylaws have been enacted, we are recognized by Bylaw 4.3. We appear in 4.3[n]. We're actually a Bylaw creature now so we morphed in a sense.

And there are certain details about what about the committee? We don't want this thing to be looking for work in the future

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when our work is done. On the other hand, the panel may create revised rules. They may suggest new rules and we don't think the panel should operate without community involvement and so the question then becomes do we go dormant for a while or do we get re-instigated at various periods. So the IRP IOT status review is an important thing to address in itself so thank you for that, Jordan.

JORDAN CARTER: Great, thanks. No questions? If you think of some questions later, I'm sure that David will be around today and tomorrow so please feel welcome to address those to him. If there aren't any then we will wrap up the session by saying thank you, David, for that presentation, that information.

We now have the lunch break from 12:30 till 1:30 and at 1:30 sharp we will come back in the room and start through the Work Stream 2 update for you. Thanks.

[END OF TRANSCRIPTION]