

Brian Cute:

This is the Accountability and Transparency Review Team meeting in Boston at the Berkman Center. Good morning, good afternoon, evening to everyone who is online. What we are going to do over the course of the next few hours is walk through the draft working group documents.

Working group 1, 2 and 3 onscreen and as an entire review team. Have the leader of the working group walk us through the documents, provide reactions, make decisions on proposed recommendations, and identify any gaps or fact finding matters that still need to be completed.

With that, we will be collaborating with the Berkman team who is here with us. Working group 1 will be up first. Chris Disspain, whenever you are ready to go, I turn it over to you.

Chris Disspain:

Thanks, Brian. What I would like to do is to go to page 8 of the document which houses questions for consideration on area 1. So whoever has the document, you just have to scroll down a bit farther. The starting point for us is the first area which is to do with board skill set, etc.

I want to look at the questions that we've asked because then I can go to the recommendations that we're making based on the questions. So the questions for consideration: Do the current mechanisms for determining ICANN board composition to insure that collectively the board possesses an appropriate and diverse set of skills and experience?

And then sub questions: Would changes in selection and composition and compensation improve results of the desired skills, backgrounds and experience adequately confined for representing the public's interest, mission operations and best practicing governments and could the collective skill sets of directors be improved?

And then there is a second set of questions which I have some concerns about because I'm not entirely sure they are actually in our scope really. It says: Are current mechanisms for determining ICANN board composition effectively ensuring the board's representative of the state collar community.

Are boards' selections mechanisms sufficiently transparent and accessible to stakeholders? Is the current board of optimal structure and size to ensure both effective representation, etc? At board level is there appropriate balance of the representation of ICANN's various

stakeholder groups? My challenges with those are as follows.

The size issue we have kind of discussed and agreed that it's not really our realm so I would suggest that that comes out. I'm also slightly concerned by at board level is there an appropriate balance in the representation of ICANN's various stakeholder groups because again that's not actually a board issue.

It's a bylaw issue and the current representation of the various stakeholder groups is effectively set in stone in the bylaws and can only be changed by a full blow policy development process. I am proposing to take those two out as questions. We don't deal with them in the recommendations anyway and I'd like to see them gone.
Yes Fabio?

Fabio Colasanti:

I beg to differ. I have no views on any need for improvement. In my view, the board is fine in terms of size and empathy. But I do not think that answering this question is outside our realm.

We discussed already in the past that we might very well identify areas where we want to make recommendations

that imply changes in the bylaws. Something that is in the bylaws by itself is not a reason for excluding it from our realm.

Here it is something that I would say, yes we have discussed this matter but we felt that there was no changes should come in there and therefore we are making no recommendation. I would not delete that as an issue for direct consideration.

Chris Disspain:

Fine, we'll deal with that as long as everyone is clear that that question there is currently no recommendation with respect to those questions. I am comfortable to do that. If we can now go to the first set of recommendation with respect to the board skill set and we will go through those.

I will wait for it to come on the screen so that I can read it. Pursuant to the advice of both the 2007 nominated committee review and the 2008 board review, establish formal mechanisms for identifying the collective skill set required by the ICANN board and for consulting the stakeholders on this issue.

Emphasis should be placed upon ensuring the board has the skills and experience to represent constituent's interests and

general public interest and deliver best practicing corporate governments over the size of ICANN's operations.

That's the first substantive recommendation so discussions on that comment and put: use of the word constituents is wrong. We need to find another word for that, but other than that, I'm comfortable with it.

Brian Cute:

Any comment? Let Berkman feel free to chime in as well please.

Unidentified:

We are not trying to word-smith here. For the record, Louie was asking is the word community too broad to replace constituents and I was just replying that we are not trying to word-smith here, but it should not be constituents.

Chris Disspain:

At this stage, yes I would agree. I will just make a note of that on my document.

Brian Cute:

We should flag things that might be flaws. We are not going to be drafting.

Chris Disspain:

That's right.

Brian Cute:

Are these going to change at all in light of anything from Berkman? You have Caroline and Scott there to tweak recommendations. Are we able to operate both screens because that would be easiest if we would put the Berkman recommendations on the screen too?

Chris Disspain:

Yes, that would be helpful.

Brian Cute:

And then we can have the side by sides. Yes, let's do this in real time. So Peter who arrived late, we wanted to pause because Chris just got to his first substitute recommendation and we're working with one document. What we are spot-checking is if we comfortable with it, not getting into a drafting exercise per se. But if there any words or unique flaws that we want to flag, now is the time.

Fabio Colasanti:

I would like to flag the wording of number 6.

Chris Disspain:

Well, we are not yet on that document, but that could mean Fabio that you agree with numbers 1, 2, 3, 4 and 5.

Brian Cute:

Can I just react to the concept of representation? I mean you talk about constituents.

Chris Disspain:

Yeah, that's the wrong word. We need to change that.

Brian Cute:

Well, represent is also wrong. The board does not actually represent interests. The board actually acts statutorily in the interest of the company. I know what you're trying to say and I agree with it, but you are going to have to be smarter with the wording.

Chris Disspain:

That's fine. I'll take that point and I'll work on that.

Brian Cute:

And just as an FYI, this is actually out of the way. This has been out the way for a long time, but it got held up and may have because there was an internal dispute among the board members as to how it should be done and the prices are now back on track. This is actually happening right now through the board governments committee.

Chris Disspain:

We are now moving on to the sub points. This should build upon the initial working undertaking and the independent reviews involved. (a) Benchmarking board skill sets against similar corporate structures. (b) Tailoring the required skills to suit ICANN's unique structure and missions through an open consultation process including direct consultation with the chairs of the SOs and ACs. It is has pointed out to

me that – you might want to say – the leadership of the SOs and ACs.

To use a case example, the GNSO, there are sort of vice-chairs for the two humps of the camel that is the GNSO that would imply a leadership of the SOs and ACs. (c) Review these requirements annually delivering formalized starting point for the chair. (d) Publish the outcomes and requirements as part of call for nomination.

Those are the detailed sub points to the recommendation that there should be a formal mechanism for identifying the collective skill set required by the board and for consulting the stakeholders on this issue.

Fabio Colasanti:

I have a doubt on point (a) Benchmarking board skill sets against similar corporate structures. We have said many times that there is no other structure like ICANN and the recent danger in going too much into the direction of corporate structure. This is not just the corporation running a corporation. This is something that has a wider remedy.

Chris Disspain:

Fabio, I agree with that. What this is intended to cover is ICANN as a corporation and as such the board has a number of over arching jobs to do legally. For example,

some corporate structures would have a benchmarking saying “hey board member, there should be an ordinate with regard to finance and experience.” They should be able to review public policy or would set up the policy that would be ICANN. That’s the point.

Fabio Colasanti:

I would go for something that would say, define the skill sets against the board of ICANN in order to fulfill the overall goal of ICANN.

Chris Disspain:

We’ve already done that in the main paragraph. What follows from (a) to (d) are some suggested mechanisms that could be used to bring this fruition.

Fabio Colasanti:

But then again, (a) practically what does it mean if we agree that there is nobody else like ICANN?

Brian Cute:

Without delving too deeply into word-smithing, corporate and other government structures cause they may be other types of structures.

Chris Disspain:

Yes, that’s fine, some of the corporate and other government structures. So just that we are clear, we could as an annex to this put in a list as some examples of corporate structures. Can we move to number 2, number 2

is review and reinforce the existing board training and skill building program. Again, there is an existing board training program, there's a skill building program and there's a doctorization of the program. So review and reinforce that.

Brian Cute:

Do we know is there a deficiency in what they're doing that we've identified? Frankly, I thought based on what I have seen that it was pretty good.

Chris Disspain:

I think it is pretty good too, but some of the feedback from board members has been that they would like to move stuff perhaps in suggesting that you do a review so that the board itself can input into the current system.

Brian Cute:

Still, I would think that if the recommendation is going to be that the board should be possibly revising the skill sets of board members. Reviewing and revising training might go in tandem with that recommendation.

Larry Strickling:

I don't object to the recommendation but this is an overall question that we need to address at some point. How are we going to give credit to ICANN for what they are already doing because the way that these come across is that we are identifying deficiencies? Here, we are not. Here the view is

that they are already doing this and that we have no reason to believe what they are doing is inadequate.

It might be worth taking another look at in light of the skill identification exercises. Maybe I'm into semantics that we can pass on until later but I do think that in terms of what we give to the community, we want to give credit where credit is due and not suggest that everything in here reflects inadequacy of the current practice.

Brian Cute:

I agree that should be part of the draft.

Chris Disspain:

Yes, but I would say that probably it's not largely part of the recommendation.

Brian Cute:

Not part of the recommendation, but part of the broader document.

Chris Disspain:

Yes, so I've made a note here saying that we should give credit. But I agree Larry; I think we need to make sure that we do that. Peter?

Peter Dengate Thrush:

This is the job of the board governor's committee and the chair of all governors' committees is doing it and doing it

reasonably well. I'm not sure what this renegotiating achieves. This is a keep on doing your job message. It's not broken, so -

Chris Disspain:

No, I've said in the beginning that these recommendations would first need to be discussed and then if we agree we can take it out. It comes from comment feedback from the members that they think that there could be some improvements which is why is simply says review.

Brian Cute:

And without knowing in any great detail the steps that have been taken, I think it would be worthwhile that those steps be redone and reexamined in the context of the skill sets being established. There are training problems which are splendid but are splendid for a more traditional corporate structure.

and it may be that there are other pieces that one could put into the mix based on the identification of one of those idiosyncratic things that are necessary for an ICANN approach. My own recommendation would be that credit be taken for good steps done, but that one of the things that people think about are improving it in other ways.

Chris Disspain:

Fine, and if we can look at the right hand board here, it says to where I've got review and reinforce the existing of all training and skill building program that has considered the expansion of board selection processes to include board development activities including the establishment of a board development committee. Can someone tell me what a board development committee does?

Brian Cute:

This comes out of a comparison of organizations. A number of organizations have starting calling their nominating procedure a development procedure. I think with the notion being that boards are things that require intentionally consideration of skills and other factors.

It is in some ways a semantic point rather than a structural point. But it is captured we felt by a lot of the suggestions here. It's just a labeling of the process to reflect that kind of consideration.

Chris Disspain:

Okay. So where we currently are with this then is that we have an online recommendation in the document. We have a slightly different spin or cut on that from the Berkman document. And we have a suggestion that it's probably not necessary to make the recommendation at all on this. And if we do, we must make sure to give credit for the work that has already been done. Can I get an idea from the review

team about consensus as to whether we leave it in or take it out? Is there anybody out there?

Brian Cote:

You can take it out is my recommendation.

Chris Disspain:

Okay, does anybody object if we take it out?

Larry Strickling:

I don't have a problem with in doing the recommendation when you give people advice; often times you are saying do more of, do less of, and continue. So the idea is that you want to wrap up some things that are already happening and you want to make sure they continue, say so. But I am worried about putting a recommendation out that suggests that it is not being done.

Chris Disspain:

So if we were to say continue to reinforce the existing board training skills program, Larry that would actually specify that point?

Larry Strickling:

That or if there are some of these that reflect current practice and you want to give credit for that and the recommendation just say there is already a lot of progress in these areas but we certainly recommend that these activities continue and be reinforced where appropriate. That's all.

Chris Disspain:

Okay, so what we're looking at if we decide to do this – and we may or may not – is to say something like the board of governments committee does the following things....all of which is brilliant and the recommendation is to continue to do so. Question, do we need to say that?

Brian Cute:

I don't think so. Not as a recommendation. You can recognize it in your introductory drafting to this section, but I would rather keep the recommendations to actionable.

Rob Faris:

I agree with that too. My only question was, is there a forward-looking future-looking recommendation a companion to the first? If in the first – and correct me if I'm misunderstanding this – the suggestion or the recommendation is that new and improved higher levels of skill sets should be identified and integrated into the board selection process.

I think a reasonable recommendation as a companion is to review and revise as necessary existing or training skill building programs. That's logical to me, but I'm not sure if that ties in cleanly with the first reference.

Brian Cute:

I'm fine with that.

Chris Disspain:

Can you just run that past me again Rob?

Rob Faris:

I might just tweak number 2 to say review and revise as necessary the existing board training and skill building programs because it is interrelated to the changes and skill sets that flow from number 1. To me that is logical otherwise I have no problem in dropping it.

Chris Disspain:

What I currently have – to think about this – but review and revise as necessary the existing board training and skill building program with a comment about the stuff that is already being done. So, number 3, ensure that nominating committee procedures of public event at the earliest possible stage of the process. Now this again flows from feedback and looking at the previous years of the nominating committee that stuff has come out at different times depending on who's chairing.

Brian Cute:

Is that handout from a long time ago. We can't hear you Warren.

Unidentified:

Brian?

Brian Cute:

Yes?

Unidentified: May I ask for the group to express itself and in that is more than one voice on the fundamental issue

Warren Adelman: Brian? Can you hear me now Brian?

Brian Cute: Yes we can.

Warren Adelman: I just have two comments. One what are the disadvantages of being remote is that your? What sounds like crash which we heard when you were on your break?

Brian Cute: We're all Okay.

Warren Adelman: We weren't sure if Peter had clocked you. The other thing that I just wanted to say is congratulations are forthcoming to Chris. I just saw a note that he will be joining the ICANN Board in June of 2011 based on his CCNSO nomination. So a little bit of news I just saw come over the wires and I wanted to point that out and congratulate Chris.

Unidentified: Congratulations, Chris.

Brian Cute: Fabio asked if we could get a sense of other review team members on the WG1 questions that were being discussed and for which I asked WG1 to take offline and come back to the group. I will ask people to make extremely brief comments about your sentiment on the discussion, and then WG1 please take it offline and come back with some

concrete recommendations. Anybody have an opinion to offer? Larry.

Larry Strickling:

I don't know if this a specific response to what Fabio put in his email, but I think we all have to acknowledge that Board effectiveness is affected by how the staff operates. As I've said to other people, we could have the best skilled motivated Board in the worlds.

But, if for example, they are only learning about matters coming before them at the last minute and aren't appropriately briefed, that is going to impair their effectiveness. And again I'm not saying that is the ICANN, it's just an example of how staff can have a big impact on the Board's ability to conduct its work.

I, though, have no specific evidence of how, if at all, the staff skill set, the staff processes, or anything else in fact is having any kind of deleterious effect on Boards. So, I'm not in the position to come in and say it needs to change because I just don't know.

But on the other hand, it does seem to me that there is an opportunity there that ought to be part of the constant evaluation of ICANN and certainly being done by their CEO and Chief Operating Office which is: do we have the right skill sets on our staff.

Are they doing what they need to do to make it so that when the Board is taking a matter, it is presented with them with issues resolved ahead of time with a clear recommendation that the staff work has been done to deal with all of the conflicting advice that comes in. I mean that is the way any good organization runs.

I just don't know how we as a review team, lacking any particular evidence that it's not working well, at least none that I've heard articulated here, translate that into a recommendation that goes to the Board for action.

Brian Cute:

Thank you Larry. Manal.

Manal Ismail:

I also agree to add this third area to work group in principal. First of all since the staff work has an important role in the efficiency and transparency and accountability of ICANN, and second because of the perception we already felt from some of the meetings and interviews we did Brussels.

So I think if we can work out the language that really translates and interprets what we heard and what we felt this would be definitely an area to consider.

Brian Cute:

Thank you Manal. Cheryl.

Cheryl Langdon-Orr:

Thank you Brian. Building on what Larry and Manal say, I would just like to mention to the record that some of us have had discussions during our break on this matter.

One approach, which is very much in my comfort zone, would be to indicate in our report that there is the perception of what we heard in our working in Brussels a concern amongst the community that there is undue influence of power in the manner in which staff briefs the Board and that may act as a gate or filter, noting that it is a perception.

And that a recommendation as to how, not just the skill set which I think needs to covered now thanks to bringing that in, a recommendation along the lines of asking the Board to discover mechanisms to test that isn't happening to assure the community would be worthwhile, I thought.

Brian Cute:

Thank you Cheryl. Mr. Zhang, please.

Zinsheng Zhang:

I support the principal for what Mr. Fabio said for the staff [inaudible 6:12.8] should be more accountability [inaudible 6:15.8]

Brian Cute:

Thank you. Larry.

Larry Strickling:

Well, again I'm guided a lot by what, I'm not sure we have in the record, but it occurred to me that out of all of the

Berkman's interviews that have been conducted, do they have any record, evidence that can guide us here?

Brian Cute:

Good question. Berkman's did you hear any evidence from your interviews of this issue - staff capture or -

Unidentified:

I think you should take us through your report Caroline.

Caroline Nolan:

Definitely. Actually if you look on our report, page 27, we outlined the issue in some more detail, and it picks up on many of the strands from this previous conversation.

Cheryl Langdon-Orr:

As I noted in our last remarks, we did run into this perception issue.

Caroline Nolan:

So our revised recommendation does respond to that and the perception as outlined in the issues portion of our document regarding the interaction between the staff and the Board, and concerns that staff plays a role in setting the broader agenda. To that extent, we adjusted our recommendation, and again taking Larry's notes about action ability into account, to reflect the idea of changing the visibility of that interaction.

Peter Dengate Thrush:

Can I suggest that what might be helpful, if it's alright, is actually to look at the introduction, the issues, of that document. If you'd just take us through that because part of the struggle here is some people saying is there an issue, do

we have evidence? I think your opening on page 27 actually deals with that because it talks about interviews, what people have said. I just think it might be worth actually if that's alright with everybody else.

Caroline Nolan:

Yeah, happy to. So the two broad issues as we've articulated them here and concerns expressed in some of the interviews and the public's admissions that the ICANN staff, rather than the Board, play the predominant role in setting the larger agenda and plans.

So that's again, I think we've then couched this in terms of a perception issue there. And then the second issue that we outlined is that the broad scope and complexity of activities result in a demanding work load which raises questions regarding their ability to devote sufficient time to overseeing activities of the staff. And so the recommendations that we make respond to those two issues.

Peter Dengate Thrush:

Okay there is a record of perception, so what is the analysis of the truth of that. What has the review team done? What has Berkman's done to investigate the truth of this perception? How is the Board agenda set? How much influence does the staff have over setting the agenda, and what does the Board think about the way the Board controls it?

I mean you can't just put up a perception and then say we need to treat it as true and start addressing it. You need to say if there's any truth to this perception. Unless you just want to deal with it as a perception. If you're taking the perception as true and then moving to solving it as if it were true without doing the -

Brian Cute:

Not taking it as true, taking it as fact - how about that. I mean this is based on a number of interviews from people in the community who have told us and communicated this perception in a number of different ways.

Peter Dengate Thrush:

I'm not denying the existence of the perception. I'm saying what you now need to do with the perception is investigate it - before you can start remedying it, you need to investigate it.

Brian Cute:

Which has been done.

Peter Dengate Thrush:

So what's the investigation.

Brian Cute:

The DAG. There have been instances in the DAG, the development of the DAG, where substance appeared in the DAG that came from nowhere in the community or certainly nowhere from the active participants in the respective processes.

So language that was clearly staff originated based on no input from the community is one example. We have the recent example of the addition of the terrorism element in the DAG that appeared, again from the communities perspective, that we don't know where came from.

Peter Dengate Thrush:

So any recommendation ought to be in relation to the new detailed [inaudible10:36:0]. What you're suggesting - you actually didn't say that. You said the setting of agendas which is Board meetings.

Brian Cute:

But that was from Berkman's' interviews. We don't mix and match here. We had our own interviews on the working groups. We talked to people in working groups and got feedback, as did Berkman's. So don't mix and match the two. Caroline, how many interviews did you do total and how often did you hear this roughly? Was this a fairly common theme?

Peter Dengate Thrush:

I'm not denying the perception. I'm talking about what have you done to check the veracity of the perceptions. You can't move you see it as a problem here, then you're moving into solution mode. If the perception is wrong, then the remediation is address the perception. If the perception is right, then you need to address the underlying cause. Peter, what have you -

Brian Cute:

I would disagree on this point, actually. I think our mandate here was to identify issues based on factual analysis and observations, including entries and case studies. As I explained yesterday, we had a particular methodology to identify key facts. Perceptions are a fact if expressed in interviews.

We collected that. I think the next recommendation was - the next step of the analysis was to think about appropriate ways to address these issues that have been identified in our research. I think the result is a recommendation, as we revised it yesterday, which includes, if you could pull it up on the chart, some flexibility as regard to the question: Is it mostly.

And especially in individual cases more perception issue or is it actually really a substantive structural problem. I think we are not in a position to answer this question based on the research we've done. The only thing we can say is this has been quite an issue. This has come up in case studies. This has come up in interviews.

If we get the chart back on line you will see that we address that and leave it, to a certain extent, to the Board and the ICANN staff to do a more detailed analysis. Of course, we're happy to work together with you and your staff to figure out in specific cases what's the validity of the claims that have been made.

You will see that we include language, such as, to strengthen the capacity but the visibility of these interactions. We don't have the opportunity, I guess, to go back and do in-depth reviews of your internal processes.

Peter Dengate Thrush:

You are doing the second thing then? You are addressing the perception?

Caroline Nolan:

Yes.

Unidentified:

[Inaudible14:00] is an important word in the recommendation.

Brian Cute:

One minor point is that our hope is that in this approach there is this unknown mix of perception and substance is that the suggested courses of action would address both, recognizing that they are both of concern -- if they can be addressed in the same way without digging apart all of the internal communications within ICANN -

Peter Dengate Thrush:

Board members aren't going to accept recommendations directed at substance that you haven't investigated. They will accept a recommendation based on dealing with a perception that you have investigated.

Brian Cute:

Fair enough. Manal.

Manal Ismail:

I think if we have a consistent perception it only makes sense that this should be flagged out in order to be addressed either by proven [inaudible 15:06.2] or either addressed by more clarification or addressed by fixing the issue. We cannot ignore the perception. It has to be flagged out and addressed.

Brian Cute:

I just want to be clear on your last point, Peter, if the group is saying there is a perception and we're treating that perception as a fact and we're addressing the perception in our recommendation, is that something the Board would not accept?

Peter Dengate Thrush:

If there was a perception and you had a recommendation on how to deal with that perception, then that's exactly fine.

Brian Cute:

Okay, thank you. Erick, I think you had your hand up.

Erick Iriarte Ahon:

More again on comments. We're talking a lot of things about [inaudible 15:38.1] Appearing all the working groups in some case in a specific recommendation - my proposal as I said a few minutes ago - make some general recommendation before the [inaudible 16:13.3] - with that you cover all the possibilities that appear and the focus for us to work is a more a general thing.

Brian Cute:

Thank you. I guess on this conversation I guess we're going to ask working group 1 to do off and do some

redrafting and please make that contribution directly. Warren, you've got your hand up, please.

Warren Adelman:

Yeah, I just wanted to touch on this issue of capture and maybe I'm going to touch back on working group 1. It's very difficult, obviously, to test for capture. I mean often if you want to test for staff capture, you could look at things like how a staff's feathering its nest, etc, and this is an indication of staff wrecking the show, etc, but there are lots of ways to debunk that as well.

So, I think this is part of the reason why and I think it's even enumerated in the document Denise presented to us on a number of occasions on the affirmation of backing document as publication of Board member positions and of thinking of particular votes because in an organization that is representing diverse multi-stake holder type of environment you would expect the plethora of positions potentially.

What often comes across is this unanimity of decision making which is also an indication of capture when there's no reflection of alternate opinions amongst Board members etc. So I think that also, I would ask Peter what would you suggest are good methods to test capture?

Peter Dengate Thrush:

My first reaction is just to go back to yesterday's Board resolution which I picked at random generally would show,

in fact, the scenes and people recording their procedure was the reason, I recall, for selecting Columbia or somewhere as a venue.

I mean the reality on the Board is that particularly at the fact to face meetings there are long discussions by Board members at the public Board meeting about the positions, and I think you see considerable discussion and divergence. So if that's your measure, I think, and I think it probably could be a measure, it's visible.

Brian Cate:

Anyone else? Chris.

Chris Disspain:

Working Group 1 is going to try and work on this. Let me see if I can pull some threads together here. It seems to me that what we are actually talking about and it is a perception, is that, and there were many different examples of it, it is similar to the discussion we had yesterday about people complaining about the way the staff does the summaries.

They say that they aren't accurate. Now, that's a perception. I could argue that it's a fact if one of my inputs has not been summarized. How do I test that? If it's just me that says it hasn't been. So whether that's a fact or perhaps a truth; whereas, a perception is a difficult thing to deal with.

But none the less - this whole thing stems from - let's just call it work staff capture perception - and it manifests itself in people's minds in many, many different ways. Now the problem is that that current suggested recommendation by Berkman is too subtle, and Fabio's thing is not subtle enough.

So what we need to try to do, it seems to me, is to find a way of specifically, as I've said to you Caroline, to continue to strengthen the capacity of the Board to proactively and visibly steer ICANN activities. Will we interpret it as: the Board should interfere more, which is not what you mean.

What you're trying to say is the Board needs to be more engaged to ensure that they are - insertion of the words and visibly. So what we're trying to find is somewhere that little subtleness and something that deals with the perception, specifically the perception whether that is something sorry Caroline.

Caroline Nolan:

I think that's right. We outlined it in the body of the document and the issues and observations and I think we can pull that in to be more specific in the recommendation.

Brian Cate:

Chris, [inaudible 20.59.0] this idea behind Berkman recommendation that the Board should be and should be seen as being effectively in charge. That is what drives the perception capture. The second point it, the Board

perceived as being of aware of its responsibilities in the area of accountability for the organization as a whole. So the Board should be visibly seen as taking that as an important role.

Brian Cute:

Okay. I'm going to draw a line under this where everyone has to go offline and come back with recommendations. I think we have a good sense of the framework. Ok let's move to Working Group 2's presentation. And Larry is going to take that for us.

Larry Strickling:

We've got the document. I'll just run through quickly what is in the front half of the document and where we still have gaps but would welcome any input from folks as to things that are missing in the background descriptions. The background statement on page 1 picks up the relevant provisions of the bylaws.

I think other folks have identified this, not really confusion, but the fact that the bylaws use both the word advice and the word opinion. I think I found a fix for that. I'm going to just drop a footnote that says that we will use the word advice throughout the document it meant to refer to with what the bylaws are asking for and we'll use something like other input or something to reflect the more informal things that are done between GAC and the Board.

Then on page 2 we have a brief discussion of the GAC operating principles that effect this that again provide very little additional clarity or definition on the bylaw provisions but they are worthy of mention. We've got a summary of recent GAC advice.

The one fact that we are trying to determine is the number of occasions where the Board is actually, specifically in writing of the opinion that the GAC - there is some sense I think on the part of some Board members that by virtue of the GAC attending Board meetings they're on notice of everything.

But you'll see when we get to the recommendations that that ambiguity I believe has led to some issues and frankly it would be useful to know what exactly the Board is more formally invoked the provision of the bylaw to seek GAC opinion or GAC advice. So that's a request we have out to Denise right now - to get a response.

We've tried to do it on our own and I think so far we've documented two occasions where there has been a written request for advice from the GAC. But we'll see what the ICANN folks come up with. So that's a factoid that we still need.

There is the yellow highlighted language is just a place holder to go back and provide a very brief summary of the

Berkman case studies that relate to GAC which would be the GLTD's case study and the DOT XXX case study. No intentions here to do anything other than refer to the case study.

I don't see any reason to reproduce it in our work, but I do think we want to draw some kind of - what did we learn from these case studies as it deals with the GAC Board relationship and I've identified a couple of bullet points under each of the case studies that I think are worthy of mention.

The next factual section deals with the establishment of the joint working group and this probably needs to be we'll continue to update this based on any new information we have. I think what's written here is now at least a month old and I frankly don't know if there is anything to update.

I know some of the folks had a phone conversation Heather Dryden so I don't know if there's anything to update there. I would appreciate folks who were on that call passing on to me. Then I've attempted to summarize the public input that was received on the Board GAC relationship that carries over through page 4 onto page 5.

Page 5 then lists the questions for review that we were looking at. Then we get into the finding and recommendations on page 6. So unless folks believe there

is something - well let me just stop. Is there anything that's missing from this discussion up to the point of the actual findings and recommendations?

So why don't we go through the findings. There are basically well let's just go through this paragraph by paragraph. Unlike what Working Group 1 did, this is drafted to actually provide some factual findings based on what has been discussed in the preceding pages.

So that's a little different approach, but at least the idea being we can actually say what we find the facts to be and then talk about what our recommendations are to deal with it. The first paragraph of the finding really is a finding that finds that the current relationship is dysfunctional and has been so for some time, and that basically indicates that some - our view is that this is a problem that could have been addressed before now and needs to be addressed.

That the joint Board GAC working group in an appropriate vehicle for considering this, but in light of how long this problem has persisted that we are not just going to leave this to the joint Board GAC working group but are going to go beyond that to talk about the issues we see that really ought to be resolved by this review before it concludes in order for us to believe that there's been an appropriate assessment done. I'll pause on that. Any reaction to paragraph one?

Brian Cute:

What's the basis for finding that the relationship is dysfunctional?

Larry Strickling:

Well I think if you go back and look at the summary of the Berkman case studies, I don't see how you could reach any other conclusion. How can we have GAC letters going constantly on the GTLD process and not being responded to. The fact that neither the Board nor the GAC has a shared view as to what advice is that triggers the Board response.

The fact that there have been few situations where the Board has actually responded and said we are accepting this advice or not accepting this advice and gone on to invoke the rest of the bylaws. It seems to me, my read of the evidence is that there's been a virtual complete failure of process on these more contentious issues over the last several years based on the case studies and based on the interviews we've conducted. And I think -

Brian Cute:

Wondering if a little summary like that would be helpful at some point?

Larry Strickling:

Well I think if you read through the previous five pages you just collect that.

Brian Cate: I just wonder if it would help to maybe summarize it at that point what the key elements because some of the things before may or may not lead to that conclusion.

Larry Strickling: Sure.

Brian Cate: Taking the ones that lead to this - it would just be helpful to group those at that point.

Larry Strickling: Happy to do so, moving on then, any other comments?

Manal Ismail: Can I propose that we say that it's maybe not functioning well?

Larry Strickling: That is the definition of dysfunctional.

Manal Ismail: Dysfunctional is not functioning well? I'm sorry, it is my language. Because I thought it is not functioning at all. No? Okay.

Larry Strickling: By the way, I should have said before we get into this, that in addition to providing a summary of the case studies, Bill Dee, I guess at Fabio's invitation, also has provided some edits to the document. I would just like to, if it's Okay, to retain some editorial privileges to work those edits in where appropriate.

When we get to the last recommendation, Erick has an addition to a previous formulation that I think we should talk to as well. We'll get to that. Okay. Moving to a more specific recommendation, the first one is that the Board and GAC needs to clarify what constitutes an opinion or I guess advice, whatever word we're going to use.

Interestingly, what triggers - the Board has an obligation to seek an opinion but then elsewhere in the bylaws it refers to advice - so anyway, I will clarify opinion vs. advice. There needs to be a shared understanding as to what is an opinion and advice under the bylaws that triggers this very precise obligation on the part of the Board either to follow the advice or work it out with the GAC as to why they don't.

And again as I said yesterday, I think that we have a problem here that the GAC has a very expansive view as to what constitutes advice when it's not a consensus position, when it may be even inconsistent view of governments. I just don't think it's reasonable if we're going to put the Board to a certain discipline here and ICANN to a certain discipline to force it to be responding to something that itself is not a little more formal in terms of triggering the particular obligation.

Nothing in any of this will in any way restrict the GAC or any individual government from sending its viewpoints in to ICANN to be considered the course of things. But I

think what we really have to focus on is what triggers the kind of special treatment the GAC advise gets under the bylaws.

That I think starts with a clarification of what advice is. So, that's captured in that paragraph beginning "first both the Board." Any comments or opinions? Fabio?

Brian Cute:

I try to agree with everything. Can we possibly mention at the end of where we talk about a more formal [inaudible 32:10.5] process including establishment of an [inaudible 32:14.1] that was specifically suggested by many people. And that when we were in Marina Del Ray [inaudible 32.21.0] indicated to us that he has created a number of those [inaudible 32:23.4] for certain work screens.

In other words, that there would be somewhere at depositories of all official advice. This is probably what you had behind the formal documented process. Maybe addendum to the sentence "which would include the creation of [inaudible 23:42.4].

Larry Strickling:

You're actually on the next paragraph, I think, which is fine. And actually I thought we had used the word data base, but yes that is captured in the idea of documenting Boards consideration of and response to such advice.

So the idea of there then being a place where all that is captured for public review, whether on the website or data base, whatever word you want to use, that's implicit in this but we can make it explicit. So since Fabio has moved us into that paragraph, again, this picks up the second half of the major recommendation which is that at the same time we need a more formal definition of advice.

We need a more formal process as to what the Board will do with it when it gets it and having the documentation for it. Any comments on that paragraph? Okay, the next paragraph beginning with the word 'second' except the idea that there's a timeliness issue here. Again, I know the working group has focused on this.

So our advice here - we have no specific recommendation here other than they need to work together to figure out how to have the advice both provided and considered on a more timely basis. I do think that if they do what is in the previous two paragraphs about having a more formal process, that should help a lot.

I, in no means, want to exclude other options being considered. One of the ones, meeting face to face was one of the Berkman recommendations which we can put specifically in that paragraph; although, I've captured it in a later paragraph.

No prescriptive recommendations here but just recognizing that timeliness has got to be improved as part of this. Any comments on that? The next tries to deal with the situation in we now have a way to deal with the precise language of the bylaws when advice is asked for and the Board's obligation is to, yet I think everyone we have talked to about this evaluation believes that having the GAC involved very early in the policy development process will facilitate what eventually happens near the end when the formal process is invoked.

So this paragraph is to capture the idea how to get the GAC and its members involved early own in the policy development process while it's still like the sustaining organization with constituency level. Again, as we've pointed out yesterday, this is happening on an informal basis already.

At this point, we're just suggesting what work can be done in that area out of the evaluated. And then to capture some of the points from yesterday, we've changed the end of the paragraph to talk about the Board and the GAC developing and implementing actions to assure that the GAC is fully informed as to the policy agenda at ICANN.

And that ICANN policy staff is aware and sensitive to GAC concerns. Before we had had some language that related to the secretary, that's all been taken out at this

point, but we've retained the concept of getting people talking to each other and sharing information early in the process to facilitate the overall review.

Picking up on the two specific Berkman comments, there caption in the last sentence which says "in doing so the Board and the GAC may wish to consider creating or revising the role of the ICANN staff support to the GAC and also consider whether the Board and GAC would benefit from more frequent joint meetings." So that just picks up the Berkman recommendations.

Again, we're not being prescriptive, we're simply tossing those out as things the working group can consider. I'll pause to see if there are any comments on that one. Maybe that resolved some of the concerns that folks had yesterday about some of the early language.

Then the last paragraph has been recast because this dealt with the issue of how to engage the governments with more commitment and engagement on their part to support the GAC process. Originally, the wording gave people some heartburn for good reason.

So we've rewritten this now turning on as a recommendation to the Board so we now ask the Board to endeavor to increase the level of support and commitment of governments to GAC process. Again, trying to get them

to participate on a timely basis and at a sufficiently authoritative level.

We don't really raise the issue of who attends, just to make sure as we point out at the next sentence that making sure that whoever is attending GAC meetings are prepared and authorized to speak on behalf of their countries and organizations.

And then we do tee up in the last sentence the idea that the Board working with the GAC should consider establishing process by which ICANN engages senior government officials on public policy issues on a regular and collective basis. Which I think leaves the field wide open on that regard.

Erick had a good suggestion and that I think ought to be worked into this which was to provide a specific focus in this section on developing countries and language issues that follow on from engaging with a certain number of the developing countries. I think that's a good suggestion and should be added here.

Since he didn't have the benefit of this language, I didn't want to be presumptuous in terms of how to put it in. I think in working with Erick we can add that concept if people are fine with that. Any comments on this? Is there

anything we should be recommending on that we didn't talk about? Again this captures on the Berkman. It's all in here.

Brian Cate:

Just in fairness, I think in this you can show that the longstanding practice of treating the GAC as on note through having the liaison on the Board has actually lead to the GAC being taken by surprise. In another words, the absence of a formal note may have actually caused the problem that it was therefore done nothing but make itself push back, I'll use the word frivolous.

Larry Strickling:

Well I can tone down the frivolous. I'm surprised people haven't been making me tone down the language. We can tone that down a little bit. Here is what I would suggest in response is that I think the Board is better served by abandoning that approach because it deals with the timeliness issue.

If the idea is well because the GAC heard this in a Board meeting they're now on notice to go off and do something, then you don't have any framework within which to ask for an opinion by a certain date and time.

Whereas, if the more formal request were going out, the Board would have the opportunity to indicate to the GAC what is the relevant time frame within which to receive this consensus view that supports the process.

Brian Cute:

That's a slightly different point. I agree with that. Asking the GAC more formally earlier was a good idea. I'm just reacting to suggesting that the current mechanism is frivolous when in fact it doesn't appear to have led to any actual problems.

Larry Strickling:

Well, except that I think the GAC would say they never received, or rarely have received, the feedback from the Board that are called for by the bylaws. An again, if there were a specific triggering of the bylaw, you would avoid that issue.

The fact that the GAC feels they've had to send multiple letters on the same topic to the Board would suggest that that piece again I can't tell you that I think that that does stem from a sense that the Board doesn't take formally this whole issue of what does it do with GAC advice when it comes in. Anything we can do to make it more formal would assist both sides.

Brian Cute:

I agree. I'm just talking about the comment in relation to the notice. Recommendations on how to improve relations to the GAC will be well received by the GAC.

Larry Strickling:

Let me work on the actual wording. I do not feel your comment is frivolous in the least.

Brian Cute:

Okay I think we're done. Thank you very much, anything from Berkman before we close off on 2? Thank you Larry and thank you for your efficiency, we've got fifteen minutes or so before we have working lunch. Okay here's our statement of purpose.

We're evaluating the processes by which ICANN receives public input including adequate explanations of decision taken and the rationale therefore which is expressed from the AOC. The extent to which ICANN's decisions are embraced, supported, and accepted by the public and the community, the policy development process to facilitate enhanced cross community deliberations and effective and timely policy development.

So factual statements we've identified in the relevant provisions of the bylaws, the GNSO policy development process, the CCNSO policy development process, and have the base for those processes in the documents. We are going on recent public comment periods and policy development processes that Berkman did a review for each specific comment periods which we are going to be inserting into this document.

That's not done yet, but we will be inserting that fact basis into the document. Looking at what's presently being done, Board public participation committee, we had an interview with John Jack which was very informative and again

revealed many of the kudos the organization deserves for what it's achieved in the past few years improving public participation which will be mentioned clearly and underlined in our report.

The new GNSO policy development process is also underway. That is something that we need to factor in as we make our recommendations so as to be aware as to what's coming out of that process and not to step on good things that are about to surface.

There's also working on cross community deliberations which we will insert Cheryl's observations because she's participated in that and had some clear views as to how those deliberations have worked recently. We just had recommendation six deliberations as example.

Next we have public comment to the ATRT on these issues. Generally speaking we heard from a lot of different sources. The volume of the work that's out there in terms of all the processes that people have to pay attention to as being an issue and a problem of transparency perhaps.

You know the kind of ping ponging that we've discussed the fact that processes get to a point where it looks like they may be completed and then something surfaces and sends it back down for a redo or continuation. The question about

whether the comments summaries are complete and accurate, obviously.

We have a number of quoted comments here, we can probably put a few more in, but those are the things we are hearing from the community. So if you want to move on down to the questions to review. So on the questions for review; this is the list of them: Is ICANN's support for the policy development process adequate to ensure effective and timely policy development.

That was a question because there were complaints about the timing of the TFE process. For example, how long that took the EOI was an example of people feeling very frustrated at the missed targeted dates for completion of work. Does the existing policy development process adequately facilitate and enhance cross community deliberations.

It is an open question. We have some recent new activity, again its rhetorical. There's come activity to be taken into account. Are ICANN Board decision accepted by the community? Is there any that stand out that were not accepted, supported, or embraced?

That's a difficult question. We've heard feedback from the community. I'm not highlighting any one particular decision here as falling in that category for the moment. Is

the policy process steering committee, DP, and process policy steering committee work group efforts adequately addressing timely and effective policy development?

That's a specific bit of work again James and Cheryl are involved in that and we are going to map our recommendations against the recommendations that are coming out of these processes to make sure if there is any redundancy.

We're not going to reinvent the wheel. Does the level of multi-lingual in the policy developing process and the Board decision making support sufficient access and opportunity to participate for the global community? We've heard comments about this.

One sense is that ICANN has done a much better job. There seems to be a call toward. Just as an overarching comment. Would public input be improved if ICANN's notice of current processes this is where we moved would certain things be improved by iterations of questions?

So would public input be improved if ICANN's notice and current processes had stratified categories, examples being used as notice of inquiry or agreement paper, as you said Fabio, or notice of proposed policy banking? This is a question we framed. Would public input be improved if ICANN's notice and comment processes were prioritized

based on rightness or urgency established by coordinating community input and consultations with staff?

We recognize that JSO is working on a prioritization as well that we have to map against. Next question, would public input be improved if ICANN's notice and counter processes have different timelines based on rightness or urgency established by coordinating community input and consultation staff? This again is tied to prioritization and managing the volume if you will.

Last two questions. Would cross community deliberations be improved with the establishment of procedures for cross community deliberations? For example, normal procedures or fast track procedures and the establishment of explicit mechanisms to trigger cross community deliberations. It's an open question.

Last, would public and [inaudible 49:44.9] community embrace of ICANN borders be improved if the resolutions articulated the rationale for the decision taking including the reasons various public input was taken or rejected in reaching the decision.

We've had a discussion just in the last day and today on this very point. So to the draft proposed recommendations. First one, the Board should direct the adoption of public notice and comment processes that are stratified. For

example, notice of increase notice of policy making and prioritized.

Prioritization and stratification would be established based on coordinated community input and consultation with staff. Again the notion here is that we have a cycle of comment periods that was stratified and prioritized it would potentially help address the volume issue.

It would reshape the way in which information is gathered from the community at the early stages of policy development and provide the community a vehicle through which it could provide the Board and staff with input about pending policy issues, perspective policy issues.

So that's the thrust of the recommendation. Comment? Questions? Next. Two - public notice and comment processes should provide for both distinct comment cycle and a reply comment cycle that allows community respondents to address and rebut agreements raised in opposing parties' comments.

The value of this is that it provides the Board, the reply comment cycle in particular, would provide the Board with argumentative basis upon which it could found its decisions and also articulate more fully the rationale for those decisions. Questions? Comments? Chris.

Chris Disspain:

Could you just walk me through how that would work?

Brian Cute:

Hypothetical policy question: Should vertical integration take place? Chris files comments saying yes it should and here are the five reasons why. Here's the rationale. Brian files comments saying no it shouldn't and here are the six rationales or reasons why.

That's comment cycle that's taken in by the staff. Then reply comment cycle, the participants themselves in the hypothetical, are then asked to attack, undermine. I go with Chris's agreements. I say here's why Chris's agreements are flawed. His economic analysis is not sound.

His expressment on Board decisions is not well founded. And Chris does the same thing in response to Brian's comments. You now have a comment basis that has laid out for the Board in a more full way the rationale, the basis on which the decision can be and should be made. That's the purpose.

Chris Disspain:

Which is fine, so you'd double the comment period?

Brian Cute:

You run successive comment periods. Questions? Comments? It doesn't necessarily have to take longer. It just has to have it set out that before you give people 90 days to file, you might do 60 and 30.

Chris Disspain:

So would you proactively reach out. Say I filed my comment saying this is the most wonderful, stunningly, amazing idea. Then you file your comments saying this is ridiculously stupid idea. Now would someone reach out to us and say you two have to fight it out in Jell-O over there?

Brian Cute:

No. You're an interested party. These are the vehicle through which you can give input to the Board or to the staff and you are motivated to file reply comments. In practice, there are some participants in other industries who file only in the reply round sometimes and not the initial round.

Cheryl Langdon-Orr:

Just on that, there was one exploration in public comments, it may have been two but I don't think it was more than two or three, where we used a different tool. It was more of a message Board tool for public comment input. It was specifically designed to encourage this and it would be interesting, it wasn't enough data to look if the outcome of those processes is any better or dramatically differently.

One of the things it was trying to do is address the issue of people feeling that their voices had been heard and that now it's being addressed in a different way, so to some extent we haven't gone back to that tool because the purpose it was trying to meet is being met in another way not. But it might be an interesting mechanism to explore if this particular mechanism has been implemented.

Brian Cute:

Thanks Cheryl. Any other comments on this? Okay, moving on. Number three: Timelines for public notice and comments should be reviewed and adjusted to provide adequate opportunity for meaningful and timely comment or reply comment.

Comments should be of a fixed duration. So again the timing, you do 30 day, 60 day. That's just something that would have to be set as part of the new comment cycle. Any observations, comments, reactions? Number four: The Board should in publishing decisions about the practice of articulating the basis for its decision and identify the public comment that was persuasive in reaching its decision.

Peter Dengate Thrush:

I've got a minor comment on that. Let's take out the word public, just the comment or input because that seems to exclude. We tend to talk about GAC advice - it's just all the input.

Brian Cute:

So remove public timelines for notice comment. I'm sorry number four, identify the comment -

Peter Dengate Thrush:

What I'm saying is to say input or identify the reason or -

Brian Cute:

The GAC advice is going to come through the comment cycle. Is that what we're getting at Peter? Comments and

input that was persuasive in reaching its decision. So number five which is a companion to number four: The Board should identify the relevant basis - take out public, leave comment - so basis, comment and input.

How about the relevant comment and input that was remove basis, so the Board should identify the relevant comment and input that was not accepted in making its decision. The Board should articulate the rationale for rejecting relevant comment in reaching its decision. The word relevant there gives the Board latitude.

You don't have to respond to 75. If 50 said the same thing and you're rejecting that argument, then you can pick one. But relevant is a meaningful term. So number six: The Board should ensure that access to and documentation within PDP processes and the public input processes are to the maximum extent feasible provided in a multilingual manner. Companion number seven: The Board should publish -

Peter Dengate Thrush:

On six, we said that here we would say something about the [inaudible59:01.2] perhaps. When it came to access of documents there was a condition by Berkman about creating a transparency having clear rules about access to documents and then we felt that the -

Cheryl Langdon-Orr:

That was really more an issue for work group four not in work group three on the ability to have fair and reasonable access to documentation could be triggered - it doesn't actually belong in three's recommendation.

Brian Cute:

On number seven: The Board should publish its decisions in a multilingual manner to the maximum extent feasible. Number eight: The Board should direct the creation of a mechanism and/or support role at the staff level. The purpose of which is to ensure that all policy making processes within ICANN are run in accordance with ICANN bylaws and respective PDP procedures.

Peter Dengate Thrush:

So what's the evidence of a defect that this is designed to remove?

Brian Cute:

It's the ping ponging effect if you will of processes getting down the road and having -

Peter Dengate Thrush:

They're not outside the bylaws. They may be inefficient but making them run according to the bylaws might stop ping ponging.

Brian Cute:

Well I guess respect to PDP procedures has greater weight too but also GAC advice when that comes in and the effect that has on certain processes -

Peter Dengate Thrush:

None of them make sense [inaudible 1:00:54.5]

Brian Cute: And does David - is he responsible to observe every input into the process?

Peter Dengate Thrush: All staff is obliged to make sure that they operate in accordance with by laws and procedures.

Brian Cute: And does David have the ability to indicate to NAC or NSO or the GAC when they may have missed a procedural step? Raise a red flag and say this input is needed at this time because -

Peter Dengate Thrush: That recommendation wouldn't track there -

Brian Cute: Conceptually that's the notion that there be a single set of eye's responsibility for the totality of the process, the entire process of policy making all of the inputs.

Peter Dengate Thrush: Well it doesn't say that. The answer as I see it - that's already met because we have somebody in charge of that right now. All you need to do is say what's wrong, what's not happening, and how your recommendation will fix it. Saying ping ponging doesn't.

Brian Cute: Well what this relates to is the other concept that we've had of the checklist from the Board. So if something comes up to the Board at the end of the process.

Peter Dengate Thrush:

Well I don't see a checklist at all.

Brian Cute:

It's not on the page, Peter. I'm just speaking conceptually. That we were trying to ensure that when a process is undertaken and that an item comes up to the Board for decision, that each of the constituent inputs are there. That they've taken place, that they've happened according to procedure. They've been timely.

That GAC input is there. That PDP processes have been respected and are complete and that the Board is in the position to sign off on something and not send it back to the community once again.

Cheryl Langdon-Orr:

We can resubmit this to recognize that David has a specific role here.

Peter Dengate Thrush:

A new process that doesn't apparently exist and your recommendation is that we need someone to make sure that the current thing's working. You need to clarify what you're trying to do. I don't want to say the process so the Board gets a check list - the Board should get a checklist at the end of everything -

Cheryl Langdon-Orr:

There's only one part of what this particular recommendation is trying to do - to get that role back slightly from the checklist. But we perhaps should be saying here is the Board should direct David on his role,

whatever that is, to review the mechanisms and support roles the staff literally to ensure that -

Peter Dengate Thrush:

Why? Because [inaudible1:03:39.6] let's be clear about what's the problem and then what do you want to fix. I don't think it's there yet. What are you saying? That there is policy development processes that are on the outside of the bylaws?

Brian Cute:

It's the totality of policy making process which would include GAC inputs.

Cheryl Langdon-Orr:

I think that because the words ICANN bylaws are in there, that's the flag issue. That's what the problem is - just in accordance with the respective PDP processes and SOAC inputs - something along those lines.

Peter Dengate Thrush:

So if you give us that recommendation and I tell you yes that's David's job, then you'll be satisfied? Nothing will change because nothing's identified as being broken and the current staff mechanism will meet your recommendation. I'm sure you want more than that. I'm sure you've got a problem that you see -

Cheryl Langdon-Orr:

And that then leads to your check list. That's where your checklist comes in to ensure that the AC the ESO and the PC and all those things have run according to the procedures and the procedures should be under the bylaws

Brian Cute: And there is a staff component itself in terms of shepherding the process?

Cheryl Langdon-Orr: So we just need to reword that because it doesn't make sense to me too.

Brian Cute: Okay so we can take another stab at that. Number nine. Well that's tied to number eight, so let's take another stab at that. Number ten: The Board should request the ACs and SOs in coordination with the staff to develop cross community deliberation processes mechanisms to initiate cross community deliberations processes as well as the potential role for ad hock and fast track procedures.

Peter Dengate Thrush: Why should we? There's no reason. What's wrong with the one we've just done dealing with recommendation six in the rights of the - there's a cross community deliberation process -

Cheryl Langdon- Orr: And in fact that's a shining example of what we would like seeing being rectifiable in some way - when this type of issue comes up, there's a mechanism to stop - that was totally ad hock and in fact has no teeth as I think several people have pointed out to us because it was not a SO chartered PDP process. So to get the validation of that type of exercise is what we're asking for.

Erick Iriarte Ahon: I suggest that point nine

Brian Cute: We're on ten actually. We're on ten.

Peter Dengate Thrush: Eight and nine are off the table for reworking.

Brian Cute: Oh you have a suggestion for nine?

Erick Iriarte Ahon: Yes. All the process needs to be based multilingual perspective - this includes the final sentence. The idea is not only have the documents in different language it is had the possibility to discuss in different language and also the results we share in different language. More of the case the results are only in English.

I don't want only to put the comments of multi-lingual's here and then multi-lingual's here try to be more inclusive and not only give transparency with diversity of the language in documents we have to make accountability in the possibility of discuss that information in their own language.

Brian Cute: Okay well you're on the redrafting team for eight and nine. That you for that. Chris, do you have a comment?

Chris Disspain: There is a significant difference between asking for a mechanism to start the cross community deliberation

process on the one hand. On the other hand, asking for something that gives it teeth.

Cheryl Langdon-Orr:

That's the difference between what Brian's written and what I want.

Chris Disspain:

Well if you want to provide - if you want the output of the cross community working group to have any standing other than the comment, then that is a completely different kettle of fish. Because you end up with - if it's about policy then it has to go through a policy development process. So if what you want is for there to be what currently doesn't exist is a cross SO policy development process mechanism there is no - which is what?

Cheryl Langdon-Orr:

I think what Brian is trying to -

Peter Dengate Thrush:

I think the best recommendation here would be to take this away and work out how to solve it. I think Chris is actually right. The development of the PDP inside the CCNSA hugely contentious because the CC's have a particularly strong view about the ability of the PDP to do anything to them. And equally in the DNSO the contracting parties are very strong contractual positions.

So everyone has their own hedge which doesn't want other people have PDP power over including the colleagues. So creating a mechanism whereby they can be completely a

cross constituency PDP is actually probably a very good one but can take quite a lot of working and probably negotiating. That's not what that says.

Cheryl Langdon-Orr:

That's what I want that to say. I understand that's not what that says.

Peter Dengate Thrush:

I think a recommendation making initiating the discussion or something would be very helpful.

Cheryl Langdon-Orr:

It also goes back to very much what the public participation observations are saying to us and that is the earlier you get interaction and involvement the more widely dispersed across the community that interaction and involvement is in any of its participation processes the better the outcomes are.

Unidentified:

Hold on. I've got that problem taken offline to be redrafted but it's important that we get this real clear because I'm probably not going to get involved in the redrafting. If what you are talking about is to recommend that work be done to see if it is possible to create a joint SO process than that's fine but what's the problem that's solving?

Cheryl Langdon-Orr:

That any activities to date with the exception of those already in fast track because they had a particular structure which gave it standing have no standing in their outcomes.

So for example, if [inaudible 1:11:07.4] work group which is [inaudible 1:11:13.6] technically -

Unidentified: Did that concept policy -

Cheryl Langdon-Orr: That's exactly -

Unidentified: They've got to go back to their bodies and pass them. Is that such a burden that we need to go through this? What's wrong with taking the work back to CCNSO or any of the constituents perhaps and getting them as quickly as they can adopt them as their own? Is it because that's too cumbersome?

Cheryl Langdon-Orr: What happens when you bring in particularly the GAC into is we have a particularly long time lag. And that certainly was the case in the recommendation six exercises. In fact only one of the ACs could even endorse the process of the record in a timely manner.

Unidentified: So could we use recommendation six as an example? Could you tell me what you want the standing of the outcome of recommendation six to be?

Cheryl Langdon-Orr: That as it involved an SO and two ACs [inaudible1:12:16.2] it should be seen and the [inaudible1:12:22.0] was able to make it endorsed and then go on to make it advice. If we didn't prepare to public

comment which we have done, it wouldn't have had any standing at all?

Unidentified:

So what standing did you want it to have?

Cheryl Langdon-Orr:

Slightly higher than Mrs. Jones writing in and saying dear Board we think public order is word that should be seen in the GAC.

Unidentified:

As a matter it has been given a great deal of weight, it doesn't need to be at all - the Board could very well have said that's interesting. Thank you very much. So is the concept that because it's more than a comment -

Cheryl Langdon-Orr:

It's a waiting exercise.

Unidentified:

So your argument would be that the same comment made by the ALAC so it processes, the GAC's processes, and the GNSA has its processes is not as weighty as the comment made by all three.

Cheryl Langdon-Orr:

My personal view is yes, but that's simply because of the deliberatory process, the mechanisms to build consensus, and the way that whole exercise can be gone through, where you are actually getting a real consensus building exercise. It may not necessarily be.

Unidentified:

I think that there's a lot to this. One of the worries that the Board had is capture and it's very much harder to capture all three SOs than it would be to capture a single working group with three or four dominant personalities. So I think the whole thing needs to be thrashed out.

Brian Cute:

Any other comments? Berkman. Any other recommendations beyond what we have on the screen.

Unidentified:

So I just want to point to two that we included. The first one I think there is much alignment in our first seven recommendations. And then under the section aggregating the public input and responding to public input based on our conversations yesterday regarding the summarization and analysis of comments, we did take into account the idea that rather than having a fixed template or language that suggested the summarization of comments can be an exact science.

We altered the language to say develop and communicate baseline procedures and guidelines for summarizing and analyzing public comments. Continue to provide support and training for staff and their use with the idea of creating baseline standards, things that should be a part of any summarization process but also recognizing and putting flexibility into the process itself based on the type of decision or material at hand.

Brian Cute:

Is that on the screen Laura? Can you pull it up. Okay at the top, yes. Herbert, you have the processes from Switzerland.

Herbert Burkert:

Yes. I wanted to go back to your previous discussions involving the responsibilities of observing the procedures and bylaws and policies with regard to the public participation process. I wonder whether what you are looking for is something that has been established in a lot of companies around the world.

There are legal obligations to designate a data protection officer in a company. So were you thinking something along the line that there should be at least a formal function designated that looks into the rules of the participation process and keeps a record on these various participation processes. This would be my question to you?

Brian Cute:

No we weren't. We weren't considering that function. What we were attempting to describe in eight and nine and I guess the documentation of those processes at the present are really the responsibility of respective organs CCNSO, GNSO Council, GAC and its own deliberations. That's where the record keeping, if you will, requirements lie.

Herbert Burkert:

In the public sector in the context of access to information laws a data base is being kept that makes it in most countries possible to exactly say at which point in the

process is a particular request and with regard to this process to have some sort of instrument that tells you those other documents which are at stage A, those are the documents of procedure 1, those are the documents of stage E in procedure 3 - something like that.

Then you can go with - you mentioned in one of the recommendations that there should be adequate tools that make it transparent and feasible and accessible for the general public to follow these procedures in a better way than is currently the case. It's just observation.

Brian Cute:

We need to put some thought into that before we finalize our recommendations. We have not been thinking of those mechanisms.

Herbert Burkert:

It's just that you've been asking.

Brian Cute:

We'll take that into account.

Herbert Burkert:

Another point from yesterday, what it ended with was something of a sort of skill set to be able to digest and summarize the information that is coming in through these participation processes. But I guess that's rather a minor -

Brian Cute:

I'd ask the review team to focus on the recommendation here from Berkman. Is everyone comfortable?

Unidentified:

Just a quick point, I'm sure the board has considered this already, one of the things to keep in mind that might be tracked over time is the volunteer model may have a different distribution of the skill sets that are attracted by people. It seems like there is a presumption that people are going to be attracted to work on ICANN.

And that kind of basic prerequisite may not map against the skill sets that you are looking to fill on the board in the future and would be interesting to see whether you are getting the different skills that are envisioned for the board using the volunteer only model. That should be evaluated perhaps to help with this decision.

Brian Cute:

The only other question I'd have for you, Chris, is if you were inclined to drop professional directors

Chris Disspain:

I'm saying I think Peter's right. We should stick to the process recommendations.

Brian Cute:

I agree.

Unidentified:

So we will have something say that concentration should be even to [inaudible 1:13.7]

Chris Disspain:

Should say something like given that consideration for directors is currently in the board and has been for some time, we recommend the processes to deal with this process

is expedited so that a formal decision can be made one way or another as soon as possible.

Unidentified: [Inaudible 1:40.5].

Chris Disspain: I think the best way you do that is to have you just have Berkman tell us what additional things you've got in respect to this area that you think we should consider.

Brian Cute: Caroline are there others beside the two that are on the board? So you've already agreed you're going to be pulling the skill sets? So I would then say, Berkman do you have any reactions to where we've landed? Anything to add? Anything to suggest? On these recommendations?

Chris Disspain: From my standpoint, I'm comfortable.

Fabio Colasanti: So we can move on to area two which is towards the end of the document. I think it's the last page of the document. And in fact we can put up into the parts to the parts until I've got control of the document again. So, this one is to do with transparency of board decisions which we had a discussion about yesterday in passing.

And these are the recommendation. ICANN should throughout the consultative process develop clear procedures for determining which issues should be considered at board level. I think we should we should

have an open consultative process to determine what ICANN should do and this is part of the policy development process issue.

But I can see this should be any consultative process to decide what should be decided at what level. If tomorrow the board were to discover there was a major problem because of one member of the staff has made something [inaudible4:38:0] probably the board would have to deal with that.

There are a number of unforeseen circumstances. I think corporate government's rules should be to decide what should be discussed at board level. I don't see what open consultation brings to that.

Brian Cute:

What it brings to that, Fabio, is it tries to find solutions to the current situation. This is not supposed to be an ongoing thing so it's not every time a decision or matter comes to the board there has to be a process about whether the board should make a decision or not. It goes back to what I said yesterday. The starting point is this.

The board makes decisions about stuff that California law says it has to, the bylaws says it has to. So for example, signing off on the accounts. That is a legal requirement for the board to make that decision. That's the first type of decision. Second type of decision it makes is contractual.

So there is a contract for [inaudible 5:41.4] to increase their price they must apply to ICANN and the board must resolve that price increase is acceptable.

The third type of decision and the fourth type of decision is where I suggest we probably need to have some sort of process to get clear about. The third type of decision is practice decision. There's nothing written down anywhere that says the board has to approve delegations or redelegation, they just do.

And the fourth is [inaudible6:12.4] supposed to make a decision. An example I gave of that yesterday was where the GNSO are unable to reach any form of agreement on [inaudible6:25.3] and order for the GTLE process to proceed, a decision has to be made.

Fabio Colasanti:

I'm sorry there is a fundamental disagreement between you and me about what the board should be doing or ICANN should be doing. I'm sorry, for me the board is not just, I would say, a legal instrument. The board is the body that is responsible for the way in which I can work the strategic decisions of ICANN and the policy decisions that inevitably makes.

It's not just purely, I would say, a technical corporate influence. The board is ICANN, when you say ICANN has

decided this, it's that the board has decided it. It cannot be the chief operating officer or the director of one department. So, and this is a point that has been made that we have expressed in other parts, the board has a responsibility for the oversight of ICANN's work.

And these may expand to a number of areas that's why I am fighting against any attempt to limit the number of decisions that could be taken by the board. I would like to see a board that takes a greater responsibility for ICANN does.

The board probably meets more than three times a year, that works even more because probably the board, that is the best representative of the community as such of the [inaudible 7:55.3] holders.

Brian Cute:

That's fine and that's your [inaudible 7:59.4]. Almost all of the feedback on this topic, we interviewed board members and we interviewed members of [inaudible 8:14.4] on this, the fundamental problem that was talked about was that we're unclear about what should be a board decision and what should not be a board decision.

Chris Disspain:

That's with respect to [inaudible 8:34.1] recommendation at the moment because the board is going to decide what the board is going to do.

Brian Cute:

As a matter fact and as a matter of law, the board is not going to implement recommendation which starts to give anyone the power to determine which issues the board should consider. So what I suggest you do is be very much precise.

If you are talking about processes for how things get to the board -the community is not going to tell the board what duties the board is going to do -that is indeed the job of the directors. If you don't like it, then you've got to get rid of them.

Chris Disspain:

As I said, that's demonstratively not correct. If you take decisions and policy, there is a codified process that is used for the board to make the decision. So if you take the CCNSO policy mechanism there is a bylaw that specifically states what the board is supposed to do in what circumstance. It's in the bylaws.

Brian Cute:

It doesn't deal with that issue which is determining which issue should be considered a board issue.

Chris Disspain:

No, no you're quite right. The point I'm trying to make is that there are examples of codified things the board has to do. Let me take a recent example.

Unidentified:

The board is going to determine what the board is going to do. Any limits to that are going to be regarded as probably illegal.

Brian Cute:

I think that there is a false opposition in these two things somehow. I agree completely with your point that your board is the final arbiter of what the board will do, legally required to carry out. In that process, however, the board can as a matter of normal course decide that it will consult in these following ways on these following issues.

If you set these up as things we'll do perhaps use the words in the normal course, well it would be helpful. In the normal course we would anticipate using the following procedures as ways to identify things coming out of the community that we'd like to know about. And then we set up ways so that we can do that.

Unidentified:

I agree, that's what I want Chris to focus on. If you focus on what the problem is. This is an extraordinarily broad point - it may be some genuine issues about process or things - let's focus on those rather than trying to say there's got to be some kind of process for telling the board which issues it shall be considering.

Brian Cute:

But there could be a process in which the board asks what things it ought to be considering. And if one put it in that framework, that would be a different - you know help us to

be good listeners - that's what we want to proceed you to do. So again I think it may be a matter of emphasis in this, your legal and practical point is absolutely correct. But I think that one could, none the less, say in order to make us better listeners, please help us and here are some ways we'll do it under normal course.

Unidentified:

What are the examples, Chris? What are these plights about? Maybe build up on those.

Brian Cute:

Okay so you look at it in the round. Effectively what -

Unidentified:

Actually you are right about the statutory categories. Nobody's talking about that - signing off the accounts, employing people, doing contract for employment, all of the ordinary governments and fiduciary stuff that -we agreed about that. So we don't need that process to tell us about that. This policy stuff coming up for me is for the ACs.

Chris Disspain:

So let me read the summary to you. With only a few exceptions the vast majority of the boards operations are based upon organizational conventions. Significant policy issues are identified at the time based upon the practices established over time all according to codified procedure and requirements.

Perhaps this is a direct result, a large result of comments received as part of the AT and OT's consultation process related to the way in which issues were identified for board consideration. How and why particular decisions were taken and how these outcomes were conveyed to state policy.

The first part of that were identified as how issues were identified for board consideration. These are potentially brought up for discussion. What is supposed to be dealing with is how you satisfy people that -

Unidentified:

Why don't we just tell them how things are decided? Let's answer the point rather than saying let's have a process.

Brian Cute:

The text that Chris has just read definitely leads to the policy development process. Identification of the issues that have been discussed this year vs. next year.

Chris Disspain:

It absolutely does not relate to policy development.

Brian Cute:

Surely people don't need to be told that we have to consider the CEOs contract every time the CEO's contract requires us to consider it.

Chris Disspain:

No one's says that the complaints were that they don't understand any of the decisions. It says as part

[inaudible14.17.3] process related to the way in which issues were identified for board member consideration.

Brian Cute:

We must agree that there is a whole chunk that nobody actually hears about. We're talking about policy stuff.

Chris Disspain:

Exactly and that policy stuff is the policy development process. There are a number of decisions that result from the working of the corporation.

Brian Cute:

Fine so in that case how do you decide whether there's no recommendation on something in the GNSO policy development process final recommendations? How does the board decide that it is Okay for it to make that decision?

Brian Cute:

It exercises judgment by reviewing the factors and makes a decision. I mean just have to make . . .

Chris Disspain:

Yes, but that's my point. There needs to be some -the feedback that we got is that that's unclear.

Brian Cute:

The recommendation should be clarifying how the board identifies issues. The problem is not identifying issues. The recommendation should be clarify how the board -not set up a process which limits the boards power to decide things, which is what that recommendation does.

Chris Disspain:

All this should be dealt with under board [inaudible15.37.2] because the policy development process results at the end in most cases in board decisions.

Brian Cute:

That is actually not formally how the board makes a decision. The policy development process bylaws basically say the SO makes policy. Those recommendations go to the board and the board must implement except in very, very limited circumstances. So the board does not get to chose whether it should be red or green if the SO says it's green, it's green.

Chris Disspain:

The board needs to include in its template of things that we consider GAC advice. Have we done that? Why are we doing this?

Brian Cute:

So you accepted the reformulated -

Chris Disspain:

Clarifying the basis upon which the board takes up an issue.

Brian Cute:

So then you need to develop complimentary mechanisms for consultation with SOs and ACs on policy issues that will be addressed at the board level. This includes a refinement of consultation mechanisms with the GAC. I think that probably needs to come out because I think the GAC is in respect to group two so that's done.

So that would leave developing complimentary mechanisms of consultation with SOs and ACs on policy issues being addressed at board level. In other words, it's simply saying let's make sure that we talk to each other. Now let's get down to the meat.

Promptly publish all appropriate materials related to decision making processes including preliminary announcements both being provided by staff or meeting recordings in detailed minutes and director statements relating to significant decision and votes.

So this kind of where we were yesterday, Peter, when we were talking about what you already do and what you don't already do. Now I need to say that there is some stuff in here which we probably should talk about. Now the board meetings are not recorded and there's probably extremely good reason for it.

Well I suppose they're not because the transcriber can't do those. I don't think we should recommending a recording of board meetings. I don't think that's appropriate. So perhaps we should take that out and just leave detailed notes.

Chris Disspain:

I guess my starting point for this comes back to what we talked about yesterday which is to come from the default position of transparency. And then as to why you can't be

as opposed from coming from the default position we don't disclose anything and then find ways to disclose stuff.

Brian Cute:

Turning it that way is really important from the community perspective.

Chris Disspain:

So does everyone consent to taking out the board meeting recording? Does anybody have any comments on three apart from that?

Unidentified:

Do you need to recognize the obvious point that they will be reactions; do we just want to acknowledge that?

Brian Cute:

Well I think we can acknowledge the fact that the book was published so we want to recognize that. That it's a step in the right direction and we could also, in that context, comment on the redactions because there were questions about the breadth of those redactions.

Chris Disspain:

I think that's a slightly different -that's a specific complaint if you like. I think you need to recognize and I agree with us promptly publishing all material. You just need to recognize that there will be bits that will be blanked out. And they should because they'll be for security reasons.

Brian Cute:

You could literally say that we are recognizing required redactions.

Peter Dengate Thrush:

Caroline I have a question for you on that. Caroline can you just check what which ones and what recommendations you want us to look at in this context.

Caroline Nolan:

Absolutely Peter.

Brian Cute:

Peter how does it work -I had a long discussion about the process and how the agenda's set and all of that. My understanding is that the general counsel says this will be redacted. Does the board discuss that? Is there an opportunity to say why, how, let me see that.

Peter Dengate Thrush:

No but we should. The process is -I mean it's only happened once so . .

Brian Cute:

Oh it's only happened once? I supposed what I'm really asking is, maybe this comes down to skill set, which clearly has the ability to challenge and say what's the risk here. Where's if it's 100% riskless, then you'll never publish anything.

Chris Disspain:

Which has been the current practice.

Brian Cute:

Correct.

Chris Disspain:

Is there a way we can get at that issue in a helpful way?

Brian Cute:

I think that's very worth including in a review. The typical reaction to the board, Chris, in reaction to your question is unless somebody is interested in a particular issue, they will tend to take staff advice on that as they most things and would only come back on a complaints basis if somebody in the community said why and brought it to the board's attention. The board is too busy to check to see what's being taken out of materials that is saw a month ago.

Brian Cute:

We'll see if we can work that in.

Chris Disspain:

That should not come in the context of a recommendation but as redaction and risk analysis. And then finally number four is also publishing concise and written conclusions to each decision making process. [Inaudible 22:25.3] This comes from many things. Just as an example: people saying I don't know that my comment was considered or if my comment was considered it clearly wasn't accepted and I don't know why.

Now I think the board need to acknowledge this of course. You can't -generally there are thousands and thousands of comments so it's going to be very hard to comment on everybody's comment. But as a general rule, there should be some sort document that said they commented.

Brian Cute:

Is this overlapping with working group 3?

Chris Disspain:

I'm not sure that it is. It is. So Caroline do you have anything you want to point us to from the Berkman summary on any of this?

Caroline Nolan:

We certainly have the same -on number four I think there's the same overlap with the public participation section as far as providing a concise summary and rationale for inputs and the decision making process. So there is a clear parallel there. I think that's it on number four. I want to revisit number three.

Chris Disspain:

In three and four they're informed by the research that's out there that resolution context which suggests that people were much more satisfied with a result when they felt they have been heard. That ensuring not only the substance of actually having been heard but the perception of actually having been heard is a key point and will go a long way toward reducing the concerns.

How you do that well with pertaining some degree of confidentiality in deliberation is hard and so that we felt there are two places: one is up front where you get clear procedures about stuff - it did come in, we did receive it, it is here, it has been summarized, all of those pieces are taken care of - that helps with that.

Then after the fact if you then recite - and by the way we did hear and we specifically did hear your argument, we

did not buy it, but it was there, we considered it. If you go those extra steps, both up front and on the back end to provide that assurance that can be a reasonable substitute for direct observation of the procedure itself.

Brian Cute:

Do you have the data or studies on that?

Chris Disspain:

I will get them. It's in the dispute resolution literature.

Brian Cute:

That'd be great. Before we go on, I want something up on the screen. We're sticking with this recommendation number four. One question, Chris, why the matter was escalated for board consideration, do you have a precise fast track escalation?

Chris Disspain:

Why the matter was addressed by the board?

Brian Cute:

Ok so in keeping, this is material I was going to put up during working group three, but it's very supportive of what Chris's point was here. So Alice can you throw up that FCC excerpt document?

And this goes to the working group three recommendations and this recommendation, Peter, in terms of explaining the decision, the basis upon which the decision was made, the arguments that you rejected and why. It's probably a little bit dense on the screen, I apologize, but - actually it's the FCC document sent by email.

I don't think it's in that file. Yeah that's it. So this is the excerpt from an FCC decision and I've highlighted some of the points that we've been talking about. So here you see the commission in this segment is identifying specific parties and identifying the arguments that they make and the rationale supporting their arguments.

And now we're moving down to the decision and they're affirming prior decisions and they've stated no party has described an alternative model that will provide more accurate calculations than TV station contorts. So that's their holding. But then they go on and you see in the highlighted yellow that they address specific parties agreements.

The parties whose arguments they agree with and some detail. And if you scroll down to the next page, that continues and we disagree with SPE that the rule fails to protect analog TV stations and then go into the rationale as to why they disagree. Now you know as Chris said, it would be unreasonable to expect that every single comment was addressed, absolutely not.

But to identify the relevant arguments, to select some of them and incorporate them into the decision is one of those things that can be done that provides that sense of being heard that we've been talking about in a clearer way. It also

provides a good basis for decisions or a clearer basis for decisions by the board. So this is an example as you did yesterday.

Your point was well taken that board resolutions do contain quite a bit of information. It is not just that we're going to do X, not at all. But there is a legalistic aspect to the resolutions now. This is more of an informational, narrative type of presentation that specifically picks out arguments presented, we accept this basis, here is why the rationale is flawed but we reject this basis, this argument so.

Chris Disspain:

You're a lawyer and you're talking to a lawyer. I'm on two or three judicial panels, I'm writing a judgment along these lines right now in relation to an issue on the electricity ruling panel. I'm familiar with this. The reason why it doesn't help us is the risk evasion.

The only time any of this kind of material has ever been put out in resolutions is what it was used and it was in the [inaudible 30:36.3] decision. It became the basis for the dispute for [inaudible 30:39.6] penalties. So there is a long standing assumption that this kind of reasoning will explicitly not be put into the rationales.

The [inaudible 42:03.0] are written by the lawyers on the ICANN staff who are familiar with this kind thinking.

Another question about being familiar with this kind of thinking or not being aware of this kind of precedent is a deliberate choice not to put in material for risk management reasons. So that's how you need to review or discuss that, it needs to be with that in mind.

Cheryl Langdon-Orr:

One thing on this particular mechanism which I'm very warm and fuzzy about as well, is that it would make not only some of the issues, call them concerns isn't good enough call them complaints is perhaps going too far, that we heard in Brussels from a number of the, actually from all different parts of the community that we engaged with.

Where they were unclear as to what the rationale or where the point of connection was between what they know was said and how that was addressed by the board. And it certainly goes to the desire to explain or have decisions better understood or accepted by the ICANN community.

But to me it would also go a long way to addressing the needs that we know need to be fixed in how advice, and let's use the example of GAC advice of cities [inaudible 32.27.1] is it that you can actually start getting this done during the process.

So for example, I would like to suggest if we ever go down this pathway, that a recommendation could be advice from and AC or SO - insert subset here counsel, work group

whatever, doesn't matter - then that type of input should be addressed in this type of manner. And that I think would go a long way to making a number of the complaints we've heard disappear.

Chris Disspain:

[Inaudible 33:02.8] studies that mention possibly this mention [inaudible 33:09.2] case. I just reread the minutes on the board and it's really very short. It cannot evoke confidence within reason. It's really very short compared to all of the discussion that I've seen before on the topic.

Brian Cute:

You can take it down Alice. Go back to Chris's recommendations.

Chris Disspain:

I think we're done and we need to move on to Fabio's email about that stuff.

Brian Cute:

In point of order, when we get to working group three, let's realize there's an overlap here and make sure we reconcile. Larry.

Larry Strickling:

I think this is the most important recommendation in all of working group. I actually I think concise maybe sends the wrong message too. I think their does need to be details in these highly contested policy decisions. There really needs to be better explanation. If there's one thing we could do to improve in this area, this is the one I see.

So I don't think we should flinch from it. I think everybody's process will be better off, I think actually legal risks will be reduced if people take the discipline to do this the right way and we should just make sure we're doing it.

Chris Disspain:

I think I agree with you Larry. I think we might need to take out the word concise as related to summary.

Brian Cute:

The Berkman formulation was a detailed explanation of the reasons for taking decisions.

Fabio Colasanti:

I sent you an email last night recapping some of [inaudible 35:16:5]. I think we should be having here a third area covered by working group one. I am going to reread the way with which we have defined it.

I would say that after area one the position of the board to the transparency to report decision making process, I would have a third area which I will call the responsibility of the board for the strategic orientation and oversight of the work of ICANN and for the implementation by the organization of its accountability and transparency commitments.

Essentially they adhere to that, I strongly believe in, is the board has the ultimate responsibility for ICANN. ICANN is the board. That we do not have in terms of accountability transparency the possibility of exerting some kind of leverage as a community on the individual

members of the staff or even the senior members of the staff. ICANN has the main responsibility and the ICANN as a whole is the board.

Let me translate a number of recommendations that I have. I think you have received the email but I will -The first one would be, and I have rephrased the language used by Berkman, the accountability and transparency performance of ICANN could be further improved by, because we will have said before what ICANN is already doing, by one: measure aimed at strengthening the capacity of the board to proactively steer ICANN activities.

Chris Disspain:

I have to stop you there and ask what you mean because the board has all the powers. There is no way of strengthening the current powers the board has because the board has ultimate power to do exactly that.

Fabio Colasanti:

I explained it in that the board might consider reviewing more frequently the implementation of your program by the staff.

Chris Disspain:

That doesn't increase the capacity of the board not to anything. That's just an exercise. You're talking about strengthening the power of the board. The board -

Fabio Colasanti:

You know what is missing her, the reference to the committee structure.

Chris Disspain: Which is again at the end because it says this might require any increase in the amount of effectiveness [inaudible 38:11.3] both members of ICANN activities and an improvement in its committee structure. That's how you would have an increase in the capacity.

Unidentified: I think by capacity it doesn't necessarily just mean power but capability. With the power question being - is the power being used as it best could given the individual culture all of the constraints that are realism linked to the power. They have the full power actually. Can we make that power better deployed? The capacity in that sense.

Brian Cute: Comments?

Fabio Colasanti: On recommendation one?

Brian Cute: Is that up on the screen? It's up on the screen on the right hand side.

Chris Disspain: And prop on aversion I don't think you've seen before. That's this mornings.

Fabio Colasanti: If eyes could put on the main screen, my email.

Brian Cute: And Berkman you've got a corresponding one on the screen to the right, correct? Okay.

Fabio Colasanti:

So the first recommendation would be the one started with measures and ending with committee structure.

Chris Disspain:

Accepting the interpretation of capacity, what do you mean? What would be measures aimed at strengthening the capacity of the board?

Fabio Colasanti:

The board should take a greater interest in how the staff is behaving. Is it running the policy process, the consultations, and then you have now more complete recommendations that spell out. The first one is about using the power the board has, organizing itself in order to use the power.

And then the other recommendation spell out what that would be. The second one would be the board instructing the staff to implement the measures it considers necessary to improve accountability and transparency performance of the organization. The board might reexamine the -

Chris Disspain:

I can read it Fabio. I'm trying to work out what your structure is. The opening sentence is that we should have measures and capacity in what follows are suggestion about what those capacity and [inaudible 41:32.0].

Fabio Colasanti:

We can perhaps talk about the part of the capacity at the end.

Chris Disspain: And then our next typical question would be what do you mean an improvement in the committee structure? What do you mean by that?

Fabio Colasanti: You might have for instance a committee that deals simply with accountability and transparency. I don't know if you already have one that deals with that.

Chris Disspain: You're not recommending anything. You're recommending that we go away and improve our committee structure.

Fabio Colasanti: What my goal is to say that responsibility for the accountability and transparency performance of ICANN rests with the board. The board should take an interest in that.

Chris Disspain: What's the problem this is intended to remediate?

Fabio Colasanti: Well the problems are that if any member of the community were to be unhappy about the accountability and transparency performance of ICANN at all, they would ask the board.

Chris Disspain: And the board replies. How does that help any of that?

Fabio Colasanti: The point is there I feel that the board should answer whatever it feels it can answer but it satisfy those that ask

the question that they, the board, are doing whatever they can reasonably do to ensure that the result is the desired result. I don't want a situation where the board says, oh no go talk to [inaudible 43:23.4] that's not our business.

Larry Strickling:

There is, as you know, a great deal of literature out there suggesting that on many issues of the tone set by the board or the CEO or both is as critical to the way the staff then implements things. That a wonderful rule set is what we think but then translating the rule set into what people do day to day is a matter of leadership and culture.

So at least a portion of what I think we're all getting to is that, among the many tasks the board must solve - one of them will be that making sure that making sure that: A, they set the leadership in this, and that B, they then engage with the staff in a way that makes it clear to the staff that this is important.

We need to follow through on these things and make this part of your job and not just a bit of obligation window dressing. I'm not saying that is the case, I'm just saying that if one really wants to implement thoroughly that's at least what the literature suggests is a classic necessity for implementation.

Chris Disspain:

That would be a recommendation I could understand and live with. The board should take responsibility setting the culture of the corporation. Is a very different thing . . .

Fabio Colasanti:

It's spelled out by the board doing what comes in the next step.

Chris Disspain:

I'm sorry Fabio a recommendation that there be an improvement on the committee structure tells me absolutely nothing.

Fabio Colasanti:

That comes at the end. Since I'm asking the board to do a number of things, probably the answer will be we don't have the time, we don't have the resources. Then at the end we'll say, then give yourselves the resources. So the first could be moved to the end. Let's discuss the concrete ones.

Chris Disspain:

Alright we're discussing the concrete recommendations that you say an improvement of -that is not a recommendation I can understand.

Fabio Colasanti:

The point is, I would like to see the evidence every now in then in the minutes of meetings of the board, that the board has asked the staff to behave in the way that we recommend and that the people expect. And that the board regularly, every six months, every year, asks to be informed about how is ICANN doing in terms of accountability and

transparency. And it should be informed about any major complaints.

Chris Disspain:

I agree with all those things; they're all happening. But, none of them have anything to do with what you've got on paragraph one.

Fabio Colasanti:

Let's go through the others and then we will return to paragraph one.

Chris Disspain:

Paragraph two is what currently happens. The board instructs the staff to implement immediately new [inaudible 46:03.7] so that is what we do. So by all means recommend that we continue doing it. That's already happening so you recommend that.

I mean you've met the staff who are instructed to do this, I've told you what they're doing, and I've given you a copy of the papers showing how they do it. I'm not sure why you would recommend that. I'm not trying to be defensive, I'm trying to work out what's a useful recommendation to change anything that's currently going wrong.

Fabio Colasanti:

The obvious answer is that so far it hasn't worked so far in the community because there is a widespread perception that there is a problem. So maybe a lot of things have been done that have to be done better, more intensely, or in a more functional way.

Larry Strickling:

One of our additions was proactively and visibly - again at least the data that comes back from the interviews, as you say, there is still a perception gap, whatever that may be. The perception gap can be related to we're doing things we think they work, actually they don't.

It could be that we're doing things that do work but people aren't aware of. Again, we need to include them. Or I come back to this point of the visibility of listening, the visibility of all that which is not quite the same thing as actually listening but is at least a part of what needs to -

Chris Disspain:

Could we drill down to some of the data then? You're right about some of that being potential circumstances. What are the actual circumstances, Fabio? What are the data that you've gotten on this point.

Fabio Colasanti:

That data that they got is that the community's complaining. Whether it is right or not, it's a long discussion. There is a need to improve the performance and I would like to see physical proof that the board is taking responsibility, that it acknowledges that there is a problem, and it is officially asking the staff in a visible way to do something about that and that there is an interest in this.

Chris Disspain:

Who's complaining about what?

Fabio Colasanti:

Why are we here?

Chris Disspain:

Well that's a fair question. Who's complaining. What complaints are you referring to that this one affects?

Fabio Colasanti:

If the reason after a reasonable commitment has been signed with the review process. The first one being accountability and transparency. We cannot deny that there is a problem.

Chris Disspain:

I do deny there is a problem.

Fabio Colasanti:

Okay fine.

Chris Disspain:

I'm asking for the evidence behind this so that you can make sense of it.

Fabio Colasanti:

Well ask Larry a sign of the original [inaudible 48:55.2].

Chris Disspain:

I'm not asking you what the information is. I'm asking you what the evidence is. I'm unclear on -let's assume that there are complaints, that's fine for now, I'm asking -give me -I'm not asking for a specific. Is this a general feeling in the community, which I acknowledge, that ICANN is not as accountable and transparent as it should be. Or is it something specific?

Fabio Colasanti:

Chris, there are two aspects. First of all we have a specific aspect linked to the nature of ICANN. ICANN by its definition by its structure has an accountability issue because as we have discussed, there is no meeting of shareholders, there is no meeting of members, and you can't have one.

So the obvious question is - ICANN has to built its accountability through an extremely high degree of transparency. Now when it comes to transparency, we have had a lot of indications that in spite of all the improvements that have taken place, transparency is not the one that we should have.

The example that Brian mentioned about the decisions of the FCC, the way the board decisions are explained, the way in which the staff complains, the staff behaves, because we should not be forgetting that if we look at the inputs that we have received from the community, most of the complaints were not so much about the decisions of the board, but about the actual behavior of the staff.

So, clearly the reason the problem, big or small it doesn't matter, with the organization as a whole, the leaders of the organization, and I would like to see them taking responsibility for addressing this issue. I don't think there can be anything wrong with that.

Chris Disspain:

So can I just say, assuming all of that is true, what I think you just said is that there is feedback, and you're right, there is feedback that some of the ways in which the staff interact with the communities is not promoting transparency. Yes? So I think what Peter was asking was, find, how do those resolutions, recommendations deal with that?

Fabio Colasanti:

They deal with that by showing that the board acknowledges that there is a problem and is doing what it can to address a problem. And it does it in a way that is visible to the community. We may discuss about a word here or there about a sentence, but the basic point that I'm making is that the board should recognize that it is its responsibility to ensure that the organization is being held accountable in a transparent way.

Unidentified:

If you want to make a recommendation that says that, I mean I think the group does already but I've got no problem with making a recommendation that says that we should do that.

Unidentified:

I think that that's the point I'm making Fabio. I've just gone straight to the strategic plan, and there in the strategic plan is the requirement to meet the object of the information . . .

Fabio Colasanti:

You have done and I'm sure the board has done a lot of beautiful things but if we're here, it's because that

everything that has been done until now was not sufficient. So we have to come up with something that says tomorrow the board is going to everything it was doing yesterday better.

Unidentified:

I don't think you should start with the assumption that there's a deficiency there. The information creates a set of obligations and the trick is to see how, what is the performance against those. You don't start by assuming there's no performance -

Cheryl Langdon-Orr:

As exciting this conversation is, and I'm not saying I'm disagreeing or agreeing with any parts of it, what we actually have here is a piece of additional text from a member of the work group. It has not been discussed by the work group nor has it been endorsed by the work group.

Now I'm not terribly sure the committee as a whole here in debate mode is going to further this any further. Either take it back to the workroom and get back to us after some lunch or whatever or establish now does this text have support or not. And I'm not hearing support. Call for some response for someone other than the two debaters.

Brian Cute:

Any comment from other team members? Larry.

Larry Strickling:

A couple of comments. One is to the extent we want the board to take our recommendation seriously; it seems to me

we do that in the overall shell of the report. Some of what is in Fabio's email, but not all, I think it's at that - hey take our recommendations seriously and implement them and you're on the hook for that.

I think the AOC clearly puts the board on the hook for that and we can remind the board of that in the overall document because that applies to not any particular working group, that applies overall. I think that some of the other thoughts that are in here - my main concern is they might be worth considering but I'm not sure how actionable they are.

And again, that's no criticism of Fabio; he just pulled this together last night. But that factors into Cheryl's comment that maybe there ought to be a little more working group deliberation on what out of here could be pulled together to become a more specific recommendation.

Like the question of should board members be committed to spending a certain amount of time on ICANN activities - maybe that's a great idea, I don't know, but it would seem that it requires a certain benchmarking, a certain amount of deliberation rather than to just kind of toss it out there as another thing that people can think about.

Not that it was inappropriate for Fabio to do so in his email, but it seems to me to take it to the next level that these things have got to be tightened up and made more specific.

Fabio Colasanti:

Larry, I sent an email about ten days ago.

Brian Cute:

Not your fault. That's why these meetings force people to focus and concentrate.

Brian Cute:

I'm happy to take this discussion out. If you need to that's fine. I have issues with, while I would be interested in input from the whole group on the principle of where some of these things are actually appropriate for us to be make recommendations about. For example, is it appropriate for this working group to be making recommendations that the board instruct the CEO to do stuff?

Larry Strickling:

I think it depends on the specifics and what we've documented as the deficiency. If in fact there had been a documented deficiency that we felt strongly needed to be fixed and the only way it could be fixed was for some action by the CEO, I'd have no problem in the abstract considering a recommendation like that. I'm not sure that that's what we're dealing with here.

Brian Cute:

And I agree with you. I'm not saying that there aren't some circumstances, but if I can just take one. The board instructing the CEO to ensure that the staff attaches the

required importance to participate in transparency, ie: to ensure that the organization becomes a recognized benchmark in terms of consultations, feedback on comment received.

Now that seems to me to be -there's a mismatch there. If you wanted to say that the board -if we wanted a recommendation that ICANN should strive, the board should strive to become a better benchmark in terms of consultation feedback and we could point to some sort of benchmark that can be used to benchmark ICANN against, then that's perfectly fine.

But making comments like the staff should be trained not to see the length of the consultation process as a negative factor, I mean we don't know that they do think that.

Fabio Colasanti:

We have received comments with this effect.

Brian Cuta:

What we have received is some comments that a number people think that, which is not the same as actually -this - I'm concerned about the appropriateness of making those sorts of resolutions. I've got no problem taking this out into working group one, I've got no problem in sitting down and working out what we can. I'm looking for guidance from everyone else about whether or not some of these things are actually appropriate.

Fabio Colasanti:

I think that this is an issue for whole committee to discuss this not something that can be resolved in working group one.

Brian Cute:

Fabio, you know the work hasn't gone into this that's required. Take paragraph two: the board instructing the staff [inaudible 59:01.7] where is your review of what's currently being done? All the other processes have said: here's what's available, here's the bylaws, here's what's being done, here's the deficiency.

What I've tried to tell you was some of the things that are actually being done in relationship to paragraph two which if you knew about you would probably would withdraw recommendation two. So I think that this needs to go back to the working group and work itself up through the process that's been established - identifying what's being done, identifying relevant bylaws, identifying the current structures and the current performance, then review with the current performance.

There's no description here of the current performance that's being reviewed. I'm happy to help you with that. I've got on screen for example the way that the second paragraph is currently being done - the board periodically reviewing the performance. I can tell you, that's currently being done. You might tell me that that's inadequate, but

none of that's contained in what should be a proper review document.

Fabio Colasanti:

We're all back to square one. Square one says that the present equation is not ideal.

Brian Cute:

No it doesn't, all it says is there's a set of commitments and you have to review the performances of those commitments. Where is your review of the performance against the commitments. You haven't even described what the commitment is.

Fabio Colasanti:

The commitments were yesterday. They were signed yesterday. How can I possibly have seen an improvement?

Brian Cute:

I'm going to go ahead and suggest that the working group takes this offline. If you want to contribute to that, I think it would be better if we had -

Cheryl Langdon-Orr:

We what they're doing over lunch.

Brian Cute:

I would also recommend that Berkman has a recommendation on the board as well, correct? On the right. And I would ask that the member of working group one to take that into their discussions as well. And if you're going to come back with revised recommendation, factor that one in as well.

Caroline Nolan:

I want to say quickly, I want to point out that this is the result of the conversations yesterday and some revisions that we undertook this morning. This conversation has been particularly helpful because this is geared toward the perception issue and that has been identified in the course of this conversation. Larry's point regarding action ability is also well taken.

Brian Cute:

Ok do we have anything on working group one. Ok what I'm going to suggest is that we take ten minutes, that we grab our sandwiches. Okay lunch at 1:30. We'll take a ten minute break and we keep working. And when lunch arrives that we take lunch at the table and keep working. So let's take 10 minutes. Thanks.

Brian Cute:

So let's go back to up to one that was revised. Recommendations from Berkman develop and communicate baseline procedures and guidelines for summarizing and analyzing public comments.

Continue to support provide support and training for staff in their use. Professor Burket had said that had source materials from the practices in Switzerland and that there was another point of reference

Cheryl Langdon-Orr:

So this image is primarily in response to our discussion from yesterday regarding the summarization and analysis's of public comments. Professor Burket about different

practices in Switzerland and the art form of this, what not.
No reaction?

Could we scroll down to the second, will port that into our recommendations, flag that we had mentioned continuing to improve opportunities to participate with Adkins meetings by scheduling these meeting further in advance. Yesterday we also discussed with remote participation opportunities which is something where Adkins has made a great deal of progress in recent years.

Brian Cute:

Can we get that on the screen? I'm not sure that's it. Okay backup. Thanks Laura. Is this it to continue with experiment with different public input response mechanisms? Explore and evaluate establish mechanisms to improve the ability of stakeholders to track the lifecycle of their input into "I Can" policy and decision making processes. That's it right Caroline?

Caroline Nolan:

Yes

Brian Cute:

Review team, reactions

Cheryl Langdon-Orr:

Oh no, no sorry.

Brian Cute:

That's not it.

Cheryl Langdon-Orr: No. Sorry Outline things. Explore opportunities and tools to engage community member nope no.

Brian Cute: Wait well can we just hold for a second, is this a draft for proposed recommendation? The one I just read.

Cheryl Langdon-Orr: Did we discuss this yesterday?

Brian Cute: No it's not bad.

Cheryl Langdon-Orr: Yeah.

Brian Cute: Yeah. So review team reactions are this something that we should adopt as a recommendation of our own? Comment edits.

Cheryl Langdon-Orr: No I'm happy to steal from them, yeah.

Brian Cute: It's the middle one. Okay we have already agree the top one will be ported into our recommendations. We're looking at the middle one. This must be the post lunch glucose spike. Okay any objections? Okay we will incorporate that into our recommendations as well. So the one that you were just referencing Caroline?

Caroline Nolan: Yes.

Brian Cute: Erick?

Erick Iriarte Ahon:

Yes I'm worried because this sort of point with inkwell on the tariff is not okay but is something like a general concept but to be transparent to maintain competitively to give the opportunity to others to live life in their own language. I know I don't know how one specific barrel of money general thing.

Brian Cute:

You're referring back to?

Erick Iriarte Ahon:

In the last case it is probable to for twenty two for this community member to and one in universal language so it said to include this two or three phrases in this recommendation is the idea but with the general concept would be more easy.

Brian Cute:

I see so we should have an overarching statement. Okay. Okay, so noted. Have you found it yet?

Cheryl Langdon-Orr:

I think I will have to look further but for now just the final recommendation that we have revised from our conversation yesterday that was focused on Cross Community Dialog, that was the last.

Brian Cute:

Still not seeing it on the screen.

Cheryl Langdon-Orr:

There it is.

Brian Cate:

Encourage I can various Constitute Bodies to engage cross community interactions and early stages of policy initiatives. Discussions and ill iterations. Explore explicit policies and procedures for triggering cross community deliberations among I can various constitute bodies. I'm sorry its times ten. We have had this discussion about ten, about modifying ten, and potentially to have the board ask the constitute bodies to initiate a dialog. Changing we had that discussion. Peter did you have more comment?

Peter Dengate Thrush:

Just the point that I made yesterday is that there needs to be a threshold to cross. There's got to be winners. Some way to say when I cross policy. The whole policies are only relevant to schools portions of the community. And yet there are people who want to talk about everything across the entire community. So you need to make a standing requirement that I talked about yesterday, where not everyone who will be required to talk about everything all the time and there will be some people who want to. So I'm sure you mean implicitly

Cheryl Langdon-Orr:

Certainly.

Peter Dengate Thrush:

When it is appropriate.

Cheryl Langdon-Orr:

As appropriate as relevant.

Peter Dengate Thrush:

So it has to be in fact when this is policy that we require it from all the groups.

Brian Cute:

Peter just to clarify that, you argue that the recommendations are to write place to define this threshold as opposed to suggesting well that would be the next step implementing this recommendation to look at the issue where include this threshold so you argue that we should to define that threshold in the recommendation itself and not in a second phase where it is about the implementation and not where it.

Peter Dengate Thrush:

Yes in the recommendation and not it is a policy that we all agree and it may be common sense but not all have common sense.

Brian Cute:

Well that point being taken we have to pick up the pen again and see merging between up and number ten. We need to sit down and plagiarize your work. Integrate the two add in Peters point. Okay anything else from the Berkman side?

Cheryl Langdon-Orr:

That's it I just wanted to flag those two revisions.

Brian Cute:

Okay thank you very much. So we finished with working group three. I have talked to James working with group four; Stark man is not ready for a review yet. Game plan would be to go thru that first thing in the morning. Have a

good scrub with the review team and see him back at the hotel later tonight.

Working into the evening for sure, so for the remainder of our time walk thru the standalone transparency recommendation of Berkman for this yesterday and see if there is something we want to incorporate and pull into our recommendation.

Balance of remaining time to discuss the structure of the document that we are going to put out for public comment and we need to come to an agreement as to how we are going to build that document. Professor Burket, why don't we hand it to you and again summarize the proposal from yesterday.

Professor Burket:

I think I will just go thru the Berkman recommendations on transparency again and give my impression of the discussion in this room today. Then it will be up to you to decide if you want to pickup something of that or whether it will remain standalone based upon this specific approach.

Laura do you have the document or Alice the transparency is it on the screen. You just want me on the clock. I m sorry I walk you thru that on the issue of information design it is my impression that specific information's should be there.

And is reflected in the recommendation and in context of board covenants and in the context of deck relations and public participation it is mention that it should be in specific appropriate manner general public that we should focus on information design as a general issue that we should look at information policies.

And the way that the information was being presented that at that given date when we started our e with our research we were strapped with an institute that is at the core of data processing that is slightly conservative in the way that it is presented in a website information design and comparison of similar websites presentation accessible with the room making process would be good ideas.

And commitment to stay close to the state of the art how this information would be presentation, take it or leave it. We feel that the second recommendation with regards to the access request will be announced describe eventually handled will be specific to the Berkman approach in this context and looked at the policy procedures for the ICANN approach goes specific to the two on the bottom Exemptions in particular.

Exemptions is a cross sectional issue we have touched upon when discussing personal privacy of candidates my

impression was in this that it was mention in recommendation that you put forward

Brian Cuta:

Sorry just to be clear if you could scroll up Laura Starting at second from top “Provide clear and easily accessible information about the terms and procedures from I can has not been publicly made available. That is specific to the document information closure policy. As is the one below, restricting the more independent review and narrow transparencies and exemptions.

Exemption issue the audit issue I could not imagine that this is something that working group 4 id s working on explicitly. In 2008 we suggested that a financial external audit that collects data on how information data is handles example would be how many information request how they were handled positive response on which reasons they were requested

Annual reports have information communions of information law government reports report on relation to general public other issue connected should there be specific review process to access where information has been refused or information has not been made available. We have refrained from making a point on this up to your reflection in particular the review process.

Traditional review process does not usually allow this just because you were refused the information without a financial reason. When the facts become known that this will have its own effect so this audit is very helpful. Are we talking about I can adopt a broad participating regimen or a disclosure policy? What is the scope?

Scope is quantitative how many request, under what categories have they been refused, is there a procedure in which level are decisions made. Are there policies for those that make this decision? Best practice of procedures. Normal practice of what goes on the website.

Review team: Proposing transparency audit: no reaction good, bad, how complex would it be to conduct such an audit? Professor would have to do information analysis to achieve this. Contiguous request to perform audit task and there would be a case where all the transparency documents need to be documented would vote and take on board. Web world is dynamic and will change landscape of how it works.

Webpage for ICANN is under review hesitant to take on while under such dramatic changes. Investigate in the next stage. Very little is not available to the public at all times. Few requests come thru since it is so public but could ask board how many come thru.

Document should outline all the requirements of what you could have and could not have, reference document that would need to be updated as things change. Time to vote. 1st recommendation: Is ICANN deficient in its practices, website has been still has more to be done, has more accessibility of documents but not very friendly use for new users of the site for I can.

Option would get some responses in what the use of the reports would be. Objections to pulling as recommendation none. Active passive transparent are planned to be met and recommendations need to be made. Timing? Budget? Website note work under way.

Provide clear information that is not already public, specific efficiency trying to get. Tool is not that well known and mechanisms are not well utilized by the community. Procedural as well as more visible of a tool, because there are so few requests that this tool is not known that you can access it and those that know how to access do not know how to utilize this tool well. Less attractive to place an availability request. No objections. Restrict a less restrictive objective:

They are difficult to use because to review you need to be able to show a financial burden not just because the information was not accessible to you. Be clear about your

request, Draft and eliminating: Don't criticize them are standards, big problems with these overrides.

Transparency audits: Commentary; ongoing learning process for the organization itself, helps for the fulfillment of the prestige advantage. It is difficult to understand the triggers for the future and an audit gears towards a more open policy. Why transparency audit is that every company should have one, it is a documented process, when you do it you find things that you would have not seen. End of list.

Working group 4 not ready, discusses and conclude on the public documents; Fact finding portions of your documents brainstorming documents need finished. Acclimation of commitments, Paragraph 10, says to facilitate open terms and output will be publish for public comment. Standard public comment will be 30 days, description of how they came to be, public comments already to the, Principle in the Berkman work.

Four working groups, four documents from the four working groups and include the recommendations from the Berkman group. Single list of question to the community or tailored questions? Should we do questions at all? Specific input would need to be tailored questions that would not be targeting.

Dispense of questions. Melted or messed structural document look like. Groups should be relying on case study comments and then there is public opinion as to what the community is expecting and whether or not their expectations have been met. We have a uniform structure provided that group 4.

Wrapper document will need expanded to include Berkman documents. Case studies will be an appendix, possible to give reader groups, to guide them in succession. Recommendations could be compiled into an executive summary. Group needs to finish up their documents.

--End of Recorded Material--