

**Brian Cute:**

Okay, let's begin. Good morning. This is a meeting of the Accountability and Transparency Review Team of ICANN. We are at the Harvard law school with the Berkman Center for internet and society.

Thank you very much to Berkman for hosting us on these three days of very important work. To begin with, I would like to introduce a new member of the review team. We have Carlos Alfonso Pereira DeSusan from the NCSG, the Non-commercial Stakeholders Group.

Welcome Carlos. You are filling very big shoes in Willy Curry who had to step down for professional advancement reasons. But, we are looking very forward to working with you and you're joining us at a very critical juncture where we're beginning to finalize our recommendations so welcome aboard and looking forward to the next few months together.

**Carlos Alfonso Pereira DeSusan:**

Thank you sir. I'm very grateful for your warm introduction and welcome. I hope I can fill in Willy's big shoes. Of course we have a hard task ahead of us so I'm very grateful to be a part of the team.

**Brian Cute:**

Thank you very much Carlos. So, we're pulling the agenda up for today and let me start at a high level. The objective for these three days of work is for the review team and the

coordination of Berkman to agree on draft proposed recommendations to be put out for public comment.

On day one, we're going to be primarily hearing from Berkman as a report into the Review team, the work that they've done, both the case studies that they've undertaken at the direction of the Review team and the parallel research and analysis that they've undertaken with regard to the overarching questions in the affirmation [inaudible 0:01:54.9] that we have to address.

The working groups in the Review team, in turn and in parallel, have been taking their own analysis and review of certain questions and have prepared draft working documents and draft proposed recommendations.

The draft proposed recommendations from the working team are essentially strawmen [inaudible 0:02:20.0] there for the purpose of discussion over the next three days and the next exercise we'll run through is looking at a side-by-side comparison of the draft recommendations that the working groups have come up with and the draft recommendations, or proposed recommendations, that Berkman has come up with in the course of their work.

And without any further introduction, I will turn it over to Urs Gasser who's the managing director of the Berkman Center's effort on behalf of the ATRT. Urs?

**Urs Gasser:**

Good morning and a very warm welcome from my side on behalf of the Berkman Center. Welcome to Cambridge. Welcome to Harvard Law School. It feels a little bit like being at the law school. It's crowded this morning here in this room. We're delighted to have you here and your productive conversation.

While we are happy, of course, to report our work, this is structured as previous meetings as a conversation so we're very much looking forward to this discussion. I would just briefly like to introduce the team, the Berkman team, that is here that has worked very, very hard over the last few weeks on this review.

We have two faculty members present right now from the Berkman Center side, Jonathan Zittrain and John Palfrey. We also have a faculty colleague up from the University of St. Cowan, Herbert Burkert. Then, we have with us over three days, our research director, Rob Faris. We have Caroline Nolan.

You've received many emails from her. She has been coordinating this effort and has also been very deeply involved in the research effort itself. Laura Miyakawa, she has primarily focused on the interviews. She has also helped guiding the research effort, especially with regard to

the case studies that we shared with you in draft form. Behind me are research assistants.

They have done a lot of heavy lifting in terms of facts gathering and when we will talk about the case studies. They will help us if we have very specific factual questions. I think they're deepest into the substance there. So that's the team. There are many more in the room today.

I just want to take the opportunity to express my thanks to my team. So before we go into details, I would like to turn it over to Jonathan for a few remarks and observations. Jonathan.

**Jonathan Zittrain:**

Thank you Urs and let me echo Urs's welcome to everybody. So good morning to those who have traveled from far away to be here in Cambridge and good afternoon and good evening to the people that may be on the webcast listening in.

When we began the process of taking up this task at the Berkman Center, early the North American summer, the most common reaction by our friends, colleagues and acquaintances was for them to offer us condolences for becoming reinvolved in such a deep way with ICANN processes after we had escaped the orbit 12 years ago during the founding times of ICANN.

These may be condolences that each of you on the review team, as well, received for your own involvement in this. In many ways, work with ICANN has a kind of character to it that has difficulty and perhaps even a certain degree of thanklessness.

This can be true, I suppose, with any work in government or with any set of problems for which there are many competing parties and interests for which it is difficult, if not impossible to reconcile. And I think as we have dug deeply in many ways, one of the recurring themes is the extent to which some of the many problems for which ICANN has chartered to make progress, have a kind of attractability.

At the very least, it can be difficult to resolve them in ways that leave all parties feeling satisfied. We're of course at a law school and our primary grounding comes from that direction and in some ways, I think, leaves you the purpose of law as to be resolved disputes to which there may have to be people who come away with less than they wanted.

But for which, at the end of the resolution, while they didn't get everything they want they don't feel that they were taken advantage of or treated or otherwise abused by the process. And as we've tried throughout this with the many interviews and development of the case study's and

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in turn the recommendations that flow from that and I think the same can be said of the recommendations developed in parallel by the review team, I think our sense is that we really want to get to a place where we can strengthen the processes here and have an understanding that those who may come away from future implementations of these processes not with everything they want do not feel that they didn't get a fair shake.

So that's sort of been our leading imperative here. I think it's been clear from our work, from the people we have interviewed across the spectrum of interests represented within the circles that ICANN covers that pretty much everybody wants to see the right and at least a good outcome.

So that's our hope for our ultimate work product for the next three days that we have together here and for which will run us on this highly accelerated process through to something that we genuinely hope will be helpful, not just to ICANN, but to the internet community at large and to the aspirations for a global interoperable accessible network that captures the best technology and our aspirations as humanity has to cover.

And for that, now I think I should turn it back over to Urs who will review some of the methodology that we've been

using to come up with the case studies and recommendations that flow from it.

**Urs Gasser:**

Thank you very much Jonathan. So perhaps I start with a brief overview of the agenda and talk a little bit about the game plan. Obviously Brian Cote has been responsible ultimately for drafting the agenda. We thought that we would start with this opening session talking about bigger picture issues.

As Jonathan introduced it, also to give you some things where we are in our own research process, as we've heard several times, work is still in progress so I'd love to give you an update on where we are. Then I'll talk a little bit about methodological issues that have come up, scoping issues that have come up in our own work. So that will be the first opening session.

Then we'll spend the rest of the morning on corporate governance issues. We will have John Coates, our faculty member, joining us and he will be happy to answer open questions and discuss some of the recommendations with you be it Berkman recommendations or working group recommendations.

In the afternoon after the lunch break we would love to focus on the role of the GAC as well as the public participation issues. John Palfrey will help us to structure

this conversation and then end with a session on transparency issues. These are more cross sectional transparency issues, something that has been addressed in various working groups but as you will see, the Berkman Center recommendations include some transparency related areas and issues that haven't been addressed actually by the working group.

So this is somewhat a special cross-sectional session led by my colleague here Herbert Burkert. So that's the rough game plan for today. Of course I understand we may have to revisit this agenda also depending on availability of remote participants and team members and Brian, just take the liberty to weigh in and rearrange according to your back channel conversations with your own team.

In terms of the documents that we shared this morning, we try to distill the recommendations from all the working groups as well as from the Berkman Center so that's actually the handout you have. Of course we all have read more extents from the working group as well so this is sort of a short summary of draft recommendations place as Brian pointed out and then we also shared with you the synopsis where we're basically structured among the working groups.

One can see at a glance what our ATRT's current draft recommendations and what our corresponding, if any,

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Berkman recommendations. Obviously, there is a significant overlap but there are also areas where the working group has made more detailed draft recommendations and the Berkman Center has had a slightly different take on the issue.

So this kind of hopefully helps to structure the conversation as we move forward. Again, these are only tools to organize and construct our conversation and by no means final recommendations. Now let me briefly comment on our own work we shared with you a few days ago, our draft report in the form of an annotated outline.

It's, I think, pretty detailed so that you get a sense of what our current thinking is. Again, this is research in progress. We started, as you all know, based on the specifications and the services agreement. Our job was to come up with facts based recommendations and the way we've done that is we try to map core issues or issues that have come up in several forms.

We're very interested in getting your feedback today on the three case studies. We try to be as objective as possible and as descriptive as possible as far as the case studies are concerned and then in the second step, to use these materials to draft recommendations and link back actually, to the facts and observations from the case studies.

So the case studies play the key role, actually, in our work and they help us a lot to establish this facts base. Case studies are however, only one element of one area of review. The second area of review is where public submissions and comments from the community, obviously some of the submissions you got during the Brussels' meeting but also previous comments back to January 2008 where object were subjected to review.

In addition, we conducted over 40 [inaudible 0:15:08.7] and Laura can give you more information on the methodology she used, the questionnaire spaced interviews, structured interviews. It's been a very intense process but we learned a lot from these interviews and we're working currently on a good format how we can share the core findings of the interviews as we move forward without compromising confidentiality.

So we're working on that. However, findings on the interviews are already incorporated in our annotated draft outline and have shaped and formed and influenced the recommendations quite significantly. That was a policy analysis especially in the area of transparency. We took a slightly different approach and looked actually at the transparency and accountability framework as outlined by ICANN policies.

So this is coming from a top down approach we took in that sense but also still, of course, fact oriented because these frameworks doubtlessly count as facts too. So these were kind of the main elements of our review. Based on that review we ended up with quite a long list of issues.

We could talk about issues, we could analyze in great depth and what we did next is clear not only for practical reasons that we have to come up with key issues and a short list out of this longer list of potential issues and so we went back to the AOC, especially paragraph 9.1 and try to understand again what the scope of the AOC is working on the earlier agreement and earlier conversations with the review team and carved out certain areas that we thought - certain issues that we thought were outside of the scope of our mandate.

In particular, in the case study's as well as interviews and the review of other materials. One of the things that comes up is like, disagreement on the substance of the issue. For instance, is there really a security threat that has to be assessed in the way staff and Board members expressed it or not.

That's a disagreement on the substance and many comments, if you'll look at XXX case, of course, where it's about sensitive issues that are at stake. A lot of comments and submissions touched upon, agreements, disagreements, with regards to the substance. So that's not a part of what

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we reviewed. We do not want to second guess, obviously, the review decisions made in terms of substance.

We focus however; on what we call foundational issues and procedural issues. Foundational issues are issues that are almost within the DNA of ICANN, how ICANN is set up as a non-profit under California law, what its basic structure looks like with port and IRP and different committees and so forth, so very basic issues related to the structure.

And then the procedural issues are issues that we've identified within this particular framework within this structure. So that was another analytical framework that we used to cluster some of these issues. Now based on this filtering process, we ended up with a list of key issues that we then analyzed in greater depth and the summary of these reflections obviously is put forward in this annotated outline.

There are much more in depth explorations of these issues and preview documents over the course of the next few months actually that we plan to make publically available these background documents that have formed this final draft of this report so one can better see how we reach certain conclusions and get a better sense of the rationale and considerations that have been given in the context of our research.

Now, the way we try to summarize our work and our findings are the following: We identify roughly three topical areas. The first one is key issues related to transparency. Again, this goes a little bit back to what I said when we discussed the agenda.

These are more cross-sectional issues in that chapter of our final draft report. Then the second section is dealing with public participation issues. And the third section addresses Board governance issues. Now within the Board governance issues, we also include the role of the GAC and some might wonder why do we assume the role of the GAC within Board governance chapter and not treat it separately.

The reason is that in our view, the Berkman Center was not asked to provide comments or recommendations at risk to GAC but rather review how ICANN staff and Board can improve its interactions with GAC, consider GAC advice more effectively.

So our spotlight centers on ICANN Board and staff and their interactions with GAC and not on GAC itself. Therefore, we integrated the GAC aspect of the review on the Board governance issues in that cluster. So you see this is a slightly different structure from the working group structure.

Now, for today's discussion, we arranged our own cluster just a little bit and mapped them according to the working group structure so what we have up there on the screen, the synopsis, follows the working group structures to make the discussion easier.

So it starts with Board governance issues, which as we noted, is also the first session today. At this point are there any questions, comments, observations?

**Brian Cute:**

Any questions from the review team? Urs, have you completed the intended interviews? Did you get through your entire list or are there still some to do? I know there are some ongoing with the review teams, with the working groups.

**Urs Gasser:**

We have completed most of the interviews. We have a few interviews later this week with ICANN Board members. The invitation to the Board members was just sent out late last week and we have these interviews scheduled for later this week but we are almost there.

**Brian Cute:**

Any other questions? The floor is yours.

**Urs Gasser:**

Let me just emphasize that the findings here, while we're comfortable with the factual basis that we have established, the recommendations are still tentative in nature, still a work in progress. Of course we continue to learn and we

will revisit the recommendations in light of today's and tomorrow's discussion. So again, these are by no means, final recommendations.

So if you agree, we could probably turn to the first set of issues, corporate governance issues, and talk about some of our findings. We will be later joined by John Coates but perhaps it's helpful just to give a rough review of what we have observed, what our team has observed, the collaboration guided of course by John Coates and other members of the faculty and Rob Faris may be kind enough to give us a brief overview where we stand. Thank you.

**Brian Cute:**

If I may interject, two things for the review team. Number one, as Berkman walks us through their proposed draft recommendations we will have the working groups in the column in the middle. This session is intended to be dynamic.

I'm encouraging everyone to ask questions. And then secondly, the Harvard faculty that are attending are attending at scheduled times. So we need to take advantage of their presence. If John is here and we really want to plumb governance issues, we need to do it when John is here. So let's take advantage of their presence. Thank you.

**Rob Faris:**

Great! Thank you Urs, thank you Brian and thank you all. Do is take a preliminary, rather quick overview of what

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we've talked about in terms of corporate governance and then we can come back and discuss these in detail. As background on this, there's clearly a lot of experience and a vast body of knowledge related to corporate governance.

I think the challenge for us in this respect is to extract the lessons and adapt them and modify them for the particular circumstances of ICANN. There's a few things that make ICANN stand apart which makes it hard to cookie cutter cut and paste recommendations from corporate governance literature and experience directly on the ICANN.

Certainly one of the aspects is that ICANN and particularly the Board of ICANN plays a dispute resolution role as mentioned earlier by Jonathan and Urs which I think is somewhat unusual for a standard Board and a standard corporation that typically has a central objective that is shared by all within the corporation or within the non-profit corporation.

So let me start jumping in at an overview level and I will just walk through, very quickly, Berkman Center recommendations related to corporate governance. We started with recommendations related to [inaudible 0:26:45.4] This is certainly something that is already in process.



There is many people working on this already. We did find it useful and helpful to reiterate the recommendations that have been put forward beforehand. We take, in addition to those recommendations; we added two twists on it.

One, is we felt that given the role of the Board and the unique standing of ICANN that more emphasis should be placed on the Board as a body that plays dispute resolution and negotiation and collective decision making roles. This does set ICANN apart from other corporations and we felt that this deserved special attention in addressing issues of the composition of the Board.

There's a second aspect that we wanted to highlight was that I think it's unrealistic to expect anyone selected to be part of the ICANN Board to come with the necessary skill sets and the experience and the breadth of knowledge nor to effectively carry out this position.

So for this, we felt that perhaps a shift but more an extension of the emphasis of the selection and skills of the Board would be on development and training to go with the Board. Again, it's not particularly a new idea and there are efforts underway right now at ICANN that we want to recognize. Any comments on any of this?

**Urs Gasser:**

So Rob, perhaps in addition to that , one of the challenges, I think, is to understand what is actually currently on the way

in terms of implementations based on previous reports especially the Boston consulting group [inaudible 0:28:56.0] and my understanding is.

And I would love to hear more, especially from the working group one members, that the working group one has done something similar as we did basically saying that the previous recommendations by previous independent reviewers are sound recommendations but here is reemphasis what should happen now in terms of Board selection criterion and selection processes.

Is that a correct interpretation or is the working group number one, the set of recommendations addition to previous recommendations as a matter of substance? Just a clarification question.

**Unidentified:**

I'm not sure that I understand the question. The recommendations in this context are built around interviews and feedback showing that there is a high degree of consensus or belief that full input into the nomination committee are what's required in respect to this appointment set of the Board.

It's something that should be there. It was recommended by both the Board review and the nomination committee review. The Board has made effort in some respects to deal

with that but we think that they should be- and I think you are saying the same thing.

**Urs Gasser:**

So what I'm trying to understand is whether our recommendations are actually saying the same thing like your recommendation with the main difference that we do not repeat what previous recommendations have said while you provide some additional guidance and emphasis as we move forward so it was a very -

**Unidentified:**

Yeah, that's probably right. I'd need to sit down with both of them side-by-side and double check that but fundamentally yes, I think that's right.

**Rob Faris:**

Great, I'll continue to forge ahead. The next set of issues that we looked at had to do with the workload and set of responsibilities for the Board. Particularly vis a vis, that of the staff and trying to better understand how the interaction between the staff , the amount of support given the Board, the amount of time that the Board could spend on specific issues, which seemed like a core issue that needed to be addressed here.

Again, reflecting back on a standard corporation, the question would be for ICANN, would we expect and would we think in an enormative sense that the level of interaction of the Board with the set of responsibilities of the Board,

the amount of time that they spent in the running of the enterprise should be more or less than a corporation.

And it's our feeling that the Board, in fact, should be involved more. Going back again to this question of meeting a bottom-up organization consensually based where there is going to be a lot of disputes and trade-offs to be made.

That this would make more sense for the Board to be more engaged rather than less engaged. I see looks of puzzlement. Would you like to follow-up?

**Urs Gasser:**

That's a kind of over-arching statement that really needs some depth; this is to say the Board needs to be more involved. In what way? I mean, there are limits as to what they can do because of time and part of the issue, and this has come up from working group ones discussion, is that there is no clear understanding of what it is the Board should be doing.

So, to give you a very simple and I acknowledge completely that this is very simplistic, seems to me that the Board's job fits into four categories. There is the stuff they legally have to do and that's things like signing off on the accounts because the California law says they have to do that, you know.

Then there's stuff that they contractually have to do so if there is a GTLD contract and it says in the GTLD contract, if the registry wants to increase prices that needs to be approved by the Board. So that's the contractual things that they have to do Then there is [inaudible 0:33:59.6] practice that's not written down anywhere. Nobody says they have to do this but they do it.

So, an example of that is, in fact, it is not written anywhere that the Board has to approve re-delegations. It's a practice. And the fourth thing is that they are sometimes forced into making decisions.

The best example that I can give you, and let me stress this is just an example, is if the GNSO cannot make a decision itself about integration, fundamentally, in order for the new GTLD process to proceed, the Board needs to make that decision. So those, I see, are the four areas to get involved in. Now assuming that's right in that context, what do you mean by that they should be more involved?

**Fabio Colasanti:**

I'd like to , I mean that other than [inaudible 0:34:55.6] we haven't discussed yet within the review team, but I see another area where the Board should be doing more and then I'm getting more and more convinced we should get moving in the direction of a professional Board.

The members of the Board of directors ought to be paid because they will have to spend much more time than they are doing now. I would say that the Board has a collective responsibility regarding the work of ICANN of the structure of the staff.

This is something I have mentioned already in a message that I sent to the group. Many of the complaints that we've heard from the community are not about the Board, they're not about the staff of ICANN, about their interaction with ICANN, with the senior members of the staff at least.

And you, yourself, in your report indicate that that may be the reason for to have a responsibility in guiding the staff. Because after all, we are in this situation and we are in the foundational issue. We are in a situation where, in the corporation construction of ICANN, what you're missing is the meeting of shareholders, the meeting of members, the ultimate source of responsibility.

We can't have it so we have the authority's invested in the Board and the Board is trying to find its self accountability through transparency as you indicate in your report. But then the Board is now, in this construction, the Board has the ultimate authority and it has to guide the stuff and its steady work.

You, yourself mentioned and it has been mentioned many times in the comments that there is a feeling that there is a capture of the Board by the staff. So I see on top of the four areas I previously mentioned a sort of responsibility of the Board for a continuous guidance of the behavior of the staff. So that adds another dimension, in my view, of what the Board ought to be making.

**Unidentified:**

Rob, if you could come back to Chris' question, the four criteria because it's pretty clear, legally required, contractually required, doing it by practice in terms of decision making or sometimes being forced to make a decision, working with that framework. If you could give a response to Chris' question and then segue way to Fabio's.

**Rob Faris:**

Sure, sure. Let me back up half a step and say that I agree with the spirit of your question and that I never intended to launch us off into these very, very specific questions. So what the Board should be doing more of, I think, is a very, very long question.

And then I would defer further discussion but certainly that is the motivation and I agree with the spirit of your remarks and this motivated us to ask the question if we were to have more Board attention on some of the matters including the ones that Fabio introduced, how would we go about that?

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What are the ways in which the Board may be supported to play a more active and stronger role? So that's half of an answer...

**Unidentified:** That's fine.

**Urs Gasser:** Where are you referring to, in which document, when you say? Which document are you actually looking at right now?

**Rob Faris:** I have the Berkman Center.

**Unidentified:** Page 26.

**Rob Faris:** The report itself. I'm not following this faithfully so forgive me for that as well. I wanted to put these issues out -

**Unidentified:** If we're able to get the second screen working at some time that probably would be helpful to have both the report that we're referring to now...

**Rob Faris:** That's right. Again, this is just roughly the structure of how we've been looking at this and I wanted to get these issues out to you.

**Unidentified:** Okay, I think Jonathan had a follow-up.



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**Jonathan Zittrain:**

I just wanted to say that the sequential comments by Chris and Fabio will nicely illustrate two non-mutually exclusive views of the function of the Board. One is a functional description that boils down to the substance.

And where is the Board either legally required or by all sense ought to be weighing in and what I took Fabio to be saying, and this may represent the qualitative part of Rob's observation, is that the Board in this organization is structured to yield some measure of accountability?

And representativeness that the Board selection is carefully structured, there are different, if not constituencies, different ways in which the Board is filled meant to spread views and segments from the affected communities and of course the Board members owe a fiduciary duty to ICANN but they also must know , qualitatively speaking, that they come from a particular zone and it's by design in the documents of ICANN that that be so.

The staff of course, it's hard to imagine structuring a staff so explicitly to reflect those degrees of representation. So to the extent that there are decisions being made and organizationally we are counting on the Board to be showing the representativeness to evaluate those decisions to the extent that by practice and habit it has come to the staff.

The Board function of representativeness is not being achieved so I think that that might be one of the qualitative impressions that kind of infuses everything, even with the four functional areas being extremely well taken. That's where the substance matters. Chris.

**Chris Disspain:**

I don't disagree with you but [inaudible 0:41:14.6] I would caution that you need to be very careful when dealing with Board and staff. ICANN is different in many respects but it's still a corporation, a not-for-profit corporation and it's fundamentally the role of the CEO to deal with staff issues.

Now that does not mean that the CEO can't receive direction from the Board. We need to be very careful that we don't end up in the circumstance where we effectively have, with the best of intentions, including the Board doing more, you end up micromanaging to a point where it becomes impossible and you'll your staff just disappear because -

**Unidentified:**

Micromanaging would be as bad for the Board and as taxing on the Board as I imagine it would be on the staff.

**Brian Cute:**

Exactly. Manal?

**Manal Ismail:**

Thank you Brian. Chris, you have nicely structured the workload of the Board but I wonder whether the planning thing is one of the things in the four bullets you have

mentioned because I think, so far, the Board is a bit over reactive and I understand that it's a bottom-up process but again, I think that if the Board thinks ahead and proactively have some thoughts, this would help with making timely decisions.

**Chris Disspain:**

There are two aspects to that. One is just a general good Board person. It is covered in my four points because I think there is a legal requirement or if it's not it's in the bylaws for the Board to do a strategy and so therefore, there is a requirement for them to be dealing with the strategic operations of the organization and it's just good Board practice to be thinking ahead as well.

**Manal Ismail:**

So this should fall within the legal obligations of the Board?

**Chris Disspain:**

Yeah.

**Brian Cute:**

Okay, I have Olivier and the John Palfrey and Fabio.

**Unidentified:**

Olivier.

**Olivier Muron:**

Yes, just a small comment because in your presentation you just made, you made no difference between the two parts of the Board elected by this organization and ICANN. If you look at the value of the criteria to choose them, they are not exactly the same and on many topics we are discussing,

they should not be treated the same way, I think, in terms of compensation and things like that. I want to know what is your reaction to this.

**Rob Faris:**

I actually don't have a well formed opinion on that one. It's an interesting question. You are right that we did not differentiate between different types of Board members and my own instinctive response is that the Board should be looked at wholistically and improved in that sense and that wouldn't want to necessarily tailor roles coming from different constituents used to fill different needs on the Board but as I said, I think that's an interesting question and it deserves more.

**Brian Cute:**

John Palfrey.

**John Palfrey:**

Thank you and good morning. So just on the point that Rob just made, of course there's a history within ICANN of distinguishing in just that way, of Board members. Particularly the ones who are elected briefly and so it's not without precedence to think in these terms.

I think it's helpful as we go back to finalize to see whether or not we should rethink some of our things in light of that. I agree with you that the wholistic view seems just right as we think about the Board but using the mechanism may or may not be something we'd want to think about, especially where the expertise required is so broad but that may be

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something we could get into during the session with John Coates.

**John Coates:**

What I raised my hand in response before was for some of the earlier comments between Jonathan Zittrain and a few of the ATRT members which was on this question of expectation both of staff and Board individually.

Here's the struggle that I've had in thinking about that part of the report which is, on the one hand one wants not to be constrained by the present in the sense that we want to help with what's right, at least by way of recommendation to aim relatively high, the importance of this effort being so crucial to this [inaudible 0:46:01.1] and so forth.

Because of our existing restraints and so forth, we want to calibrate down our expectations. On the other hand, we do not want to make a suggestion that isn't gonna work, right? So if we make the expectation so high that there's no way, practically, for Board or staff to carry out the particular task that we had in mind for them.

It creates an obvious tension between these two, where we want to aim and what we may practically get to. At least my own framing of this is that we should be somewhere between the two. Good morning John Coates, professor of Harvard Law School. And so I'd be very interested in the view, in your own thinking, if you're willing to say on this

issue of the responsibilities and the expectations of staff and on the question on expectations and responsibilities of the Board, where were you, in your own thinking, is the point in between those two as in we're aiming for the best we can possibly do or that we're thinking about it more in sort of a media practical terms given the number of hours that are being expected of the Board and the staff.

We're going to sort of half the expectation level. And just for my own part, we kind of went between those two to say we want to stretch but we don't want to be unrealistic. Chris.

**Chris Disspain:**

Thanks. Fabio, you can respond to this if you think I'm wrong but with the exception of Fabio's point about , and it's a very specific point, or a couple of very specific points in respect to the staff, we didn't spend any time looking at staff interaction at all.

We were much more concerned about the Board and its structure and skill set and so on. And we haven't spent any time discussing, and unless I've misunderstood, I felt that what you're talking about is what the staff does as opposed to what the Board does and what the relationship between those two is.

**Unidentified:**

Yes, but I was also responding to your previous comments as a CEO and as a chairman, do you think about how to

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calibrate expectations? I guess I was interested in this question of what series of tasks are allocated to the staff and how far they can take them or which series of tasks are allocated to the Board, something that John Coates had strong views on we can get into.

But also really between the aiming for something that's perfect, i.e., fixing something completely in a way thinking and it could be either on the staff or the Board sense, that the sky is the limit in terms of what one could do. So, one might, just as an example, compensate Board members almost as full time employees to restructure the skill level.

And I know there are various proposals to get professional Board members in really to wipe the slate clean and go for something that is optimal in a sense but forgetting budget. Likewise on the staff side, these are extraordinarily hard working people but we know that if you added three more staff people to work on this topic without it being a proposal in or out of something you might think about. I understand what you are saying about the staff. I mischaracterized that in my own mind.

**Chris Disspain:**

Okay, again, if I understand you correctly our discussions on the Board had everything to do with skill sets and very little to do with whether they should be doing more or indeed less. The concept that they should do more is coming from you and not anything that we've considered.

In respect to tasks that are currently done by the staff, things that the Board does and comparing those if there's a better way of doing it, again, not something that we've thought about because at least a part of that reason from my personal point of view is.

Because I view staff management issues very much as being in the remit of the senior staff and not on the remit of the Board other than the management of the CEO and other than making high level principle of philosophy statements about the way the organization should be run.

**Unidentified:**

Fabio and then Urs.

**Fabio Colasanti:**

Well, it is true that we haven't discussed the amount of work that the members of the Board ought to be doing but it's a factor that I myself have been looking into this issue of compensating the directors for a number of years and the more we have been discussing with people, the more I have the impression that this is the majority view building up that directors ought to be remunerated and not matched but there ought to be some kind of reward.

Now on the interaction with staff and Board, we have been concentrating on previous discussions essentially on the work that the staff is doing to prepare the decisions of the Board, that all is sure of the briefing material, should they



be published, should they make them confidential, is there a risk of capture of the Board [inaudible 0:51:16.7].

The additional point that I am trying to make, that I made rather late in the day, I started thinking about that probably a month ago, is that after all, the Board is the “parliament” of the internet community. Now the internet community is asking ICANN as a whole, to be transparent, to be multilingual, to appear more and more as an international organization.

These needs of the internet community should be translated to the Board and the Board should ask the staff to behave in this way. So it is not a question of clearly micromanagement but the Board should also be reassured, should be given instructions and should be reassured that these instructions are followed when it comes to the behavior of the staff and geographic diversification, use of languages, interaction.

We will have probably very demanding recommendations when it comes to public consultation and this is clearly annoying for the staff. Inevitably the staff will try to limit as much as possible but then again, the Board has to be reassured that the instructions about transparency are fulfilled.

So this is where I see extra work for the whole Board, for some members of the Board as you indicate in your report, but it's a dimension that we should be looking at.

**Unidentified:**

Thank you. Urs.

**Urs Gasser:**

Thanks so much. So just to summarize it a little bit the discussion so far, I think Chris is quite right. There is a difference between the Berkman's study and what working group number one is proposing in terms of what all issues we need to address.

I think the staff/ Board interaction issue and the question of the role of the Board are issues that have come up in many of our conversations and interviews so that's why we identified them. Now we may disagree on how to attack them and how to deal with them and all the answers but I would like to note that these have been issues that have come up in the facts based analysis that we were supposed to do.

On the things that we've shared in terms of issue identification the Board selection and skill issue. Going back to Fabio's earlier question regarding the differentiation within different ways how Board members are elected, one thing to consider there is , I think, the role of the nomination of committee which was characterized by

[inaudible 0:53:58.2] committee, not the nomination committee.

And that's something to keep in mind when we talk about skill requirements that are obviously NOMCOM has a stronger angle and more leverage to actually find people and to work hard based on the set of criteria you defined. I think we agree on that. That's also the approach that working group one is taking to appreciate the role of NOMCOM.

**Unidentified:**

Chris, Larry and then back to Rob.

**Chris Disspain:**

Urs, just so we're absolutely clear, don't misunderstand me. I'm not saying that your recommendation is wrong. I'm saying we haven't looked at it. What started this ball rolling is Rob's comment that was an overarching comment that the Board should do more and me saying what do you mean and then we started getting into staff stuff.

You are quite right, there is constant feedback about the role that the staff has and the Board has and so forth. Clarity around that may well be very sensible. I just want to be clear that we're not saying that - I mean, the whole point about this is that you guys are going to come up with different thoughts and different recommendations for us and just because it's different doesn't mean we don't agree.

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**Unidentified:**

Larry.

**Larry Strickling:**

I just wanted to follow-up on a comment Chris made not immediately but a few minutes ago in terms of what we looked at or what you looked at and whether you felt constrained in looking at it because I would think as a review team, we can look at any of these issues we wish to and I guess I'm a little concerned if working group one felt it was constrained from looking at specific issues because of that.

But beyond that, it does seem to me that as a Board member, if I were a Board member or you as a Board member, as well as the Board in the aggregate, absolutely has a concern, a valid concern, in understanding the process by which matters come to it for decision. Are you seeing things at the last minute, are you seeing things without an adequate briefing of all of the issues?

These are staff driven activities and I think the Board absolutely has an important role in evaluating and speaking to and certainly I think, as the review team, we're not constrained by any of that.

Now, when it comes to making recommendations, what you say, I would agree with which is if we were to make a recommendation to the Board it would probably be to have the Board directive, the Chief Executive Officer, to take

particular action but that should not in any way prevent us from diagnosing the issue and evaluating it in terms of whether or not that is one of the areas that's leading to the issues that we're seeing in the community about ICANN.

**Urs Gasser:**

If I gave the impression that we felt constrained in any way that's not right. Two separate comments. The first comment is that we didn't consider it in any detail. The second comment is that I think that there is - the second comment is unconnected which is I think that if we were to make recommendations, I completely agree with you. So those two things are not connected. I am happy to spend time discussing these particular issues because I think they are very relevant.

**Unidentified:**

Thank you. Rob back to you and observing Professor Coates presence here, if we can integrate him into the proceedings.

**Rob Faris:**

Wonderful.

**Unidentified:**

Welcome Professor Coates.

**Rob Faris:**

So I think what I want to do is move back from these overarching statements [break in audio] specifically and also give Professor Coates an opportunity to weigh in on this so where I had started was trying to look at Board activities in comparison to other corporations and noting

that ICANN has some differences that, maybe unique is too strong a word but, it is unique.

One is that the Board is going to be playing an adjudication role more than a lot of Boards. They're making decisions in which there are winners and losers. Another key difference is that they are meant to be representing interests of a global public and another factor that is important, which was the third overarching thing that we had looked at was that there was a presumption of much greater transparency with ICANN than with other corporations.

I don't think that we know where the line should be drawn. I think it's an open question. We needs to explore that which is where there are areas with increased transparency will lead to not only better accountability but better decisions made as such. If you have any reflections on that I'd love to give you the opportunity. Otherwise, we'll jump into specific recommendations.

**Professor Coates:**

By way of background I come at this completely outside the internet world and completely outside the specific world of ICANN and I was asked to sort of lace the governance issues that ICANN's facing in the broader upper governance debates which also [break in audio] or similar challenges.

So while unique, there are some commonalities with organizations, frequently with Federal Reserve banks have similar challenges. There are many quasi-publications that have a similar essentially private corporate structure but which, nevertheless, have to face much greater demand for accountability to different kinds of constituency's where there's not a single clear mandate for how differences should be resolved where in fact they're performing

**Unidentified:**

In a role where transparency, as a result of those things, tends to be much more important. But, having said that, most of the corporate governance world is obviously very different and so the lesson that I think you can draw from that are gonna be much more useful to talk about in the context of specifics I think.

**Rob Faris:**

Great. So let's jump into the first set which is related to the skill sets of the board themselves. I guess what I'll do is try to make sense of them jointly and we can discuss them jointly to the extent that's useful. So, from the Berkman Center, we just started off by recognizing that there have been a lot of suggestions that this is an area that deserves more focus in the past so the ECG report, among others, from the Review Team, the suggestion to benchmark Board skill set.

That's again, similar corporate structures. I guess we'll pause there and see if people are happy with that and see if

there are reflections on that. I'll keep moving forward then in that case. We had added to this, as I had mentioned earlier.

**Unidentified:**

Sorry, just a question. I mean, I don't know how deep into this you want to go. Do you have some examples of similar corporate structures? And it's all very well saying "benchmark" but is there anything out there you can point us to?

**Rob Faris:**

Just to be clear, that was the Review Team's suggestion, not ours.

**Unidentified:**

Alright, fine. I appreciate that. My point is that we - one of the things that we discussed at the beginning of this exercise is whether you would be able to provide us with practical input on - like if we made a suggestion, whether then it would be possible for you to actually point us in the direction of stuff that we may be able to use as practical examples.

And I'm just wondering whether you have any? It's completely pointless, that sounds like to us, that's a great recommendation to make as far as I'm concerned because that makes sense to me. But it's completely impractical as a recommendation, if in fact there are no corporate structures to benchmark against.



One of the things that perhaps I've misunderstood - one thing that I thought our mutual relationship was going to be about was you actually backing that sort of stuff up by helping us out by providing that practical input.

**Rob Faris:**

So, we have, in fact, looked at a number of different corporate strider unless Professor Coates wants to weigh in on that but, I think the punch line to that is there's no easy analog for ICANN and we're gonna have to borrow and steal from different corporate structures and try-

**Unidentified:**

I mean, there is no practical, simple set of alternative organizations that you can look to for clear models for a benchmark. That's just the bottom line in my view. It's a nice idea. You can talk about it in abstraction, like years of experience represented but I don't think that's really going to advance what you're asking for which is practical advice about routine ordinary benchmarks.

**Unidentified:**

So what we had in mind in making that very broad statement was that behind that there are a number of skill sets that are kind of just automatically wanted for a corporation, whether it's a not-for-profit corporation or whether it's a full profit corporation serving finance experience so that they are able to interact with the finance staff from a position of authority would be useful.

Having somebody on the board with legal experience so that they are able to interact with the legal stuff from a position of authority might be useful. In the case of ICANN, I can see that maybe public policy experience might be useful.

So whilst I accept it that there may well be no corporate structure that fits, there's two things here. One is it seems to me that there are fairly obvious skills that one would want. And secondly, question, are there any similar corporate structures that we could mine for additional skill sets that we might not have thought of?

**Olivier Muron:**

Yes, just one point. You mentioned somewhere in the report, the Girl Scouts of America, and I was wondering why.

**Chris Disspain:**

In the section of board development versus board selection and just to indicate, that is one of the organizations that thinks more in terms of board development recently than just focusing on the board selection process.

**Urs Gasser:**

If I may jump in here, Chris. One of the questions I have is how do you deal with the current framework and the bylaws that set forth quite detailed skills that are required? Is that the starting point or would you say the approach is to benchmark first and then to see how we need to rewrite, if necessary, the bylaws.

**Chris Disspain:**

I'd argue, without having the bylaws in front of me, so I'd be happy to be shown that I'm wrong on this but I'd argue from memory that the bylaws deal with some fairly high overarching issues like people of integrity. They don't, as far as I can remember, deal with any sort of practical skills. But again, maybe I'm wrong.

**Fabio Colasanti:**

Well, it's pretty detailed although it's still pretty - it depends on what you think is -

**Chris Disspain:**

Well it talks about geographic diversity and it talks about gender diversity and it talks about, but I don't recall it talking about, you know, specific corporate skills. And the reason why this is important, it seems to me is this; we have two processes by which board members come to the board.

One process is that the supporting organizations are now in respect to [break in audio 0:06:42.9] nominate people to the board through whatever process they choose. Now in the case of the CCNSO, its bylaws says that the council nominates two people to the board but CCNSO's own internal rules actually make that the members first and then the council does that.

Now those people who are nominated to the board in those positions, and I would argue the same thing applies to the

GNSO, coming from the community and are chosen by the community as people they think that are good to put on the board because they are experienced and certainly that they are respected by the community.

But, the community's not picking them necessarily because they've got finance experience or public policy experience or admin experience. They're choosing them because they are part of their community, generally speaking. On the other side of the coin you've got the nominating committee and the nominating committee, I would argue, is where the gaps that may exist should be filled. But those gaps need to be practical.

Sorry, the explanation for those gaps need to be practical. High-blown language about people of integrity and world view and all that sort of stuff is incredibly important but it doesn't actually fill a gap if there is no one on the board with finance skill.

**Unidentified:**

That makes total sense to me. I'm just happy to point out that the recommendation, the second, goes into this direction where we say more emphasis on board selection and corporate governance collective decision making and so forth. So this is along the lines of your suggestion I think.

**Fabio Colasanti:**

We shouldn't be forgetting that the board is already pretty large at 15 members. [break in audio 0:08:32.2] in my view they should not lead to overriding the other criteria such as geographical diversity , public policy experience, because after all, as I said before , this is "the board is the parliament" of ICANN and so these dimensions remain important.

Clearly, the nominating committee would have to- can combine the two. Can make sure that they get somebody with corporate responsibility coming from [inaudible 0:09:04.9] or whatever. Can I add another point that it was put forward in public comments where we have different views up that there is a need to have a more transparency about the way in which the Nominating Committee works.

In our own recommendation for the moment, we are talking about the confidentiality about the names of the candidates. Is that absolutely necessary? We have other organizations where people are candidates for certain positions have to declare their candidacy openly. So why should the candidacy for positions of the board be confidential? So this is a question where I would like to have the views of the Berkman team.

**Unidentified:**

Berkman, any reaction?

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**Chris Disspain:**

So I think one of the recommendations, okay, I will go to the next page, is also this emphasis on transparency. I think we are perfectly aligned with Working Group One's recommendation in that sense to the extent possible maximum transparency especially where the Nominating Committee is concerned.

**Cheryl Langdon-Orr:**

I was actually going to point out that the drill down on the next page goes into some of that but also point out that we need to speak without remit which is not making recommendations specific to Nominating Committee activities. What we can make is a recommendation that the Nominating Committee needs to meet particular outcomes and the Board needs to see or help them to make a way to do that.

We just can't get into the minutiae of how NOMCOM works now or how it could eventually in the future. We can do some of the micro recommendations. It's, to me, a little bit odd that a nominating committee as it is in ICANN isn't selecting what I would consider independent directors and they're not as such. And if they are, and that [inaudible 0:11:22.4] changes to particular skill sets.

That will help but the mechanisms of transparency in that I think is something that needs to come in under a NOMCOM review rather than this particular review.

**Fabio Colasanti:**

If you go back, we're dealing with a difficult foundational issue. I mentioned before that to a certain extent you can see the Board of Directors as the parliament of the ICANN community. The work of the Nominating Community is the electoral system. It's the equivalent to the electoral system.

This is how you select people who will be representing the [break in audio 0:12:10.8] the supporting organizations that have in the bylaws of their lobby seats. So, there is a strong case for having the maximum transparency possible and I would go to the point of even making known the names of the candidates so that one can judge how the Nominating Committee is choosing who has been selected and who has been rejected.

If we want to have ICANN that takes decisions that are accepted and braced by the community at large, you have to have trust, confidence, even on this sensitive issue.

**Cheryl Langdon-Orr:**

Not disagreeing with the principles at all. I'm just trying to focus on the recommendations that we can make in our particular remit. Remembering that I come from the world of At Large and we would prefer everything be out in the open and on the table and, of course, we might end up at the end point. I'm not disagreeing with Fabio.

**Unidentified:**

Cheryl, if I may, your point is very well taken. As we move through today, tomorrow and Wednesday and we focus in on the recommendations, we must, as a review team, ask ourselves that question. Are we within scope; are we directing this recommendation to the proper recipient, if you will, is what I'm hearing you say. Chris?

**Chris Disspain:**

I'm a little concerned. First of all, I want to make sure that things don't get accepted simply because they've been said a couple of times. Fabio, you and I can have a discussion about this perhaps over coffee but I would take issue with your characterization of ICANN. I'm not sure that that's actually correct.

It concerns me slightly because, and it may just be a linguistic thing, the word "parliament" is massively loaded with all sorts of things that go along with that. So I just think that we need to be really, really careful about things like that.

On the concept of transparency, for the Nominating Committee in transparency generally, in respect to the Nominating Committee, the solutions to the issues that are arising in the Nominating Committee are to build trust in the Nominating Committee process, not necessarily to simply throw the doors of that process open so the candidates are affected.



I suspect that there would be a large number of people who may come as candidates who, were it to be public knowledge that they were candidates... Let me give you a very specific example, one of the people nominated to the board this time around is Bertran DeLaChapelle.

Now I don't know whether Bertran actually told his employer, the French Count, whether he had put his name forward but I do know that he knew that he would have to resign his position. It would be putting him, I would argue, in an untenable position if his candidacy were public.

He would be forced to go to his employer and tell his employer that, which he may have done anyway, which is fine. But on the other hand, that should be his choice, not ours. In respect to transparency generally, at the board level, it seems to me, and I acknowledge completely that this is very easy to say and very hard to do, but it seems to me that the philosophy and I think this is pointed in out both in Berkman's recommendation, it is transparent and you work backwards from there.

Where I think we are right now is simply because of the fact that it's been going on for so long, is we're actually trying to put transparency into a process that hasn't always been transparent. And I have no idea whether we can ever achieve it but it seems to me if we can spin it and simply say the default should be transparency but there are lots of

reasons why it can't always be that way and here's what they are. That might make it easier.

**Peter Dengate Thrush:**

I'm not sure whether this is relevant or its not relevant for our discussion but one thing I am sure about is its completely [inaudible 00:08] about it unless we get some clear pegs in the ground about what it is we're talking about so let me, let me try. First of all, this is based on feedback from certain people in discussions that some members of the review team have had.

Secondly, specific suggestions have been made that date an outcome by a certain date for a number of staff members effects their [inaudible 00:48]. Now that, that outcome by a certain date is [inaudible 00:54] says in respect to interpretation because [inaudible 1:02] because in order for that date to be metacarpal a number of things need to be clear and those things need to be, basically for those decisions to be made, discussion with the ICANN community needs to happen.

So the implication is and I would stress that I am just kind of putting this together, I don't necessarily hold the screw. The implication is that processes may be rushed or curtailed in order to have a particular result by a certain date because the en enumeration of the staff is enhanced if that is achieved. That's the, without going into [inaudible 1:53] detail.

Whether or not this is an issue for us is an entirely different thing but that is what Fabio is asking for your approval.

**Brian Cute:** Any reactions.

**John Palfrey:** Hey Peter, let me just, totally outside the...

**Brian Cute:** John?

**John Palfrey:** Totally outside this Board but it strikes me that normally staff compensation would not be an item for [inaudible 2:26] review but there are reporting constituencies who have the perception and have just outlined it that the organization is failing to meet its goals, to put it vaguely. [skip 2:48]

Woodbren suggests a general rule for the Board to take up compensation structure not for a specific case. That would be silly but in general. I mean, so it would be no different than the issue that has come up in the financial community about making bonuses to particular, creating events. This has obvious advantages and obvious disadvantages.

In general, Boards didn't think this was a role for them to get involved in but it has come in because of hindsight because of serious problems, the structures that were created, the Boards are taking it seriously. Not as an

ongoing matter but as a general matter set in parameters around when this can be done and how. Now, I do have another observation.

The policy versus implementation, I understand the distinction and everybody would but I suspect that the problem is that, that they get entangled.

**Brian Cute:**

Jonathan and then John Palfrey.

**Jonathan Zittrain:**

I don't want to ask a question on a totally different topic because obviously we have John here and to sort of just get his comments out on the table which is on a subject for which I don't think we have sought to make any recommendation about Board size because that's been a subject already studied and weighed in upon and everything else.

But I just, as long as you're here John, I wanted to not simply ask you, you know, big versus little kind of thing, but rather if what we have is a comparatively large Board then it's basically going to stay that way. I don't think anybody's putting on the table, in any venue, the prospect of shrinking it.

Is there anything you can recommend that structures the work to avoid the problems that come from size and that

maybe allows for some of the differentiation of roles or of talents that has come up earlier in conversations today?

**John Palfrey:**

Well, so I think everything that we've talked about in some way is linked to the fact [inaudible 5:00] relatively large size and so I am not sure I have a lot more to add but just to point to a couple linkages.

The idea of paying Board members is in part to overcome the inevitable tendency to free ride that when you are in part of a large group of people, all of whom are very talented and you know you are only going to be contributing a relatively small amount.

Thinking carefully about committee structure, one general thing too, I recognize that it is probably hard to hear a recommendation like this because it does imply something less than what is being pointed to but I think every organization frankly ought to have this permanently on their list of "to-do."

Because, in fact, it's a never-ending process of trying to, in fact, do all these things. So, it is not necessarily the case that I personally would be able to point to specifics to back all this up I just, you know, don't take the committee structure as a granted, I would say. This is, that for me is the idea of this recommendation.

Don't assume that because it has worked in the past and because every other organization that you look at has a finance committee that that's the right way to divide up the Board's time. In fact, take an ongoing role in looking in fact at what issues bubble up through the staff, dance around them or not, what's really taking up the time.

And if it's not finance you don't need a finance committee necessarily and that would be the point I'm making is think about it carefully as a narrative ongoing matter and this is a partial response to your point about the large size because I do think that large-size Boards have a habit letting inertia control their committee structure.

**Brian Cute:**

Chris and then John Palfrey.

**Chris Disspain:**

John, just to respond. I feel like a congressional committee. John, just to respond to that.

**John Palfrey:**

Yep.

**Chris Disspain:**

I just want to stress. See, your explanation of what you think the bit about the committees means makes perfect sense to me.

**John Palfrey:**

Yep.

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**Chris Disspain:**

It's not, that's not what's there. That's my point.

**John Palfrey:**

Fair enough.

**Chris Disspain:**

It's not about what, about being offended by this, it is more they just don't understand it and the more we talk about it the more I don't understand it, which is why I rather think it is going to take away.

**Brian Cute:**

John Palfrey.

**John Palfrey:**

Thank you. I'm going back to beats to two comments of Chris's ago so if you want to keep going on this thread I don't mean to —

**Brian Cute:**

It's fine. Go.

**John Palfrey:**

I actually just wanted to raise really a procedural point for the fact that we have roughly speaking three days together and it seems like today we have a fairly crisp agenda in terms of what we're doing and it gets less crisp over the three days if I recall. It seems to be exactly this point of, you know, "Let's clarify this."

I don't know if we have kind of a bucket into which to put issues that we wish to return to in days two and three. If there were a manner even if it means let's go to the Board

analogy, we break into [skip 7:57] into sub committees to work out some more precise matters.

If we're running out of time in other words doing it in [inaudible 8:04], I would encourage that and it obviously seems like something that some combination of the Berkman staff and ATRT leadership can tee up what we will then follow up.

And I would just nominate that particular topic as one where we've clearly spent a half hour and let's make the most of that learning but I don't actually think we disagree and, in fact, it may be a feature that we do disagree in part so I'm not trying to get to a consensus between the two processes as this is meant to be independent.

On the other hand, if we can learn from one another and be more in alignment then less, let's try to do that and at least pick up on this one as a chance to do that.

**Brian Cate:**

As contemplated. Thank you. I'm taking notes and Caroline, I'm sure you're taking notes on your end and the goal is to come to an agreement on recommendations by the end of day three. There may need to be some drafting after this obviously.

To the extent that we can, in real time, in the next 72 hours make some tweaks to drafts that are on the Board and take



another look at them that would probably be useful, particularly for areas like this where there is clearly deep interest.

**John Palfrey:**

Dr. Lee [inaudible 9:03] so in addition, one thing we can do on our end is certainly to back up some of the factual claims and to go through the case studies and our other work to make sure that we're bowstringing to the underlying claims.

**Fabio Colasanti:**

I have again a question for the back row team because from the discussion now, I have been pressured that when we read the part, "Make better use of committee structure," there was an understanding about something else or an understanding that one would drop the rest of the sentence, "to extend the Board involvement with [inaudible 9:36] earlier into the decision-making and planning processes."

Have you, in your analysis; come to the conclusion that there isn't enough Board involvement with the staff early enough in the decision-making and planning process? The basis of the recommendation was, "Use the committee structure" and something else was said on that but one point there is to have greater involvement of the Board into the decision-making and planning processes early enough.

**Unidentified:**

Right.

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**Fabio Colasanti:**

Which makes a lot of sense but probably this might be a question for Peter. Already now, I'm sure that the Board doesn't simply take formal decisions at the end of the process. It also takes decisions. Maybe next year we should be looking at this.

It's asking the staff to follow a certain number of threads to resolve a number of issues. Have you come across instances either in your conference or in the public comments where people have said, "There isn't enough involvement of the Board early enough in the process."

**Brian Cute:**

I defer this question to the case study team. You want to bring specific examples where we've heard this claim and not ideal timing interaction between Board and staff members.

**Joey Mornin:**

I think it's actually touching.

**Brian Cute:**

Mic.

**Joey Mornin:**

I think especially looking at the XXX case.

**Brian Cute:**

Could you introduce yourself?

**Joey Mornin:**

I'm Joey Mornin. I'm an RA working on the XXX case and the DNS-CERT case. I think from my perspective, it's

more a question of clarity around the process of Board staff interactions rather than the nature of the interactions itself.

I think specifically what we've been hearing in interviews is that much of the root of the controversy comes from not knowing what's going to happen next in the process and then not knowing how the Board is going to approach its decisions. Does that make sense? And that what you're trying to -

**Peter Dengate Thrush:**

What we're trying to. Thank you for that. What we're trying to understand is what lead to this recommendation and the question is, "Is there an example where earlier or more, Board staff interaction and the planning process would have lead to a better result?" So that's the, that's the question. What lead to this recommendation? What defect or what example of a failure lead to this recommendation.

**Joey Mornin:**

In that case, I might defer to the DNS-CERT case where there was a question of a lack of consultation on the nature of the threats to DNS security and consultation with share holders who are responsible for dealing with questions of DNS security.

I think a lot of the controversy in that case stemmed from Rod Beckstrom's remarks in Nairobi about the impending doom threatening DNS Security and the nature of the policies that need to be crafted in response to that. The

need for a DNS-CERT organization and I think there was surprise on behalf of many that were present at that meeting and especially surprise that they had not been adequately consulted in formulating that recommendation.

So, I think, again, it's not so much a question of the nature or the volume of the consultation that took place because ICANN did retroactively indicate that there were these consultations even if they happened in private and then those made their way into the interactions between the Board and the staff that those interactions did take place.

But because of the lack of transparency and because of the lack of clarity in that process leading up to Nairobi and also the development of the DNS-CERT proposal, it left many stakeholders feeling disillusioned with the process and feeling uncertain of how things had developed and that had been an impediment to the future input after that point.

**Urs Gasser:**

So here is my suggestion that this is perfect case where we're happy to go back overnight and compare the facts that you're looking for, as we'll understand and discuss a little bit back to the methodology point that John made earlier.

Of course, we try to aggregate and synthesize multiple sources to case studies, public submissions, over 40 interviews so on top of the head its sometimes challenging

to identify one particular instance that you're looking for but we're happy to do that and answer the question more specifically tomorrow evening.

**Brian Cute:**

Thank you Urs. Okay. We're going to just keep moving forward. I didn't schedule a break. My apologies but please, as you need take [inaudible 14:30] breaks or walk outside and smoke a cigarette if you need to but Rob, please carry forward. We have Professor Coates for a little while longer. Let's work through the rest of the recommendations.

**Rob Faris:**

Okay. Thank you.

**Brian Cute:**

I do have Manal first. Sorry, before we go.

**Manal Ismail:**

I was going to say, we do have an issue we wanted to hear Professor Coates on regarding review, right?

**Brian Cute:**

Yes, that's, I wanted, that will be part of what's coming up. I was going to get to that.

**Unidentified:**

I was going to get to that Larry.

**Larry Strickling:**

Yep.

**Brian Cute:**

There's two things that we'd love to hear Professor Coates um talk about. One is the review process and the other is transparency of Board decisions.

**Unidentified:**

I didn't mean to interrupt. No problem. Manal.

**Manal Ismail:**

Just a very quick remark before we move on because I got the feeling that proactively was misunderstood as being talked down versus the [inaudible 15:17] model. And I really think and sorry Chris I'm not talking specifics again, I'm talking in general. I really think that thinking proactively would be the case. I mean

**Brian Cute:**

Thank you Manal. So, as I said we just want to touch on two things. These are huge topics and we'll certainly have to return to them at some point over the next three days but we'd love to give John Coates a chance to weigh in on both of these. So, the first one is motivated from comments from the community from interviews as well as comments submitted to the review team that they don't understand the basis for the Board decisions.

They weren't made transparently and this leads to fear that their own input was undervalued or not valued at all and this all leads into the question of transparency of Board decisions and how much traction we can get there.

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We also note in our report that there are many instances in which not making Board decisions completely transparent has great value and that there are tradeoffs there and we don't have a specific recommendation on this yet.

But this is something we're trying to work towards and understand how far one can go with transparency while also giving the Board latitude to talk honestly and frankly and make decisions and so that's, I guess we framed that in terms of recommendations, I'll just read that very, very quickly, which is, "Better delineate areas of high, medium and limited disclosure of Board input, deliberations and decisions and rationale for each."

That's three distinct buckets here. One is what the Board, what the input, what the Board is considering and what they have looked at and whom they may have heard from in making their decisions.

One is the transparency of the actual deliberations themselves and the other is the output of the Board and how are they summarizing the decisions and in what level of detail and what's being included and what's being redacted, if anything. Kind of put you on the spot on that one?

**John Coates:**

Yes, but that's okay. I mean, are you asking me just to elaborate the recommendations or -

**Brian Cote:**

So.

**John Coates:**

Or the rationale?

**Brian Cote:**

Based upon your experience.

**John Coates:**

Yep.

**Brian Cote:**

In other Board settings.

**John Coates:**

Yep.

**Brian Cote:**

What can we know? What's perhaps transferable in relation to transparency?

**John Coates:**

Got it.

**Brian Cote:**

How far one can go.

**John Coates:**

So here I should say I'm, I'm probably not representative of the general corporate governance community on some of these issues. I think that in general, people who work in corporate governance in the for-profit area have a uniform push for more transparency but I honestly think they haven't thought through the implications of the direction that they push in.



Transparency has an enormous number of pretty obvious virtues but I just will note that most corporate Boards don't generally make available their minutes to the public. Even in companies that are subject to disclosure obligations, it's not generally the case.

For example, a typical large company without a good reason, even if you're a shareholder and you typically have a moderately high burden to satisfy a court before you can get minutes.

And the reason for that, just to state the obvious advantage with the opposite of transparency, is that it can greatly impede honest and searching deliberation, if you know that every word you're going to be saying potentially is going to be released to the public.

And so, giving you, all that's a wind up by saying I'm not as much on the transparency side as many people in the corporate governance community so my recommendations here honestly are this is, again an example where I think that the Board should step back, maybe look at the past couple years in its own judgment.

And I think inherently it's going to need to be its judgment, not staff's and not third parties about agree to which its deliberations can and usefully could be made public. There privately, in my view, the right way to think about it is

probably a staged procedure where some things are released more quickly and more easily than others. And you've set out the three categories and I think those are useful categories for helping think through this problem. It's a very knotty problem. It's a problem that every Board faces routinely and it's one that I don't think is easily subject to simple resolution, which is why we don't have a simple recommendation on this point.

**Brian Cute:**

Thank you John. Fabio?

**Fabio Colasanti:**

Let me, Professor Coates, let me rephrase more precisely. First of all, I personally do not believe that ICANN should make available transcripts of the discussions of the Board nor make them available in [inaudible 21:07]. On that I totally agree with you but the issue that we have been confronted with is the extent to which the Board has to explain why it has taken certain decisions.

And essentially the atypical case one has in mind is an explanation that would say, "There were five options possible. We have gone for option three. We have declined options one, two, four and five for reasons A, B, C and D."

This gives the community global satisfaction. They know that their case was heard and was ignored for certain reasons. On the other side, there is somebody who might

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say the more you explain why you have rejected option four and five and on which grounds.

The more you open yourself to challenges because maybe you say that you rejected option five based on fact A because fact A was not entirely right and somebody might be challenging the decision. So how do you see the tradeoff between giving people who have expressed different views, the satisfaction that their views have been considered and opening the corporation to legal challenges?

**John Coates:**

Yes. No, it's a fair bucket. So we have two recommendations. One is something that is a little vague about developing procedures for deciding when and how generally information is being released and the second is precisely, in fact to provide detailed explanations.

In general, I think I understand, the balance particularly when you have a quasi adjudicatory role that the organization is playing is it will help the organization maintain and improve its relationships if it, in fact, provides explanations. They will have to be carefully written for exactly the reasons you're suggesting.

So, it's not the same thing as providing transparency in the traditional sense of, "Here's what we thought about and exactly the way we thought about it." Instead, these have to be thought about as explanatory documents. And to

anchor it in an analogy, which may be misleading, the Supreme Court generally provides detailed explanations as to it reaches decisions.

It does not provide minutes of its member's deliberations and many things that they no doubt thought about are suppressed permanently from the record of what they do and what they explain.

**Brian Cute:**

Thank you. Chris?

**Chris Disspain:**

John, I agree with your opening remarks about transparency generally and I also agree that, when it comes to ICANN, we're talking about rather than transparency perhaps degrees of transparency or rather providing explanation which helps with transparency but isn't of itself necessarily transparency.

But I just wanted to make one point about your [inaudible 24:11] which is I think you need to, we need to look at a slightly wider picture. In a corporate environment and as you say they don't even publish their minutes, in a corporate environment, you do have a whole series of [skip 24:31] to deal with decisions that their Board has made.

I mean, ultimately, they can sack the Board. Where we sit, it is completely different in this environment. We have, ICANN has a policy that the bottom up of ICANN's policy

making the Board endorsing most things, the Board doing its legal [inaudible 24:54] and I think it's, we need to get a little, we need to take the whole picture.

And say there actually might be a need for a high level of transparency because of the fact that there are no shareholders, there are no members as such and therefore all of the mechanisms available in a normal environment are not available in this environment. But having said that I think it's degrees of transparency we're talking about or explanation.

**John Coates:**

Let me just emphasize, too. I would, maybe we should add specifically in the procedures claiming because I do think, as time passes, if the outside community understands that eventually there will be full transparency or something close to it then that removes at least some of the tendency towards paranoia that comes with the lack of transparency.

It doesn't, but on the other hand if it's sufficiently lagged so that it is not directly interfering with the current members deliberations then I think that is a useful way, and in fact, that is the way I think a lot of public organizations make this look.

**Brian Cute:**

Anybody else? Rob?

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**Rob Faris:** I going to let Urs introduce the review of Board decisions.  
I think this is our last topic [inaudible 26:16]

**Brian Cute:** Sure.

**Urs Gasser:** I am happy to introduce this topic, obviously a very tricky one, too - independent review of Board decisions. Two steps back I think the working group number four has taken a slightly different approach than the Berkman team although we've been in, I would say, very complimentary in our approaches.

Working Group number four has actually looked into the three different types for seeking a review of Board decisions, ombudsman, reconsideration and the independent review process. We have exclusively focused on the independent review/independent review panel process.

Because, as we discussed earlier in earlier conference calls, argue that this is the only mechanism of independent review as opposed to reconsideration that is not an independent mechanism. So that is a scooping remark. Now the issues that have been identified in the context of the independent review of the panel is based on a very small sample of one case, the XXX case as we all know.

So we have from a methodological viewpoint a challenge. We have to address issues and come up ultimately with recommendations based on one single case. The only time the IRP was actually used. Nonetheless, what we've learned in drafting this case study as well as conducting interviews and reviewing other materials is that concerns over the costs, accessibility and utility of the independent review process as an accountability tool.

Particularly the cost issue was coming up in various conversations that we've had. Another aspect that I think is very important and you know, we certainly need to talk about today is the question of whether it is possible under Californian corporate law to have such a mechanism in place, an independent review mechanism in place that would result in actually binding decisions by the arbitration panel binding for the Board so that the Board's original decision could be overturned actually by, when this IRP process is activated, for instance by a stakeholder.

So this is still an open question of interpretation of law. I am happy to comment on both aspects but I also want to give the chair of Working Group Four the option to weigh in at this point.

**Warren Adelman:**

Well, certainly, this is Warren. That is a question that we need to delve into and we certainly presented a number of different options on this particular issue of the IRP and

California corporate law. And I think Professor Coates is still there so perhaps we have him, you know, provide his input on this other issue as well.

**John Coates:**

Sure. So, what I would say about this general topic is that there are ways to structure an independent review process that are consistent with California corporate law. I don't have any reason to think that the views of the ICANN about the Board's ultimate authority under corporate law are wrong. In fact, that is consistent with my own understanding of the way all corporations are governed. The Board, ultimately, has final authority over the corporation's decisions. But as the, is something that has been distributed?

**Brian Cute:**

Yes.

**John Coates:**

The last bullet, you know, makes clear there are ways that companies with Board blessing can bind themselves to particular procedures over some ambit which normally the Board would have responsibility for. I mean, I'm sort of at one extreme, you know.

I recognize this is not a live option that anybody has had any time thinking about but you know. Joint ventures, for example, all the time, between two companies, they come together, they know they are going to have disputes over the scope of the joint venture.



Both companies will typically bind themselves for the joint venture agreement to some form of arbitration of disputes which is then is binding on both companies even if the Board ultimately doesn't have the power to review or disagree with the joint venture arbitration results. So, there are ways legally to accomplish frankly anything you want in this area.

So, notwithstanding the existing tension perhaps between the ideas of ways to get anywhere you want to go. So, I think on this it's really a question in the end about cost, feasibility and value that it's adding and if you think in the end that it's worth doing than I'm happy to continue working on specific ways to get it done. I think the threshold issue ought to be the legal one it ought to be the policy one; whether it is a good idea or not.

**Warren Adelman:**

Well, I think, you know there is probably a variety of different opinion on this particular issue, you know, from both members [inaudible 32:23] and perhaps other members of the review team, you know, which is why it is the Board's recommendation. There are a number of recommendations. Certainly, that is not an exhausted so, if anybody else would like to weigh in based on this matter, please feel free.

**Brian Cote:**

Chris?

**Chris Disspain:**

Warren, it's Chris. I, my immediate reaction to the note we got was yes but we can't make that spread too wide. I mean I think that, from my understanding is that if you look at the Board's fiduciary duty, there are certainly things that cannot be given over to something else and that's correct under California law and, in fact, most law.

So the Board, for example, would be prohibited in my view from passing the obligation to review their financial [inaudible 33:25] to some third party. And I think that's, that's what that note basically is about. Which is certainly from a perspective of contractual matters, it cannot be the case that a corporation is unable to agree to go to arbitration and be bound by that arbitration.

That's the Board's decision and if they make that decision then it makes sense. And I think there's a whole league of other issues, which is that this catchall fiduciary duty thing is used to demonstrate that you can't actually go out for independent review.

Whereas, in fact, I think probably you can but I think John, your question, is actually the more interesting question, which is, "Do we really want to?" What's the, so I think we need to, and whether this is something this work team, this review team is going to get to as a recommendation or if

there is actually a vast amount more work that needs to be done on this.

I suspect it may be the latter, I don't know. But it seems to me if we move away from this sort of blanket prohibition on supposedly giving up the Board's authority and agree that it is possible there is a vast amount of work to be done about circumstances in which one would do that.

**Brian Cute:**

Thank you Chris. Warren, anything further?

**Warren Adelman:**

Well, I think it's, we're obviously going to have to delve into this in more detail over the next few days. You know, so many questions come up where we sort of began to present the option of differentiating between governance issues and policy decisions.

But I think there is some fundamental questions about, "Is this a viable, is it a really viable option if it's going to transpire in the way that it transpired in triple X, then really what's the difference between going down that path with an IRP versus just going straight to support scenarios?"

So I think just probably over the next couple days really we need to find, what do we really want from the IRP or in the independent-type review process.

**Brian Cute:**

Thank you. Larry?

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**Larry Strickling:**

We do need to have a detailed discussion about the policy implications but I'll just note as I did for Warren last week. If we're concerned about the quality of the decision-making by the Board let's fix that. If we create yet another mechanism out there that is now going to have ultimate say on a decision, we're just re-creating all the very issues we're trying to deal with respect to the Board.

So, I just, I think it's a fool's errand to be chasing the idea of off loading the actual decision-making authority to another body as opposed to focusing on what's in front of us which is the Board. If the Board were making decisions that people had confidence in then this wouldn't be an issue. Nobody would even be talking about.

So, again, my recommendation is we keep our focus where we need it, which is on the piece of this that really we can affect. As soon as you start talking about an independent review panel, the question then is, "Who's on it? What are their qualifications and skill sets? What standard do they apply?"

You know, we're just bringing back into this a re-invention of the wheel on a whole other set, on all the same issues we've been talking about with respect to the Board. So, that's why I don't, I find the legal interesting, the legal question of California law interesting and it's one that

people can go write law review articles on but I just don't think as a practical matter, it is one worth spending a lot of time on.

**Brian Cute:**

Thank you Larry. Anybody else?

**Fabio Colasanti:**

Can I just make a comment [skip 37:16] on this point in the discussion? I entirely agree with all the issues that Larry has mentioned. Still I think that the community outside would like to have some kind of review mechanism and maybe the existing one is satisfactory.

But I entirely agree with Larry that this review Board should not have the final word. Because I don't think that the review Board would be any better than the Board now. But maybe there is a case in still having a two-step mechanism. But with this review Board not having the final word full stop but taking a decision that goes back to the Board and then the Board is expected to follow it unless it has overriding concerns, overriding reasons not to follow it.

But I think there is some merit and we will have to discuss it over the next two days in letting the community know that there is a two-step process. But I entirely agree with him that I don't expect the review Board to be any wiser or more legitimate than the Board itself.

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**Brian Cute:**

Thank you Fabio. Warren anything else on your end?

**Warren Adelman:**

I think this reflects the, you know, complexity of this particular issue. I mean, I think, you know I would ask Larry, “Do we say then that you know our recommendation on independent review is maintain the status quo knowing that there has been a significant amount of frustration in the very limited, you know extremely limited experience that anybody in the community has had with it.

I mean, I think we just have to ask ourselves over the next few days, do we respond [skip 39:01] and what is our response here? Do we feel it’s satisfactory or do we say that we, you know, we thought as a full group, that this is where, we can solve this problem by more adequate [inaudible 39:15].

And do we feel that by addressing the Board we have a realistic expectation of making IRP or independent review unnecessary? So I just pose this as a question to think about as we dig into this in more detail over the next couple of days.

**Brian Cute:**

Thanks Warren. Chris?

**Chris Disspain:**

Thanks Warren. I just want to I think endorse what Larry said and add to it slightly. What we are talking about here is basically a trust issue. We’re saying that some people do

not trust the Board to make the right decision and the reality of the situation is that the Board could be the best Board in the world.

And if it makes a decision that you disagree with you will ask for some way of making that decision be reviewed by somebody else because there is a chance that somebody else will decide it a different way. So, you've got to come to the top of the tree at some point and it seems to me, that the top of the tree has to be the Board with a given that there in certain circumstances the independent review process that was used for the XXX experience.

But the concept that we would put in place of yet another and someone would have the right or a certain group of people would have the right to say, "No. No. No. That decision has to go up elsewhere to be reviewed." This seems to me to make a mockery of the Board's authority.

**Brian Cute:**

Thank you Chris. Rob?

**Rob Faris:**

I think this is probably a pretty good time to break.

**Brian Cute:**

A place to pause, yes. I guess I'd then just say John, is there anything else you would add to this 'cause clearly we're going to talk a bit more about this in the next two days.

**John Palfrey:**

I-

**Brian Cute:**

Feel free to come back to me if you think of more questions. I'll be around. So, great, thank you very much. Okay, any other questions from the table? Okay then, we'll take our lunch break now. We have it scheduled for an hour and a half. We'll see you all at 1:30 p.m.

**Cheryl Langdon-Orr:**

We don't need an hour and a half.

**Brian Cute:**

Okay anybody who is still listening out there, we're going to go for an hour. We'll be back at 1:00 p.m.

**Cheryl Langdon-Orr:**

Even that's generous.

**Brian Cute:**

Yeah, but these are Harvard people. Okay, we are going to kick off the afternoon session now and Rob has instructed me that John Palfrey -

**John Palfrey:**

Yes, sir.

**Brian Cute:**

Taking the wheel -

**John Palfrey:**

I have the wheel or whatever it is.

**Brian Cute:**

Okay, please, if you will.



**John Palfrey:**

Thank you and to anyone out there on the chat and otherwise, this is John Palfrey, I am one of the Berkman Center faculty and one of the colloquies on this project and I will chair the next two segments with the able assistance of my colleagues. I want to make one threshold point and then one procedural note.

The threshold point is something that may or may not be or may not have been a little bit controversial in terms of our approach to this GAC segment and it is a matter of framing which may sound like splitting hairs but I think it is very important. We have chosen, or decided it was appropriate not to ask how government should interact with the GAC but rather to look at it from the perspective of I can and the Board, relative to its interaction with the GAC.

So, as you will see, I suspect the H.E.R.T. has taken the same view but I just wanted to state that for the record as our perspective into the issues. If that becomes confusing and we are crossing that line or otherwise getting it wrong, please, as always pause and let's talk about the implications of how we have approached it.

**Fabio Colasanti:**

Excuse me.

**John Palfrey:**

And the procedural note, we will do just the same as we did before, of course.

**Fabio Colasanti:**

Yes. Your remark is important because Manal can give us more indications on that. We understood that in the GAC there are people that are worried -

**John Palfrey:**

Yes.

**Fabio Colasanti:**

That the review team and you were looking at the organization of GAC. Now, I am of two minds on this because I think that we should be saying something about GAC but perhaps Manal should be telling us about what these fears are and we should be taking a view how they are justified or whether you have also encountered this reaction.

**John Palfrey:**

Great, we'd be delighted to pause and for Manal to recognize you with the mic.

**Manal Ismail:**

Yes, thank you John. It's, it's true what Fabio mentioned and I think we even discussed this with Berkman at some point in time that GAC members are a bit uncomfortable with the recommendations that might be looking into how the GAC organizers and the work of the GAC itself and that we are having someone external looking into how the governments work and giving them advice how to work better.

My reaction to this was that we are looking into mechanisms of improvement of interaction between the

GAC and the ICANN Board and this is where the focus would be and that the recommendations would be basically coming up from the review team. It is important that we all have a common understanding of this before maybe we get into the details. Thank you.

**John Palfrey:**

Thank you that is very, very helpful Manal. May I pause here just in case there are alternate views or anyone wants to amplify this or clarify this so I state out of the theoretical and stay in the specific mode? Yes sir? Peter?

**Peter Dengate Thrush:**

Just to be, just to be clear. I'm not completely concerned that anyone's uneasy about what this review team is doing -

**John Palfrey:**

Yep.

**Peter Dengate Thrush:**

I think the validity of a concern is whether or not the work is being done within the scope or not. So as long as it is clear that the issue is about whether it's in scope and if it isn't then it should be. Just the fact that someone's interested or concerned about what we're doing is really not the issue.

**John Palfrey:**

At least speaking for the Berkman Center Team I certainly underscore that. We have taken our job to be to conduct an independent review, independent of you or anyone else and that we should be sure to focus on a core set of issues that are responsive to the charge.

And, as we discussed earlier, in a colloquy that I had with Larry Strickling, we are seeing our role as, where appropriate, actually to go one concentric circle out and make recommendations. So, I am seeing us here as making a decision as to how to interpret the scope and how to make our comments most useful.

But I think your point is well taken that simply because there is general mistrust, you know, of what we might say, that would be a poor reason not to, not to say something. So this is I'd say more interpretive of scope than it is feeling like we are trying to dodge any particular criticism in advance.

**Peter Dengate Thrush:**

So my next question then, "Is Manal's, do you take Manal's point as being a query about the scope?"

**Manal Ismail:**

Maybe we should make sure we are, we are, before, I mean Berkman would basically take the scope we put and try to figure out the recommendations, the ways for improvement but I think the scope is our call and my understanding and I, I was not replying to those sensitivities just to calm down the sensitivities.

It was my understanding that we are working on the mechanisms between, of interaction, between the [inaudible]

5:33] and the GAC's. So just to make sure we are on the same page.

**John Palfrey:** Thank you. Chris?

**Peter Dengate Thrush:** Well, are we? I suppose is the—

**John Palfrey:** Well, that's, that's right.

**Peter Dengate Thrush:** Where are we on this?

**Chris Disspain:** It's a little difficult on this to, in fact, nearly impossible to make recommendations in respect to the Board's interaction with the GAC without involving making recommendations about both sides of that coin. You cannot just say the Board should do this but we're not going to say what the GAC should do. That just doesn't make sense.

**John Palfrey:** If I may clarify what I had meant to say earlier. And it is very helpful to us to hear you guys talking about so I am going to be quiet after this statement if I possibly can. It's a matter of, let's imagine that there are kind of three parties involved.

There are the individual governments, the individual states. There is the GAC itself and then there's the Board. The

key point, I think is that we are looking at if from the Board's perspective, the Board's and staff's perspective toward the GAC but we're not looking into from the GAC to the individual governments.

So, the point I take your point perfectly Chris, which is these are interrelated entities on some level and so we're trying to make comments to make the system work better but I think we're in the way in which states as a matter of international relations or otherwise are dealing with this common constituency which in the GAC, of course, is somewhere in between the Board and those states.

So, I am sorry if this is not being clear enough but that's the, at least the perspective we've taken on this and I would welcome the thoughts of Larry and others who may have to interpret this from his side as well.

**Larry Strickling:**

Well, I don't think, we ought to have this discussion in the context of specific recommendations and whether they are within the scope or not within the scope. It seems to me that a large part of what we are dealing with in this particular area are, "What do the bylaws mean?"

I think in that regard there absolutely has to be a shared understanding of what the bylaws mean between the different parties specifically the Board and the GAC. So, to

the extent that we are speaking on that issue, it seems to me that that is absolutely within the scope.

To the extent we go beyond that and urge to the GAC to change its method of operation in areas that are reserved to it, yes, perhaps that is going to far but we should talk about that if, in fact, that is raised in the recommendations anyone wants to propose.

**Manal Ismail:**

Maybe as Larry mentioned when we get to the context, things would be more, more clear to discuss but what I meant Chris, very quickly. I know we might not be able to not to recommend certain things within the GAC but I mean we can try to refrain from asking governments explicitly what to do but rather that ask for things to be done but how they are done internally might not be the context where things would be more clear -

**Larry Strickling:**

Yes. Thank you. John?

**John Palfrey:**

Have we sufficiently addressed it? I think it is a wonderful suggestion procedurally by Larry to continue through and we'll just keep that frame in mind and test things against that frame. If I might introduce my good friend and colleague, Caroline Nolan, known to everybody here. She is going to do the walking through the side-by-side much as Rob did and let's see how far we get and kind of jump in

throughout and we'll just play it as we have the previous sessions. Over to you.

**Caroline Nolan:**

Thank you John. So, to begin, thank you very much for those framing comments. They were very helpful as far as distinguishing how we have put our recommendations, draft recommendations, together.

Laura has put up on the screen here, Page 32 of our report just as a basis as in the previous case of showing some of the general considerations that we took into account as we went through developing these recommendations. As noted in the general considerations and also in the discussion of this group, the following section for us focuses on two specific issues.

And some, some interrelated points certainly but what do the bylaws mean as far as what constitutes GAC opinion, what triggers it and other forms of GAC advice and then, more broadly, focuses on the issue of Board interaction with the GAC. Again, this is drawing on the case studies, feedback from the interviews and other public comments.

So the first recommendation that we have here notes as discussed in close consultation with the GAC clarifies what constitutes communication and submitting GAC advice to the Board. As noted, the key issue that was identified here was this notion of a lack of precise definition around what



constitutes advice and opinion and how that input and correspondence intersects with the Board decision-making process.

**John Palfrey:**

So, should we pause and take comment -

**Caroline Nolan:**

Yes, I was going to pause for a second. I wasn't sure if your working group would like to go through yours or I am happy to do it as well.

**Brian Cote:**

Well I think we have identified that similarly as an issue. Peter has pointed out to me that we do have a definitional issue even within the bylaws 'cause the bylaws in one case use the term, "opinion" and in another case use the term "advice." So, we probably among ourselves can agree to use probably "advice" as a word that encompasses within it "opinion."

But it does seem that the lack of clarity on that issue has clearly led to less than optimal consideration and decision-making within the [inaudible 11:58] process. So we absolutely have identified it as an issue that ought to be solved.

Again, back to Manal's point, it does no good in this regard to have the Board define it and have the GAC not participate in that process and reach a shared understanding because the GAC's view is one of the issues here which is

the GAC believes that any submission it makes to the Board is advice under the bylaws and I think that had, that has also led to some of the less than optimal processing of GAC advice on the part of the Board.

And it does seem that both parties need to come together to come up with a definition that actually [inaudible] rigorous process and lead to better consideration of GAC opinions within the embed of the bylaws.

**John Palfrey:**

I'd love to pause on this for one minute further and ask whether or not it would make sense to have a very specific recommendation which would be to re-examine the bylaws on this point and to try to bring down the level of ambiguity in this particular respect.

It might be as simple as changing one word to another [inaudible 12:54] might be as simple as them doing a definition of the sort as one often does in a legal document up further in the document. I don't know if that would be going kind of one step too precise or would that be a helpful thing to add here given that we have at least a shared view of the need to be clear at a minimum. Manal?

**Manal Ismail:**

Maybe we need to agree whether we should propose certain language ourselves or, as Larry, you have already used the language you used in the report that JWG is a good vehicle

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for this and by ending their work they should have concluded certain bullets.

I think, I think we have to build on the current process that is working since we agree that it is the right mechanism and this would also make the GAC and the Board work together on defining that advice as you mentioned. So, I think it is good to say that this is the right mechanism and by ending their work, they should have addressed those issues.

**Brian Cute:**

I think that's a good idea. I mean -

**Manal Ismail:**

It's your idea.

**Brian Cute:**

I'm sorry?

**Manal Ismail:**

I mean it is your idea. It's not mine. I'm saying -

**Brian Cute:**

Although -

**Manal Ismail:**

I'm saying it's good.

**Brian Cute:**

Actually, it seems to me the policy question on the table that we ought to decide whether we want to opine on or not is whether or not the idea that to constitute a piece of advice - I mean it's, it's not to us to say, "GAC, you can't say whatever you want to say to the Board." I think the critical question is what triggers the obligation of the Board

to follow a particular piece of advice and to mediate if they don't follow it.

And there I think that there need to be a definition that is less broad than the one currently used by the GAC. One option that is proposed in the draft piece is the idea that there really needs to be only a consensus view of the GAC. It triggers an obligation of the Board to follow it.

Again, there may be other ones but at least, at least that is a point of discussion both in terms of A: "Is that a good idea?" and B: even if it is a good idea, does this review team want to go that far and propose that as either the preferred solution or an acceptable solution or just be quiet on it.

Again, I do think that the idea of giving some guidance to the joint working group is useful. I certainly endorse that. I also think we should not be taking the decision away from the joint working group and then, beyond that, the Board because the Board will be the one taking the action. But it still comes down to how much we want to nudge them on some of these substantive issues.

**Manal Ismail:**

I fully agree. I just was not; I was trying not to take the credit of the idea so that's why I was pointing that as your idea. But, yeah, I definitely think since the work of the

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JWG won't be done until the [inaudible 16:16] meeting so it's still an ongoing thing where we can inject some ideas.

**John Palfrey:**

Chris?

**Chris Disspain:**

I have a question for Manal I think just so that I am clear. Manal, leaving aside any concerns you may have about particular words that are used on the left hand side recommendation, is that recommendation problematic for you? You're comfortable with that?

**Manal Ismail:**

Yes.

**Chris Disspain:**

Okay. Cool.

**John Palfrey:**

Peter?

**Peter Dengate Thrush:**

Just a very highly evolved comment here. What's missing to me so far from this is actually the review of ICANN's response to this commitment. If you look at the AOC it says, "ICANN will carry out" a number of things. One of them is that it will continually assess its relationship with the GAC and work to improve that.

In this review is taking on how well ICANN is meeting that commitment and the response from ICANN if you like is, "Well, we've got a working group." So, somewhere in the work of this working group ought to be an assessment of

how good a job and how well set up and what are the likely outcomes of that review process are.

It is not good enough just, I submit to say, “Well, we formed a committee to look at this,” and that’s...that shouldn’t be a complete response. So if their response is, “We’ve set up a working group” then the review team ought to look at the working group and say whatever it wants about the adequacy and efficacy, et cetera as a mechanism to meet the commitment.

**Brian Cute:**

That’s a good comment and the final, or the draft that goes out for comment should definitely reflect that. I think that as a response to the AOC, the joint working group is a good one; although, I think it actually pre-dates -

**Peter Dengate Thrush:**

Preceded it.

**Brian Cute:**

The AOC. The problem I think in terms of providing an overall assessment of the Board is that these problems have existed for years and they haven’t been fixed and so I think that, but there may be a structural reason for that too, in the sense that the bylaws expressly exclude the Board from conducting an evaluation of the performance and operation of the GAC.

But yet I think that as we evaluate the overall relationship of the GAC to the Board, I would say personally, that yes,

“The joint working group is a, is a good vehicle for now but the fact that this situation has been allowed to persist for so many years suggests that this is an area in which the Board really hasn’t confronted these issues and solved them before now.”

And I think that is implicit in what the words are here but we can make it more explicit depending on what the consensus view of this group is. Okay. Manal, do we have a status of the JWG. Is that report that coming by car to hand out a final report with recommendations or is it still a work-in-progress?

**Manal Ismail:**

What was agreed was that a final report would be submitted by Cartagena but, but from our discussions with Heather, I think she feels that the first two [inaudible] and she can give us like a status report now to reference. But I don’t feel that the whole report is ready yet. And I’m not sure whether the deadline of Cartagena’s is going to be met or not but it is the deadline.

**Brian Cute:**

Thank you.

**John Palfrey:**

May I please just make a point from the Berkman side which is we recognize the different pace of different activities but I’m not sure we’ve yet seen a draft or otherwise and I just, for the matter of trying to figure out what we should say and what’s being dealt with otherwise,

just as a note, it would be helpful, you know, before we finish, if it would be at all possible to do that - not crucial but helpful.

**Brian Cate:**

A draft of the JWG work?

**John Palfrey:**

Yes, sir. Just a sense of maybe even sort of scope and what they will hit and I think we are struggling with it on roughly this point where we want to say the appropriate think relative to recommendations be clear but also not to step on another group's plausible activities.

So we might, just as an example, say, coming out of this meeting, "Our intention is to call for adaptation either of the bylaws or otherwise to clarify how this point ought to work," because there is obviously continued uncertainty around it and just presume that the JWG or otherwise someone would be taking it up on the other side to say this is precisely the way to implement it within the ICANN bylaws.

My sense is we'd rather be in the business of making a meaningful, clear statement but not going all the way down to here's how you should change the rules, if that, in fact, is being picked up from the other side in a more appropriate venue.



**Manal Ismail:**

So, I believe what was said is that the current draft report is going to be circulated to the GAC mailing list to make sure everyone knows and agrees that this current version is going to [inaudible]. Maybe they are going to agree on some mature parts of the draft and those are the parts that are going to be circulated but -

**John Palfrey:**

Okay, but as the time -

**Manal Ismail:**

We should follow up on this -

**John Palfrey:**

But prior to October 20th, we might be able to see something just to, I'm thinking just ensuring interoperability of ideas here and roles and so forth.

**Brian Cute:**

We'll do our best to see that happens.

**John Palfrey:**

Thank you much appreciated. Do you want to introduce our new member to the room or is it.

**Brian Cute:**

Oh, that's right. Thank you. James Bladel has joined. Welcome James after a long and arduous trip.

**John Palfrey:**

Welcome to the Harvard Law School. So, can we power ahead here?

**Caroline Nolan:**

Sure, any other comments on that first -

**John Palfrey:**

Actually, I had one other point as we were putting, sorry Caroline.

**Caroline Nolan:**

No, go ahead.

**John Palfrey:**

As we are putting things in the bucket of “Let’s address them again,” my sense would be this would be one to come back to possibly on a future day and whether some subset of us or in a [inaudible 22:19] we might come back to help what we want to say between the two of us.

**Brian Cute:**

Fabio?

**Fabio Colasanti:**

I just want to put down a marker for something that we will have to discuss tomorrow or Wednesday. We are dealing here rightly if the relationship between the Board and GAC the way in which we advise opinion of the GAC is dealt with.

But in looking at the whole accountability and transparency issue, we might have also to reflect about saying something about other public policy input that ICANN might receive. You might imagine a situation where the WIPO, the World Organization for Intellectual Property has something to say and my write to ICANN. Should we be saying something specific?

Would that just be covered by the general recommendation that we would say that they have to [inaudible] input that they receive? But this is something that I think we will have to come back to tomorrow.

**John Palfrey:** Thank you Fabio.

**Brian Cute:** For Manal and Peter there are participants in the GAC other than countries right?

**Peter Dengate Thrush:** Absolutely, the [inaudible 23:30] the WIBA, for example.

**Brian Cute:** Yeah, okay.

**Caroline Nolan:** And so—

**Brian Cute:** Thank you.

**Caroline Nolan:** Unto the second recommendation. The second one is focus on the interaction between the Board and the GAC as noted. We'll have up those observations in a second.

**Brian Cute:** Caroline, excuse me.

**Caroline Nolan:** Yes.

**Brian Cute:** Manal wants to interrupt.

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**Caroline Nolan:**

Oh please, yes?

**Manal Ismail:**

I'm sorry to interrupt.

**Caroline Nolan:**

Please speak.

**Manal Ismail:**

Those are members of the GAC as observers. I think what Fabio meant was receiving a direct input to the Board or is it from the GAC because -

**Fabio Colasanti:**

I could imagine cases where other public organizations. What is a public organization? Certainly government or another international organization might write directly to ICANN. Is this to be dealt with like all other forms of input, acknowledged, and explained and everything or should one have a special status for this sort of public input?

One of the things that I have in mind is that I remember a number of years ago there was a letter that was written to ICANN by the so-called Article 29 or the European Union. These are the people dealing with privacy issues. And my understanding was that the letter was not even answered at least for months.

Should one be saying something about this or would the recommendation that one would make to take all of the input into account?

**Peter Dengate Thrush:** I cannot find it anywhere in the scope of this review project  
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**Brian Cute:** No, it's not. Yeah, I have to refer to the OC and 9.1.B. I don't see it.

**Fabio Colasanti:** It is not explicitly there but if we are talking about accountability and transparency, if you have say the wall of maritime organization that has a valid point, they're not represented in GAC. The right [inaudible 25:39] and [inaudible 25:41] issue is to be treated like general advice? Maybe the answer is yes.

**Brian Cute:** Yes.

**Fabio Colasanti:** But I would have, I think we would have to somewhere to say, "We have examined the issue and we have come to the conclusion that there was no reason to have a specific, a specific treatment of this." In other words, are we saying that GAC is the only channel for all public policy advice and I'm not sure that we can say this.

**Peter Dengate Thrush:** Well, we're not. It is a particular channel for public policy advice that has particular consequences.

**Brian Cute:** That's true.

**Peter Dengate Thrush:**

And we need to review how it's dealt with. There are millions of other things we could look at but they're not inside the scope. I'm not sure why we would go looking for other things to do.

**Brian Cute:**

Thank you. And one thought there Fabio, there is another recommendation elsewhere and there has been some discussion about the ICANN Board explaining its decisions more fully. [Inaudible 26:43] basis of which is accepted a decision or taken a position and those that they've rejected and why. That might be one area where -

**John Palfrey:**

The next one or the one we're on now which talks about timely responses to GAC's missions might be a way in which if we wanted to address that issue as part of it. So let's just imagine that it is a public entity on GAC. How is that responded to if it's a public entity not on GAC? How is that different? I'm not looking for work as Peter put it but to the extent that we are looking for the hook of having a particular conversation, we could -

**Chris Disspain:**

Hang on, this discussion, this section is all about the GAC and the Board. It is not about an individual government deciding to write to the Board, which is entirely up to that individual government. This is not governed or covered by the bylaws. This is not covered by our discussion.

If it's a government that writes, a member of the GAC or not a member of the GAC, it is some kind of statutory body that writes, no matter who it is, that is them writing. This is about solely and only the GAC as the GAC and the Board as the Board interacting.

So, it is not appropriate to be talking about special arrangements for receiving communication from other, individual bodies or other bodies. This is about the GAC and the Board.

**John Palfrey:**

So noted. Caroline?

**Caroline Nolan:**

Thank you. So on to our second set of recommendations and actually the next three are bundled up and are mostly focused on the interaction between the GAC and the Board. Working group 2 had formulated them in different ways but as you'll see there are a number of different overlap regarding aspects of communication between the two bodies that may be weak in some ways, particularly around the timeliness of GAC input into [inaudible].

Another issue that we identified can be the lack of detail provided by ICANN on proposed policy decisions, which may inhibit GAC's ability to effectively provide advice on certain policy decisions. A fourth aspect of that is that although the bylaws do require the Board to notify the

GAC of public policy issues the lack of a precise formal method of notification can impede the process as well.

We've also included some reference to the case examples in our case discussion section with the focus, in particular, on the notion of developing more clear procedures for timely acknowledgement of and response to the range of GAC inputs.

The recommendations, the first is up here, focus on revising and observing procedures for a timely response from the Board to GAC submissions, possibly considering whether having more frequent joint meetings earlier on certainly in the policy development process as a part of the interaction between the GAC and the Board and then finally, a clarification of the roles and responsibilities of the ICANN liaison to the GAC.

**John Palfrey:** Yes, Chris?

**Chris Disspain:** Caroline?

**Caroline Nolan:** Yes.

**Chris Disspain:** Surely, your recommendations should be both ways shouldn't it? It's not about, it's not just about revising and observing procedures for timely Board responses to GAC



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submissions but also the timely GAC responses. Um, it's got to be both ways.

**Caroline Nolan:** Yes, no that is an excellent point. I think that within this bundle of recommendations, the broader title is the interaction between the two.

**Chris Disspain:** Yeah.

**Caroline Nolan:** And certainly the onus falls on both parties. I think to clarify what those procedures might be and what those.

**Chris Disspain:** So, just to clarify for me, I guess.

**Caroline Nolan:** Sure.

**Chris Disspain:** What's happening is people are taking notes and you'll go away.

**Caroline Nolan:** We've got running notes and we're also identifying key issues.

**Chris Disspain:** So you all will make a change to that and represent.

**Caroline Nolan:** Absolutely, absolutely.

**Brian Cute:** Just to step in here, I mean this goes a little bit back to the question of the scooping issue to whom we're giving the

recommendation right? So, it's not so crystal clear as you just suggested. It depends a little bit who is the addressee of the recommendation again not our interpretation. I understand we may revisit that. We're giving advice to ICANN or making recommendations to the ICANN Board and not the GAC.

**Peter Dengate Thrush:**

But there's nothing to stop you from, surely there's nothing to stop you from recommending that the Board work to revise and observe procedures for timely Board responses to GAC submissions and vice versa. I mean there is nothing to stop you from doing that. No one's suggesting that we can make a recommendation that the GAC does the following but you can make a recommendation that the Board work with the GAC to achieve that particular goal.

**Brian Cute:**

Yes.

**Caroline Nolan:**

Yes, and I think that the formulation. I don't know if you would like to step through yours but I think the formulation of both the GAC and the Board working together to clarify those issues is an important -

**Larry Strickling:**

And taking the suggested change

**Caroline Nolan:**

Piece.

**Larry Strickling:**

Or the bi-directional aspect—

**Caroline Nolan:** Absolutely.

**Larry Strickling:** Of the edit. This is also an area where the two I think could probably be merged into one but I don't see the need to create two separate recommendations there.

**Caroline Nolan:** Absolutely. And as I noted our three are in the next three columns but they are bundled together as well in a similar manner.

**Larry Strickling:** Okay. John.

**John Palfrey:** I certainly agree with Chris as to the merits of the proposal. I do think if we come back to this tomorrow, if this is also on the list of ones to reconsider just looking closely at the language of 9.1.B and the little bit, I don't know if ambiguous is right, but it really, it says, "Assessing the role and effectiveness of GACs interaction with the Board."

Plainly, it's in at that point to go both ways and public policy aspects so technically coordination. Oh, sorry, I missed my, "and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on public policy aspects in effective coordination."

So the second clause is a little bit restrictive in that way so I just, before we go forward with it, at least make sure we have dug in to whether we think it is captured there. And as noted before, I don't think, at least I take Berkman's charge here to be, you know, responsive to the AOC.

But where things are related and fall slightly outside, I think, at least my comfort zone is to error on making the right point as opposed to just being totally confined but if that is not right, let's talk it through.

**Larry Strickling:**

Well our job is to make sure that the recommendations that are put out for further comment are within the scope full stop. So, as a matter of providing us something that maybe goes beyond the bounds you're free to do that—

**John Palfrey:**

Yep.

**Larry Strickling:**

But we wouldn't be able to—

**John Palfrey:**

You can't bring it in—

**Larry Strickling:**

Bring it in.

**John Palfrey:**

I understand that. So, I am just saying—

**Larry Strickling:**

Yeah.

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**John Palfrey:** I would love to have just tabling it for now but come back to appropriateness given what 9.1.B in fact reads.

**Brian Cute:** I'll contend, again.

**John Palfrey:** Go. Sure.

**Brian Cute:** I think we are getting sidelined by this debate unnecessarily but I'll just say that the AOC talks about ensuring effective consideration by ICANN of GAC input on public policy aspects dot, dot, dot. You can't effectively consider it if you don't have it, which means that the issue of how quickly the GAC submits advice I think has to be on the table or otherwise we are only dealing with half of the issue.

**Fabio Colasanti:** [Inaudible 34:05] particularly. Clearly, we have to say the Board has to take the findings of GAC into consideration for that to happen. There has to be advice and some were saying we should be stopping there. But what is the harm of saying and maybe could GAC could be producing this advice in this or that way giving some indications also of this. I know that some people in GAC might be a bit uneasy but I think it would help even the process within GAC if we were to say something in this direction.

**Brian Cute:** And maybe it helps the joint working group because again, these points as they're currently drafted as we all pointed

out are more in terms of what the review team would like to see come out of the joint working group process which already has the Board and the GAC talking to each other. So I'm not really worried about this issue. I think we can navigate our way through this.

**John Palfrey:**

Thank you. Caroline?

**Caroline Nolan:**

Thank you. I'm not sure if at this stage you want to walk through your version, your recommendation as well or on this score.

**Larry Strickling:**

All right. Well, I'll just, again, the construct that's in this draft, which again has not been blessed by Working Group 2 I must repeat. So, well what's here at least suggests we need changes on both sides. One is once there can be an agreement on what constitutes an opinion or advice under the meaning of the bylaw, then there ought to be a process by which the Board takes, has more formality around how it goes about seeking that advice with documentation.

There's been a suggestion of a date that ought to be considered but otherwise both sides really need to modify their behaviors that have been exhibited in the last few years where you end up with nine or ten different submissions on a particular issue all of which GAC would argue is advice, none of which.

And they would also argue few if any of which have received the response from the Board as to whether or not they will follow it. That just seems to be an untenable situation for both sides. There ought to be a process by which the Board can make it very clear, here's when we are seeking advice and then the GAC ought to be able to respond with a paper or response that is more formal and by whatever measures one wants to impose on it, whether its consensus or whatever else is agreed to.

But that ought to lead to a clearer decision-making process, at least in terms of public policy input and a faster one because this "ping-ponging" of letters going back and forth or letters only going one direction and not being answered seems to be not an optimal way to go about doing this.

So, I think that the timeliness is helped by both putting more of a process in place but also by putting more definition around exactly what is covered by the bylaw obligation on the Board to follow particular inputs by the GAC. And that's what is reflected in the draft that's up on the screen right now.

**Brian Cute:**

Any comments? John?

**John Palfrey:**

I do want to hear others views on it but just to again draw a connection to our own thinking here. We've been very much affected in our thinking by this notion of the "ping-

ponging.” We [inaudible 37:42] and maybe we need to draw a kind of lateral connections to them. But, certainly, as a matter of principle, we came at this through recommendations on precisely the way Larry just articulated it.

**Brian Cute:**

Thank you. Other comments? Caroline?

**Caroline Nolan:**

Sure. So I think if we proceed down the document, we have left some of the other draft recommendations kind of in separate spots. I have Working Group 2’s up here in the left hand corner, which is essentially focused on, as discussed, engaging the GAC earlier in the policy development process.

We had captured that in our recommendations regarding the timeliness of GAC advice and the mechanisms and methods through which to ensure that rather than having them engage later in the policy development process that there is, whether through a secretariat or some other body a means to engage them earlier on.

I’m not sure if we want to pause for a moment and discuss that in more detail?

**Brian Cute:**

Which recommendation are you looking at?



**Caroline Nolan:**

Yes, I think that, as I said, I think that there's clearly intersection points between our three bullet points but we just separated them out because obviously Working Group 2 has a bit more detail on theirs —

**Brian Cute:**

Okay.

**Caroline Nolan:**

But certainly the recommendation is the same regarding the timeliness of GAC input early on in the policy development process.

**Brian Cute:**

And I think what Berkman has pointed out which I think is also reflected in the Working Group 2 analysis is that by the time you get to where the Board is triggering this more formal process, assuming one is put in place, a lot of work has already happened; whether it is part of a formal process or not.

In fact, perhaps it shouldn't be but some way to engage GAC earlier on into all of these policy development initiatives and perhaps at an informal level. And I think, based on what we heard in the fact gathering, it sounds like that is happening already, as on something of an ad hoc basis.

But the idea of institutionalizing that a little bit more and making sure that GAC can be involved earlier means that at that time by which the Board is now formally asking for the

input, hopefully a lot of these issues would have already been worked out, already been discussed and perhaps that piece of the process can be quicker and smoother because a lot of the work has already been handled.

We have this issue reflected in the case studies that as the facts change the GAC views may change and so you get into this constant or maybe not constant or very repetitive thing of advice coming back in and perhaps advice changing over time as the facts change and to the extent that a lot of that could be handled early on so that by the time something's actually being presented for the formal GAC view, those issues have been worked out.

I think everybody would benefit from that. But that does, I think, require some sort of a more informal mechanism by which GAC people are engaged in these policy development processes and the other supporting organizations and constituencies as early as possible. Thank you. Manal?

**Manal Ismail:**

Do we need here to stress that the Board should consider providing secretariats of war?

**Brian Cate:**

Yes. Chris?

**Chris Disspain:**

Yeah, when I read that recommendation, my immediate response was actually the Board has been, ICANN has been

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offering secretariats for some considerable period of time and it's that GAC is unable to reach agreement as to accept the secretariats. So, I think we probably need to slightly re-word that.

**Peter Dengate Thrush:**

We have to get our facts right.

**Chris Disspain:**

Because it isn't correct. I mean ICANN has pushed and now, you know, well you know the reasons [inaudible 41:47] I mean some countries are not willing to accept secretariat support from ICANN. That's correct.

**Manal Ismail:**

Yeah, I'm raising this issue as an internal GAC thing to decide not whether or not it's a good thing or a bad thing. I'm not judging whether or not this should be done or not but this is where I was trying to say that we should not be getting into decisions that could be made by GAC itself.

**Brian Cute:**

Sure.

**Manal Ismail:**

I mean it's enough we ask for a timely advice and effective communication and then internally how would this be done with an effective secretariat with more commitment from members? Whatever the internal mechanism is I don't think we should be getting into those details.

**Brian Cute:**

And that's fine. I think the key part of the sentence is really the second half. If, I mean take out providing

secretariat support and the real issue here is how do you make sure that GAC is fully informed as to the policy agenda at ICANN and how do you ensure that ICANN policy staff is aware of [inaudible 43:08].

There is something of a feeling that staff engagement with GAC is less than it is with other supporting organizations and constituency groups and that both ICANN and GAC are hurt by that because of this perhaps less ability to cross-fertilize ideas from one to the other, which is perhaps more readily done in the other organizations.

So, as long as we're dealing with kind of the goal, you know, the actual process by which you do it, yeah we could either be quiet or silent on that or propose something else. But I do think that that larger issue does exist. I think there is more of a disconnect between GAC and ICANN staff than there is with other supporting organizations.

**Manal Ismail:**

I fully agree that we should have all the rest in place. I mean the GAC should be fully informed and up-to-date and giving timely advice and there are other options that are being investigated also like having someone from the Board as a liaison to the GAC. This was one thing that was mentioned so we should not restrict the ideas. We should just set the goals.

**Brian Cote:**

Thank you. Other comment? Caroline?

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**Caroline Nolan:**

Sure. Thank you. So the third part of our second recommendation focuses on determining whether or not the Board and the GAC would benefit from more frequent joint meetings. Obviously, there are intersection points between this and the previous conversation. I think with the overarching goal of engagement [inaudible 44:58] development process.

The focus here is utilizing a more formal process by which they can have face-to-face meetings and interaction, all of which focus on advancing the goal of earlier engagement, stopping the kind of back and forth effect and ideally articulating or clarifying the policy making agenda in a more proactive way so that GAC can provide advice.

Certainly coming out of the specific case examples that were in the interviews the notion that having more frequent interaction may facilitate the timeliness of GAC advice and variety of different inputs, comments?

**Brian Cute:**

It's looking like a mother making apple pie reaction or.

**Unidentified:**

Well we should accept it if we've got mother making apple pie.

**Brian Cute:**

Any discussion on that? Okay. Press on. Okay. Continue.

**Caroline Nolan:**

Okay, great. So this one here on the right, as I'd said, we had left separately because it wasn't necessarily called out with specifics in the Working Group 2 reports but clarifying the role of the ICANN liaison is a final recommendation that we had heard certainly in the context of the interviews and some of the submissions to the ATRT.

Whether or not the liaison serves the appropriate role for notice requirements and then also whether or not I think it's Manal's recommendations regarding the potential of a Board liaison to the GAC may further the interaction between the two bodies. So, um

**Peter Dengate Thrush:**

Yes, sorry clarify the role for whom? I think the liaison's themselves, I think the Board and the GAC know well their roles and responsibilities. So who do you think the role needs clarifying for?

**Caroline Nolan:**

This is certainly the result of feedback that we had from some interviewees including GAC members what regarding what the function of the liaison is and I think clarifying the role for both parties and what falls within the remit of the liaison.

**Peter Dengate Thrush:**

Do you mean clarify or do you mean publish and teach? There is a huge clarity around the roles as it is a bylaw described role.

**John Palfrey:**

There is clarity? I'm sorry.

**Peter Dengate Thrush:**

I mean if that's not understood, I don't regard, I don't know what you mean by the word, "clarify."

**Caroline Nolan:**

No, I think that's an excellent point.

**Peter Dengate Thrush:**

Do you mean teach?

**Caroline Nolan:**

To teach and to have I think to further advance understanding about what that role does as far as facilitating the policy making process would line up with some of the feedback that we received.

**Peter Dengate Thrush:**

You see it is very important that you don't mean change the way—

**Caroline Nolan:**

Yes, absolutely.

**Brian Cute:**

Well, but I think Peter, just so I—

**Unidentified:**

No, go ahead please, John and then Manal and

**John Palfrey:**

Please go ahead and then I'll come back. I just want to clarify.

**Manal Ismail:**

I think this is a topic that's really under the debate within the JWG and its more than one liaison actually. The GAC liaison to the SO's and the AC's and the GAC liaison [inaudible 48:35] there and the GAC liaison to the NomCom and they are brainstorming on a Board liaison to the GAC. This is something immature yet it is under discussion.

**Caroline Nolan:**

Okay.

**Manal Ismail:**

But, the views are not in agreement on the role of the liaison of the GAC to the NomCom, which is why we currently there is no liaison from the GAC to the NomCom because as discussed earlier, the NomCom has agreed confidentiality in its work and its, I mean, it's type of work has confidentiality which is not really working for the GAC, having someone representing them on something they don't know about.

So, again the GAC liaison on the SOs and ACs sometimes is being misunderstood for representing the GAC on everything it said, which again was a concern within the GAC because sometimes it's more of personal views, its spontaneous reactions that was not discussed within the GAC. So, again this is an area of debate within the GAC whether this member is presenting the whole GAC on everything he or she says or not.



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**Caroline Nolan:**

Okay.

**Brian Cute:**

Fabio?

**Fabio Colasanti:**

Can I, perhaps the reason for this recommendation was the fact that as you indicated in your report that there was understanding or at least different understanding of the links and you say because the Board felt but since they had a liaison from the GAC present at their meeting, automatically the GAC should have been informed; whereas the GAC was not seeing it this way.

Now to the extent that we are going to propose that the request for advice and the supply of advice from GAC to the Board be the object of a more formal and documented process, everything would be clear from that side and the reason for this recommendation to a larger extent disappears.

**Brian Cute:**

Thank you Fabio. Other comment?

**Caroline Nolan:**

I wanted to respond to your comment. That was very helpful. I think that one set of interviews in particular focus on the idea that the role of the liaison should be to facilitate interaction between the GAC and the Board members.

And perhaps that, or probably not clarity but some type of exploration or common understanding of what that could be

could certainly facilitate their engagement earlier on and certainly the lines of communication between the two bodies. So that was the particular piece of feedback that we had received that informed that recommendation.

**Manal Ismail:**

And I think this is in agreement with all what GAC members agree on. It's that the liaison is for a heads up and alerting, a channel between both but not on representing the views and what was said that one government would not represent the views of all governments unless there is some position that has been adopted by the Board itself.

**Caroline Nolan:**

Exactly. Thank you.

**Brian Cute:**

John?

**John Palfrey:**

May I please return to my previous line.

**Brian Cute:**

Sure.

**John Palfrey:**

But I never in any way want to cut off other discussions so, may I just pause and say does anybody want to go down this other thread before I go back to Peter.

So Peter, I just wanted to get a sense from you. You noted that it's perfectly clear as to this particular role? This is not a challenge to your statement. It's rather to say that we did

hear some lack of clarity in the interviews. So the answer may be simply pointing people to that statement in some fashion.

I think the gist of where you were driving with your note but I wonder is it in the bylaws or where, just so we understand as we kind of restate this, is there a particular part, we have the bylaws up here on number 1 or is there some other place we should look in so far as what we're saying is—

**Peter Dengate Thrush:**

Yeah.

**John Palfrey:**

This is perfectly clear and then we just cut and paste. Okay, here's where it belongs and so forth.

**Peter Dengate Thrush:**

Start with, and they're badly named, I don't even know what the article number is, whatever article is describing the Board. Article 6 and then you go to 9.5, which prescribes the role of a non [inaudible 53:41] liaison. I think this seems to be widely misunderstood—

**John Palfrey:**

Okay.

**Peter Dengate Thrush:**

Outside the Board, the GAC and the Board liaison.

**John Palfrey:**

So, we should go back to our notes and figure out whether, who the people were expressing this lack of clarity but I

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certainly recall reading it. Maybe the way we do it is as between one or, we might consider pointing out this passage or wherever it might be and rather than saying we need to clarify this if it's, in fact, ultimately clear.

Rather just say, "We heard the uncertainty among the community and we don't recommend or we do, whichever it might be, changing this in terms of clarity but rather we point you to a segment of the bylaws or otherwise. I'm just trying to probe this a little bit.

**Peter Dengate Thrush:**

Sure. Just a high-level comment, the GAC liaison is a full member of the Board. This suggestion that somehow there is a barrier between them. This part I referred you to makes it absolutely clear. The GAC member is there right from the beginning, gets every single paper, comes to every single meeting, discusses every issue and is there as a Board member. The only difference between a GAC liaison and an SO coordinator is that they don't get a vote but then they don't need one as there are so few issues on the Board that actually come to a vote.

**Chris Disspain:**

Are we talking about two different

**Brian Cute:**

Yes, Chris, yes we are.

**Chris Disspain:**

I am completely confused. Okay.

**Brian Cute:** I thought we were talking about the person who—

**Peter Dengate Thrush:** We're clarifying the role and responsibilities of ICANN liaison to the GAC.

**Brian Cute:** Yes but that is different [inaudible 55:08].

**Chris Disspain:** So I am completely confused now.

**John Palfrey:** Very helpful to know that we are all on slightly different pages. This may help us understand why there might be some.

**Chris Disspain:** The ICANN liaison —

**Peter Dengate Thrush:** There isn't an ICANN liaison to the GAC so I assumed that we're talking about the GAC liaison.

**Chris Disspain:** Well, there's a staff member whose job is to—

**Peter Dengate Thrush:** No. There's no ICANN liaison to the GAC.

**John Palfrey:** Laura would you mind going back to the segment you had before?

**Peter Dengate Thrush:** I assumed we were talking about the GAC liaison to ICANN. There is no such thing as an ICANN liaison to the GAC.

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**Larry Strickling:** But isn't there a staff person at ICANN that has some connection to the GAC? What do you call that person?

**Peter Dengate Thrush:** Well we surely don't call them liaison.

**Larry Strickling:** Okay. But would, because —

**Peter Dengate Thrush:** There's varying degrees for GAC activities all across the Board including [inaudible 55:53] as the whole chunk of the meetings team to deal with making the GAC meetings work. There's a whole, catering and you know, so—

**Larry Strickling:** Right. But don't you have a staff person who's like really responsible for individual supporting organizations in terms of agenda and policy that is a much stronger relationship than what you've got with the GAC.

**Brian Cute:** Perhaps if you can compare the staff under the policy [inaudible 56:22] of ICANN where we have the director of At Large and her staff and the support it gives for the At Large Advisory Committee, there is nothing on parallel with that for the GAC. To answer—

**Peter Dengate Thrush:** There's a team that does CCNSO support for example that works with [inaudible 56:39] on policy that I don't want to share, a team that works, a huge team that works with the

GNSO. There is no team working like that for the GNSO for development with the GAC.

**Larry Strickling:**

So a few minutes ago when we were looking at the sentence that referred to secretarial support which we can remove a reference to, I had made the point that there is still need for the GAC to better understand what's going on in ICANN and for ICANN to better understand what is going on in the GAC and that could be done through strengthened staff relationship.

So, I thought that that's what this was referring to but the ICANN liaison to the GAC was more tied in with that kind of stuff as opposed to the issue of a GAC member sitting on the Board. It seems to me we have two different issues to talk about; two different so—

**Brian Cute:**

We are, if you don't mind Larry, Manal, can you speak to any staff support that the GAC has received on a regular or irregular...

**Manal Ismail:**

Any staff support? I mean we usually get staff briefs upon request on certain topics of a conference call or presentations within the GAC. This is the normal thing but I think what Larry was pointing to is there is like the role that Donna Austin used to do and what [inaudible 58:07] currently does which is more into the administrative side than the substance itself. It's more with the logistics and the

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administrative and partially the secretarial work of the group.

**Brian Cute:** Yes.

**Manal Ismail:** But not inter substance.

**Peter Dengate Thrush:** So there's that underface but Larry every time there's an issue [inaudible 58:29] Kirk will come give the presentation or if there's a finance issue the CFA comes and gives it or if the chair, if they want something from me, I go, you know, so there's lots of interfaces at different levels but ...

**Brian Cute:** Yes. Fabio?

**Fabio Colasanti:** Larry, the reason there is difficulty here is that desirable as it would be for ICANN to have more resources to interact with GAC there is a problem with the other side of GAC because they are almost paranoid as far as I understand about the interrelationship with ICANN. For instance, this is the reason why many in GAC refuse the idea of the secretariat being funded by ICANN.

I would find that absolutely logical provided one had some safeguards so as to say, "So much is set aside for the secretariat and that is managed by the secretariat [inaudible 59:27]. ICANN does not have a way of controlling the



secretariat. But, there is a suspicion the side of GAC that limits the amount of support that ICANN can give to GAC unfortunately.

**Brian Cute:**

Chris?

**Chris Disspain:**

Just for clarity, I am told that the role, there is a role of an ICANN liaison to the GAC and that is [inaudible 59:54]. Now I don't know if that is correct or not but that is what I have just been told.

**Brian Cute:**

We can put that into the staff review for you as well.

**Chris Disspain:**

I just asked Donna and Donna said it's Max and his title is ICANN liaison to the GAC.

**Brian Cute:**

Okay, internal staff description.

**Chris Disspain:**

Sure. I'm just...

**Brian Cute:**

That's where [inaudible 1:00:08] got it from.

**Chris Disspain:**

We heard that from an interview with at least one man.

**Brian Cute:**

But I was establishing it is more administrative in nature as opposed to substantive policy. When is policy beginning to bubble up sort of interaction?

**Larry Strickling:**

It just seems that if what you are trying to fix, it what we are trying to make suggestions for is the idea that you want GAC involved earlier, there has to be some facilitator who will get them involved earlier. And that's all I think we are talking about here. Who is that person? Should we call him a staff liaison?

Do you call them a staff facilitator? Secretariat isn't obviously the right term because people have an allergic reaction to that but there needs to be some way to institutionalize this into the overall process so that the GAC can be brought in earlier on things. It's just, "What's the mechanism for doing that?" I think is the question.

**Peter Dengate Thrush:**

And that's what my answer was. It's intended to be the GAC liaison who is treated as a full member of the Board so the instant anybody on the Board gets anything, GAC gets it.

**Larry Strickling:**

But I'm suggesting that by then it is maybe too late. The idea that we were talking about in this section was the GAC relationship. How do you get GAC involved earlier in policy development policies at the supporting organization level or the constituency level? And that's what I thought this was dealing with.

**Brian Cute:**

Right. And that's a question, I'm sorry, if I...

**Larry Strickling:**

No. No. Please.

**Brian Cute:**

A question that I was going to ask earlier Peter with that structured relationship. Is the Board always receiving early warning on policy development in a timely fashion, too because the GAC receiving it from the Board in a timely fashion is dependent on the Board receiving it itself in a timely fashion from staff and the community? So that's just an open question.

**Peter Dengate Thrush:**

Maybe I can answer that. Yes.

**Fabio Colasanti:**

I think it's worth maybe tomorrow exploring further this idea because I think thinking also of the group dynamics that you have in a group like GAC like many other advisory committees, you have a situation where the liaison between the GAC and the Board is the chairman or the chairperson of GAC.

Now this person has to go back to the group and say, "Listen, you ask me to or you suggested that I ask for A and I put my point across and I got nowhere. That is not for this factoring. It puts the person in a difficult situation.

If you have, at a meeting of GAC, somebody representing the Board, then the chair can be in a sort of more neutral position to say, "Well I told them Mr. So and so will tell you why they couldn't do it." So I think the reason we

need to explore this at the end to have a representative of ICANN of the Board being at the meeting of GAC and that person should be either a member of the Board or a senior member of the staff of ICANN.

**Cheryl Langdon-Orr:**

Brian, if I may.

**Brian Cute:**

Yeah, I'm sorry Cheryl, please.

**Cheryl Langdon-Orr:**

That's alright, just back to that point Fabio. I hear what you're saying and I think that's slightly separate from this rather more existing role, however we call it, that is an ICANN liaison to the GAC as we've heard at least internally.

Where you look at what parity that role plays regardless of what those other AC's call it and how it facilitates policy development, early work, preparations, all of those things, which allow a diverse community and I think here the At Large Advisory Committee is your closest match for compare and contrast.

I think that is what I was taking away from this as a suggestion. That we have a system that appears to be working in one advisory committee and we have a system in another advisory committee that apparently be following a parity guideline or similar set of standards and perhaps that could be looked at regardless of what we call the role

but multiuse of the word liaison could become a problem and we've probably need to "rejig" that anyway even if it's just the way the title is used internally.

We'd have to avoid things such as what the assistants and the facilitation provided by ICANN to the At Large communities because we can hardly have a director of GAC. That would not work. We could come up with another word but I think—

**Brian Cute:**

Boss.

**Cheryl Langdon-Orr:**

Like hell. Yes, just like Heidi would probably be giggling immediately thinking of her being boss of us. Hope she is giggling now and not hiding. But the, and that's very different than having an ICANN Board member in the return pathway of communications of the GAC. That is a separate issue.

**Brian Cute:**

Thank you. Manal?

**Manal Ismail:**

Again, I mean we have to decide whether we want to clarify the role and responsibilities of current defined liaisons or if we are suggesting new functions and I mean new liaison. And by the way the idea of a Board liaison to the GAC was being discussed from the point that this person should be pre-occupied with the GAC advice and

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how it's being handled rather than alerting the GAC or briefing the GAC on a substantial level. So just

**Chris Disspain:**

At the risk of stepping on anyone's toes, it seems to be, and I don't know if this is in the scope or out of scope but it seems to me that what's needed is a person of sufficiently high, and I am talking about from ICANN to the GAC, is a person of sufficiently high weight in the organization whose job it is to handle some of the policies and difficulties that arise.

Whose job it is to report back to the Board and say, "Look, the GAC seems to be stuck on something" or to go to the GAC and say, "You know the Board really needs to hear from you by the end of this meeting." So it's not [inaudible 1:06:43] stuff like that, it's actually about being an interface between the - given that the two organizations, I know, yeah, the two things work totally differently, they do work differently and by definition the GAC has to work in the way that it works subject to some tweaks.

There needs to be an interface, which currently I don't think exists. And the question is whether a recommendation like that is actually in the scope and if there is any consensus on it anyway, which is partly I think all the same.

**Peter Dengate Thrush:**

Brian, can I?

**Brian Cate:**

Peter?

**Peter Dengate Thrush:**

Can I just say, because I've obviously been confused. I think we just need to be very clear if Larry wants to go into how to generally improve the effectiveness of the GAC, we have to very clear otherwise other people.

I have read all of this to improve the relationship between the GAC and the Board and improve the effectiveness of the GAC in giving the Board advice. In other words, I've made the assumption that all of this work is actually GAC Board.

Now if you're going to go beyond this and talk about improving the effectiveness of the GAC, which I think is a really worthy goal, obviously. I think you need to be very clear to make sure more people than me don't fall under the trap of assuming that we are talking about just this very narrow thing that the AAC talks about.

**Chris Disspain:**

But doesn't - wouldn't the appointment of somebody, in the way that I have described, actually go precisely to improving the relationship between the Board and the GAC?

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**Peter Dengate Thrush:**

Yeah but so might flying them all their first class because they get their [inaudible 1:07:57] and some might doing all sorts of things to improve the you know—

**Brian Cute:**

But so we're clear, the AOC talks about, "Is ICANN adequately making recommendations for improvement to ensure effective consideration by ICANN of GAC input on public policy aspects" So, I thought we had agreed or at least we put on the table, I think nothing's agreed to yet, the idea that getting the GAC involved earlier in the process would assist this and that would be facilitated by the role by creating or revising or amplifying an existing role of a facilitator/interface between GAC and ICANN.

I think the logic is there. Now, people may still think it's a bad idea and say, "We're not going to recommend it" but if the question is it what we're supposed to be doing, I think the answer is clearly yes.

**Peter Dengate Thrush:**

And all I am saying is be very clear that you're working down from that original high level goal. And these are, if you like, additional steps to build that up. I kept going in my interpretations back to the high level.

**Unidentified:**

Okay there's two parts.

**Brian Cute:**

Fabio?



**Fabio Colasanti:**

As I said before, even if we were here slightly overstepping I think it would be for a good cause given that the Joint Working Group has not given its report and given that we know discussions are going on in the GAC and they are not leading to very clear outcomes. So even if we are able to step in and Larry disputes that, I would be in favor of going there.

**Brian Cute:**

Peter let me ask you a question because I want to understand your point. Was it because Chris was in the realm of dedicating a staff member?

**Peter Dengate Thrush:**

No. No. It's the whole point about what we're supposed to be doing which is to review how ICANN is meeting its commitments. It is not to solve the problems of ICANN. So I just resisted his point. I am not saying these aren't fabulous ideas and wouldn't make a big difference.

I'm just saying we've got to be clear what our scope is. Our scope is ICANN has promised to do a number of things. We were set up to review how well it's going against those promises.

**Brian Cute:**

Yes.

**Peter Dengate Thrush:**

Now to do that you have to look at the context and you have to look at what the problem is and what the big picture is first so you know how accurately remedial steps ICANN

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is taking are. But it doesn't mean [inaudible 1:10:19] the ICANN solution is not working, recommend one that will. That would be my approach and not saying. It's not a clean slate.

You know, how do we improve the effectiveness of the GAC? How do we improve the effectiveness of the Board? So I start each time making sure that what we are starting with is our mission, which is "What is ICANN doing to meet its commitments?" And it's got some commitments and it's got some commitments without working at improving the effectiveness of the GAC.

The ICANN response to that is to set up a joint working group. We should look at that and say, "Is that meeting the commitment?" If it isn't, what more might we do or what might be a better solution? I just want to resist the temptation to go out and fix things because we see that they might work. Okay?

So not that these are bad ideas or not that I don't think they would work it's just that we've just got to make sure they would fit with the mantra of the review. I'm thinking of this review and I'm thinking of other reviews and this review in three years' time. So that reviews are done as reviews not as remediation's. So that's my point.

**Brian Cate:**

Thank you. Manal?

**Manal Ismail:**

I am also in favor of not getting into the details of how the GAC works but I mean all this is, we started by saying that the JWG is what the ICANN did and what is ongoing and is the right vacant to look into the issues of the interaction between the ICANN Board and the GAC.

But the next thing was that this work group by the time it's done we should make sure that it has addressed those points and those are the points we are discussing. We are still under the JWG. I mean we are not trying to fix things ourselves.

**Brian Cote:**

Okay.

**Manal Ismail:**

I mean those are the areas that we recommend that the JWG before finishing its work should cover them.

**Peter Dengate Thrush:**

Well then —

**Manal Ismail:**

Does this—

**Peter Dengate Thrush:**

Well then, I would need to see what the terms of reference for the JWG are in its draft report I suppose. If you want to frame it in the context of we're reviewing the JWG, let's do that. Let's see what its terms of reference are, let's determine whether they are accurate or efficient, or broad enough and then let's look at the draft report.

I thought we'd put that in a box and we'd leave that to that group and we were starting to go over here but if you want to bring us back to the JWG and turn the review into an analysis of the JWG, I can live with that.

**Manal Ismail:**

My understanding is that we're talking under the JWG but, again, I don't want to speak for everyone in the room. Are, I mean, are we making recommendations to the JWG for areas to be covered or we are not only? Because we started by saying that the JWG was the right vehicle and should be looking into one, two, three, so when did we draw the line and start to —

**Brian Cute:**

Yeah I mean the way this draft is currently constructed it's what you just said, which is that it doesn't give free reign to the JWG because of the factual predicate which is, "This has been screwed up for years and it's not been fixed."

And therefore, the idea is for this to be, for fixing this, one would expect to see the following things come out of any joint work effort between the Board and the GAC and then we've been going through what's on that list. One of them is this issue of figuring out a way to get to GAC involved earlier in the process so that, which is the one we're talking about now.

The other one is we're defining what is an advice and putting more structure around the timeliness aspect of it. But, yeah, it's all in the context of, since we don't have the JWG report to evaluate, its being able to provide some input into that.

So that we're, in effect, saying, "One would expect to see these things fixed in order for the Board to get a check mark saying it's doing its job with respect to the GAC and with its, with respect to its separately enumerated obligation to better use public policy input in a decision-making process. Both of those are present in the AOC not just the Board's role with the GAC.

**Peter Dengate Thrush:**

And by articulating a mechanism by which these improvements can be made I don't see us as prescribing any particular formula -

**Brian Cute:**

Right. We are putting options and other considerations on the table for the JWG for the Board. Okay. Any other comment? Caroline?

**Caroline Nolan:**

Okay. Thank you. Thank you for that helpful discussion. Just in leaving this clearly, we have to go back and take a look at that and clarify both opportunities for different roles; the ICANN liaison to the GAC and to the Board as well. I think, maybe, Larry, I will turn it over to you for

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this next recommendation in the left hand side. Is that okay?

**Larry Strickling:** Well, I have to take it.

**Caroline Nolan:** Sorry to put you on the spot.

**Larry Strickling:** No. No. We have to talk about it sometime.

**Caroline Nolan:** Okay. I'm sorry. I should have finished. Is anyone, are there any additional comments on the other one? We'll redraft and come back on that.

**Larry Strickling:** So this last point, which, you know, this was not discussed with the working group ahead of time. It's just something that is really based on my observation of the working of the GAC.

I think it may immediately fall into the concern that Manal has about telling the GAC how to do things but I do things but I do think the Board has an issue in terms of getting timely, authoritative input from the GAC and one question is, "Would that be improved if the GAC involved higher level representatives from the government at some point?"

This is not to necessarily replace the people who work at this now but is there a way to factor that in, in a way to improve the process? I do think the Board has an interest

in, as I say, timeliness and authoritativeness and this was just a suggestion, you know, put forward as something to be considered in that regard.

But it is, I think operating as more of a direction to the GAC which may make some of the existing GAC people a little nervous particularly if it means their bosses are going to start showing up at the meetings.

**Brian Cate:**

Chris?

**Chris Disspain:**

I wonder whether, and this is a problem that I suspect we're going to have with lots of recommendations that we may make. But I wonder Larry whether we couldn't. I take your point and I wonder whether you couldn't recast that in terms of recommending that the Board work closely with the GAC to you know, [inaudible 1:17:34] to have the level of GAC participation, yeah these are not the right words but just to turn it around and say because it is perfectly acceptable to make recommendations to the Board, yeah?

**Larry Strickling:**

I think if people like the idea I'm going to let Manal re-write it so -

**Chris Disspain:**

I think it's a great idea.

**Larry Strickling:**

So it's politically correct idea anyway because I want to see Manal's re-write.

**Brian Cate:**

Manal?

**Manal Ismail:**

I mean it's a novel objective that I agree to the objective of the but, yeah, maybe the -

**Larry Strickling:**

Needs a little re-write.

**Manal Ismail:**

The wording. Yeah, maybe we can say that ICANN should outreach to the local governments and ensure their commitment and continuous participation maybe. I mean, we can, we can put it in a way that we outreach to the governments and ensure their commitments, maybe.

**Brian Cate:**

Yeah, I'd actually be very interested in Peter's reaction on this. You know, because as the Board chair, and you look at what you're getting from the GAC do you think this is a factor at all and is it something you'd like to see a recommendation on?

I will also add that Erick last night submitted an addition to this that we can get around to people, too that was more not so much in terms of what any individual government might do but more outreach to governments generally to ensure broader participation of the governments. Is this worth even pursuing or talking about from your perspective?



**Fabio Colasanti:**

Before Peter answers, can I add something else that I hope he can answer for both of us? I think it would be important to have some language, more complete language there. Could we not have something that says that it's important for everything that we will have said that the Board receives advice from GAC in a timely manner and therefore the Board will have to work with GAC to ensure that this would be achieved?

For instance, by having higher members participating, yeah? Or by creating procedures whereby the GAC is able to counter-check with the national capitals whatever? I think we have to be careful in terms of language that the Board has to work with the GAC but it would be nice to have something complete mention as an example, as a possibility.

**Peter Dengate Thrush:**

There the answer is I think this is a tremendous idea. Whether it fits within the scope is my sort of standard.

**Brian Cute:**

You have a standing objection.

**Peter Dengate Thrush:**

Is the response. And it's something that I worked with the strategy committee for example in coming up with a recommendation directed at hosting external meetings placed at the capitals to improve exactly this point. So, in terms of it being a good idea, absolutely. I think this is

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exactly what's needed. Whether Manal can get the wording right—

**Manal Ismail:**

I mean.

**Peter Dengate Thrush:**

Is how I am going to answer Fabio's question as well. I think I'm going to leave it to Manal. Whether we can fit into the scope of this is my only -

**Manal Ismail:**

I think with all of the native speakers around that I am the last one to put the language but I think we should put it in a way that I can should outreach to the governments and make sure they are committed and they participate and if this is done, governments should begin to either send the right person or authorize the person [inaudible 1:21:13] should be replaced by some senior people who are authorized.

**Cheryl Langdon-Orr:**

Authority at times is as good as with us being here. They've been briefed and they are able to speak to this, this and this. That could make -

**Manal Ismail:**

Yeah, I mean if governments are interested and committed they will either send the right person or authorize the person who is -

**Cheryl Langdon-Orr:**

I couldn't agree more.

**Brian Cate:**

Other comment? Caroline?

**Caroline Nolan:**

I think we're finished with this session. Do you have any more?

**Brian Cate:**

I think Mr. Chairman we are through this segment at least in terms of recommendations. Is that so?

**Caroline Nolan:**

Yes.

**Brian Cate:**

We're going to head into the public participation but would you care to have a break or should we plow ahead?

**Peter Dengate Thrush:**

Yeah, a little stretch? Five minutes?

**Cheryl Langdon-Orr:**

A stretch would be good.

**Brian Cate:**

Do you want me to stretch in my chair?

**Cheryl Langdon-Orr:**

Do you want these on camera?

**Brian Cate:**

Okay we'll take five. We'll take a liberal five.

**Cheryl Langdon-Orr:**

Are we turning off the video camera?

**Brian Cate:**

We're breaking. We'll be back in about five minutes.

**Unidentified:** Okay, thank you. We are beginning again, is Caroline here to kick off or is somebody else from Berkman going to be kicking off?

**Unidentified:** We best wait for Caroline.

**Unidentified:** I guess we are waiting for Caroline.

**John Coates:** We can, although I am happy to get us going and Caroline can ably step back in.

**Unidentified:** Okay John.

**Unidentified:** That makes sense as so not to lead with the group's involvement.

**John Coates:** So, we switch here to the public participation segments, we will end the day on transparency, they may lead into another and [inaudible 0:00:31] time, if not right on time by 5:30 to end the day and head for other things together. As before, if she is up for it, Caroline will do the play-by-play of the public [inaudible 0:00:45] section. If not Cara, I am happy to pick up and jump right in.

**Caroline Nolan:** Great, I am happy to. Thank you John. Starting with our public participation as with the last section, I will take you first through the general considerations, essentially the framing for this portion of our report, then move on to

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some of the issues we identified. The observations are located within the report. Then we can focus in on some of the draft recommendations that we have presented here. As noted in the previous sections, much of the initial considerations were focused on the AOC take-a-ways from the case studies, public comments to the ATRT and also comments to the Berkman team through the interview process.

We also took into consideration key initiatives that are underway at ICANN right now, notably the Board Public Participation Committee, the General Manager position of public participation and the Policy Development Process Work Team, the draft report which was recently put up for public comment.

As far as the issue-specific observations, the first that is going to fit the foundation of our recommendations regarding baseline standards for the structuring of public comments periods, issues related to volume structure and timing of public forums.

I should say that in many of the interviews that we did conduct, ICANN was given a great deal of credit for the amount of progress it has made and the improvements of recent years, particularly through the processes I mentioned, but also through other forms of outreach,

restructuring the website and other forms of information design.

That being said, a number of comments focused on clarifying the ways in which public comments are solicited by ICANN, the manner in which they translate into effective and meaningful participation and input into the decision-making process.

Some of the issues we found related to accessibility, so focus on language - not only multilingual materials and information but also the language around technical specifications and other things, so the degree to which that may bar certain participants from communicating and interacting effectively in the public input process.

The structural issues mostly focus on participation mechanisms, how the website is organized. I think this will certainly come up in our transparency section. I should say that the public participation findings do intersect with all of our other sections, but in particular on transparency.

We will touch on that in the last section of our program today. As far as evaluating existing mechanisms and developing recommendations for how to streamline the process, we ask questions and receive [inaudible 0:04:09] the timing which public comments periods are put up, how

they are publicized and their relationship to the policy development process.

This also includes the stage at which they are closed, the summarization process and then the final outputs from those proceedings. We certainly drew on the case studies in a number of smaller case examples to draw those conclusions and they were certainly a part of the feedback that we received in the information process.

As far as relevant information and data, that was another central area we looked at. So, how effectively was information made available during the decision in question including questions of clarity and comprehensiveness, whether or not there are educational or learning opportunities related to public development processes and then finally we looked at consistency?

Is there a consistent methodology for how and through what channels public input is solicited? Then, a protocol regarding the different types of decision that may require public input.

Before I move onto the first recommendation, I just wanted to highlight in our observation section some of the additional concerns that were raised regarding the public input process -- this notion of casual involvement so the idea that "are you able to participate on a particular policy

decision without committing a substantial amounts of time to the process, is there too much information at once”.

So is there kind of an overarching structure by which you might be able to interact with and feed into processes without being overwhelmed by the volume of comments periods at play and then I think, finally a bar being the lack of clarity regarding the variety of different public participation mechanisms and what their inter-relationship is, if any.

I will begin with the first recommendation in response to the those initial observations. The first one reads, “To establish and observe baseline standards for the structure and timing of public comments periods”. Within this recommendation, we talk about the effort to differentiate between different types of public input requirements according to the decision in question.

So, are there ways to distinguish the types of activities and decisions that require public input and then from there, develop associated standards and ideally mechanisms. Do you want to stop there?

**Unidentified:**

Yes, I think a great place to pause and jump in either on the overall comments that Caroline started with or that particular recommendation. Peter?



**Peter Dengate Thrush:**

Again, just sort of a reality check every now and then on these things, nobody expects the FCC or any other body trying to do a similar job, not to do its work. Nobody ever says they are either late and I think we just have to be careful.

This is the internet and it is moving at an extraordinary pace and the idea that we are going to stop because of the current few hundred people participate are finding it a bit stressful. It has to be balanced against the actual requirements of the job.

I am really impressed by [inaudible 0:07:45] though, changing it to a stratified system and making it better, that is great. One of the other things is getting more people into the process, so that the few volunteers that are currently [inaudible 0:07:58] is broader, rather than saying, “Look, we’ve only got three people who know what’s going, we have to wait...” [Participant laughter].

When we ask anybody as the Board which of these processes should we hold up, they all say, “Well not mine”. In reality, none of these things can wait, just to put that as a contextual matter, there are other ways of skinning this cat than just trying to slow down or not do things.

**John Coates:**

Fabio, Chris and John Palfrey? Fabio.

**Fabio Colasanti:**

You will not be surprised by my position. I think we have to understand that everything is being recommended here that I fully support and no fundamental disagreements between the two sides. One, many indeed slow down [inaudible 0:08:49].

Two, will have a substantial addition of faults in terms of staff and personnel. I am convinced that this processes, the slow-down and the decision making process and additional cost in term of stock are absolutely worth paying and need to be paid in order to have this bottom-up policymaking process that we are talking about, to have this accountability through transparency.

So, I am totally in favor of this, but we should be recognizing in our loophole, that we are aware. One, there will be an impact. Two, there will be a substantial financial stock resources impact. I for one, would strongly recommend it.

**John Coates:**

Thank you Fabio. Chris?

**Chris Disspain:**

A couple of points, it is important to recognize - probably in respect to both side of those recommendations - a substantial number of the timings for public input are actually set in the supporting organization or advisory committees bylaws and they are not the subject of this review.

The ccNSO timings for example were agreed by the ccNSO after a significant, substantial and not easy process to convince people that they were acceptable. So, the reason would be a little bit careful to make sure we know what we are talking about.

Secondly, I am interested in a comment [inaudible 0:10:33] because I cannot see anywhere in those recommendations that talks about slowing things down. There just seems to be an assumption that resulted of implementing these would be to slow things down. It is not completely insane that we might have to speed things up, hard to know.

**John Coates:**

Thank you Chris. John?

**John Palfrey:**

Responding primarily to Peter, but each of the comments here, I had a similar reaction to each of you to the data that we collected so far on this topic. My previous engagement in ICANN other than as a student, where at the beginning of ICANN meetings, was to write a paper on public participation in roughly 2001.

I was struck by the distance ICANN has come in that period of time. We heard this consistently through the interview. I am devoted in this section to our acknowledging that improvement and I think it is crucially important that we note the good work that has happened

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and credit the staff and Board with an enormous amount of work on this score.

Second, my sense is that any recommendations that we make ought to be, just as you noted, about encouraging the ability for someone who is not a highly paid lawyer focused on this in their practice or otherwise be able to have some participation should they want to.

That is no small aim, I totally get the challenge of this. Anything we can do to lower the bar for involvement in some fashion, I think is really good. Three, I think...

**Brian Cute:**

Why does the drop [inaudible 0:12:06], just to say why, why do you expect there should be a law of that participating in governing the internet than in governing any other critical resort? It is a nice idea to think every individual person on the planet is going to get involved in crucial issues, but how realistic is that?

I mean I like the idea, I am here because I am one of those people who came into the process just because I followed the availability path, but we just have to be realistic.

We do not expect to run airport safety or road construction or food safety or any other major issues that has huge areas of public importance, we do not actually expect that issues about [inaudible 0:12:44], be broken down so that every

person on the planet is going to be able to participate. We just have to work out what the right little of involvement...

**John Palfrey:**

My point three was precisely that, which was too...

**Brian Cate:**

If every individual wants to get involved, then it is fair to expect them to have to go and do a huge amount of reading and get themselves up to speed, they will cope. The idea that they will walk in and Page 1 of the website of ICANN is going to be sufficient material to allow them to get up to speed to actively participate in something that has taken a whole lot of really clever people fifteen or twenty years to sort of finally isolate.

So I think, I am not arguing, I just think some levels is that who are the public that are going to participate in this is and what level of preparation they have to do really is part of the context. We sometimes get trapped under this what was possible in the sixties or seventies. It is different now that we are running what is the operating system for the world. End of rant.

**John Palfrey:**

I could not agree more. That is sort of my point three in terms of the series of tensions I think that emerge here is the level of sophistication as we brought up a team of people over the course of the summer, some of whom had not dug into ICANN before.

The difficulties of these extraordinarily smart people to come up to speed on this and I speak for Caroline and others and Joey, to learn this from the ground up even when you are paid to do it full time, at least for a short period of time, the bar is very high, so acknowledging that difficulty and the fact that you noted, none of this is about slowing decision making.

Overall, we are trying to make arguments that say if we were to restructure in some fashion, could we allow decisions to be made, some with more transparency, some more accountably and with more public participation but in at least the same timeframe, if not more so. I think these are just factors that are pushing at one another.

You are pointing out other agencies, we have looked extremely closely at various versions in the U.S. and in Europe of the various forms of participation acts for big agencies. The fact is every big agency focuses, deals with this problem of trying to get expert review in as well as serve general public review and then what to do with it.

If you get a whole slot, because they don't get responses and they are totally ignored every time. All of these tensions are at play here, I just want to say that I think generally the trajectory is right in terms of going out.

To Fabio's point before that we are not making any radical suggestions here, a little experimental but not radical in part as we do think it is on the right direction, but some of the main teams are just trying to simplify the process where possible and so forth. It is not about going from only these amazing experts all the way down to anybody anywhere can do it.

Let's just recall the public election that ICANN held in 2000, where it was not a whole lot of people who bothered to vote, if you think about the number of people who could. It is hard. It is not about bringing all the way from experts only or people really devoted to it to anybody, it is about if there is pressure.

If there is hydraulics involved, the hydraulics are toward making it somewhat easier for people who would like to be involved to be involved on points where it kind of matters. That is the stratification in point.

**John Coates:**

Thank you John. Chris?

**Chris Disspain:**

First of all, I am not clear John that I understand everything you have said, but I am not clear that you actually answered the point. First of all, I suppose my first question would be, where do you draw the line? At what point do you say that you have done as much as you possibly can to allow for public participation?

Now, I would argue that the concept of stratifying and prioritizing is a fine idea and I think would be hugely important and would work. That would make it easier for those of us who are currently involved. Would it necessarily make it any easier for other people to become involved? Probably not.

I think I really want to echo Peter's point which is that anything you choose to get involved in, be it your local council, the internet governments, anything - you have got to do work to get up to speed. It is not the job of the organization you want to get involved in to stop you from having to do that work.

You just have to do the work. I think we just need to be a little bit careful that we do not go for the lowest common denominator and stick to the fact that this is an incredibly complicated environment and you actually do need to have a significant amount of background knowledge in order to give valuable input.

Without wishing to be rude to internet users around the world, quite frankly, unless they have done some research and some work to get up to speed on the issues, I am not sure their input is really of any value anyway.

**John Coates:**

Cheryl.



**Cheryl Langdon-Orr:**

Thank you.

**John Palfrey:**

Chris, as with all your points today extremely well taken and helpful in restructuring my own thinking to this anyway, as to where do you draw the line? I do not think we can answer that. In fact, I do not think it is probably the right thing for us to answer. I guess my viewpoint on this is whether the internet will or will not be destabilized by a certain decision is better given by experts than frankly, by me.

I do not have something reasonable to say on that. I would much rather hear it from technical experts or find a way to do it. That is obviously one of the tensions in all studies of administrative law is from whom do you want to hear and when on what kinds of topics.

The only thing I am talking about here as a general rule is kind of directionality. Directionality meaning as I noted my first point, to reward the amazing efforts of ICANN staff to try to accommodate a large group of people and sort of to nudge that forward and to say, "You are on the right track".

I think the general idea is this is going in the right direction and we have a few suggestions that are meant not to cost the organization all of its time and all of its money doing

this. I would say I cannot answer; I am dodging your question, “Where do you draw the line?” explicitly and acknowledging that I am dodging it, but by saying I think what we can point to are these hydraulics.

Which direction is this moving, what are some simple straightforward steps that actually might lead not only to more people being able to participate, but in fact potentially the hope of all these efforts that are decision making on some level, because some good ideas come up, but not my ideas about stability of the internet.

**John Coates:**

Cheryl.

**Cheryl Langdon-Orr:**

You do not have to duck and cover, Chris, but I will have a conversation with you later. First of all, as part of the organization which is charged on bringing a great deal of this public input into the [0:20:05], could I just say all of the recommendations that I see in the Berkman Report here are not saying bringing it down so men in the street when you put a microphone in their face and say “How do you spell ICANN?”, can answer you.

That is not the intention nor is it the [inaudible 0:20:20], so I am not overly concerned about getting several billion people, having their direct input on what should be happening with who is a fast flux. It is just not going to work. However, what does work even for those of us who

would consider themselves experienced and expert, is having simple or plain language, easy to understand presentations and things appear in small bite size pieces that are easy to track down, find archives and get yourself up to speed on.

This is what I am saying in these recommendations, so I do not see there is any lack of synchrony in what is being intended here and what would be good for getting better and higher quality public participation as we define it into ICANN.

One thing I do want to mention though and that is to Peter's point. In the world of communications, we are in fact getting more and more, not quite men in the street, but interested individuals who have become experts at the particular level locally, regionally, nationally and in this case internationally wanting to be involved and being involved in public input.

You have Ofcom in the U.S. You have got ACAN, Consumer Action Network, a peak body of peak bodies founded by industry, put together by government to make sure public participation does get into policy on things as important as telecommunications and internet.

In this particular part of where ICANN sits in an internet world, we do have some shifts, some desires and expertise

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and interest in communication matters and policy and public participation in policy.

Also, while I have got the microphone, it would be remiss of me to not note that a number of governments, particularly those who have made good use of the internet are looking at GOV 2.0 and GOV Interaction using the internet modality to get their public participation in their policy development.

As that happens, you are going to enrich and educate an audience of people with interests who may be attracted to becoming involved and to stretch out and be more of the people we have as our public as well. They will be used to being involved in policy development using some of those tools.

That has a long way to go, that our need at a very immature level. It is happening, it is happening on the three to five year horizon. ICANN might benefit from that in watching what happens in that. We will chat again later Chris.

**John Coates:**

Thank you Cheryl. Carlos?

**Carlos Alfonso Pereira DeSusan:**

[Inaudible 0:23:12] comments on this and I believe one of the goals of the working group three and the whole review on the public participation issue is to simplify, to facilitate this first step that the person might be interested in taking

when deals with ICANN issues. I would like just to go back to example we had in the present NCSG, but the NCUC like one year and a half ago, when the Board Director said NCUC needs to be diverse.

You need to outreach for other representatives and consumer organizations that are interested in deals with domain names. So the task that was given to us was to come to organizations that deal with consumer protection interest.

And to the academics and say, “Would you be interested in joining and debating domain names and internet government as a whole?” This is a hard topic to sell for a consumer protection organization. What is the relationship they will have, what is the stake for them to join and to discuss internet governments.

Maybe one of the points here for us to use as a goal is clearly to facilitate and to simplify this first step. Is there a basic task or document that we could use to spread the news on what is at stake for a consumer organization in dealing with domain names and dealing with internet governments.

Just to give an example, a digest will be important here to create a sort of a timeline to discussion. It is important for a consumer protection, this or that discussion. What has

been happening to this discussion the previous two years?  
What were the proposals?

What were the decisions? Maybe this is something that could be helpful, a sort of digest. Apart from that, it is of course, something that is related to communications design, like the ICANN magazine that would create some news to go around on those issues.

Just to make the point that simply finding this first step of getting people aware of the issues and how best they could contribute could be one of our goals here.

**John Coates:**

Thank you. Peter?

**Peter Dengate-Thrush:**

I just want to say that I think all of the suggestions are excellent ideas but only actually the responsibility of the ALAC, I mean that is what the ALAC is for, isn't it, to outreach to the At-Large and so I do not think it is the Board's responsibility surely to do that.

**Brian Cute:**

Can I just respond to that, because what I was going to say but I wanted to see what everyone else...I was best put my hand, but we need to recognize that the policy department in ICANN in particular, but backed by ICANN have gone in huge efforts recently and put out some absolutely amazingly good material for this outreach.

Now, ALAC and the At-Large community are very much involved and Scott often uses us as a test bid and he directs with us, you will find our voices and our interaction as an important part of all of that.

If this is only just starting to come off now, we are just getting enough to call it critical [inaudible 0:26:41]. We need to recognize the important steps ICANN's already taken to facilitate this. I think what we are talking about when we look back even two years is vastly different than even the last six months.

**John Coates:**

Peter.

**Peter Dengate Thrush:**

I am going to step forward and claim the credit for some of those. I am the chairman who created the public participation committee and told them to make ICANN a global leader in public participation in Syria. There is a whole lot of things that people have mentioned that I think flow from some of those decisions including increased translations, including policy updates.

I say I welcome continuing steps like changing the structuring and stratifying them. I think publishing promos on everything, why should you be involved and so people can learn which to discard. I guess I started this just reacting to a couple of the recommendations about barriers

to individuals, required time and expertise are still high and the number of issues that are up.

I just wanted to make sure we did not let those issues sort of dominate. The answer is yes. There is a hell of a lot and how do we deal with it, not any seems that we should withdraw from any of those. That was where I was going with that.

**John Coates:**

Thank you. Fabio.

**Fabio Colasanti:**

Two points, one on the amount of consultation that ICANN should be performing and the second one about linguistic communication. What is being recommended here is ambitious, in terms of consultation participation but as it has been underlined, it is not unprecedented that [inaudible 0:28:28] that are ready try to do as much as it is recommended here.

Peter raised the question whether other international organizations do the same. They are here. We should not be forgetting one major difference. First of all, I think it would be good if everybody was consulting as much as possible. But other international organizations are just that, international organizations set up by states, by treaties and they get to [inaudible 0:28:59] their accountability through those arrangements.



ICANN is a special adult arrangement and it gets its accountability through its transparency in participation, so there is a strong case for ICANN to do as well as anyone can do in this area. This is a very strong reason. My linguistic point seems to be where we will be saying a lot about the need to use various languages.

Could we there where we have notice of inquiry, green paper, notice of policymaking, white paper...that is how the rest of the English speaking world [group chatter 0:29:47].

**John Coates:**

And if I may, thank you Fabio. To point out clearly, the recommendations from WG3 here are not blessed by the entire working group. Those are recommendations that I penned, so to be clear the entire group has not signed off on that and that is probably something somebody would have caught.

**Cheryl Langdon-Orr:**

Some of us might mention that otherwise.

**John Coates:**

But also Peter, to your point and I will say having worked in this area, this is an area where there has been an awful lot of favorable comments in terms of the progress that ICANN has made, clearly in the comments, clearly in the interviews we have had, there is distinct clear good progress.

One thing I want to point out for these two on the WG3 side and others to follow is a recognition of a couple points. We need to be sensitive to the fact this is a bottom-up organization. Some of these we have to take care with how we craft these so that one could look at these and see something of a shift to top down.

We want to avoid that. Mostly, this is about timeliness of input and also trying to minimize the ping pong effect. I know I give Warren credit, he is the one that came up with the black box early in the process, but the ping ponging seems to become the second phrase du jour.

So to minimize the ping pong effect of processes being under way and policy coming up only [inaudible 0:31:10] or a box that was not checked, that is really the focus of these and even more broadly, Chris, to your point the fact that the ccNSO has its own procedures and policies. The GNSO has its own procedures and policies.

The GAC has its own modus operandi in terms of its participation. Stepping back from all of this, it is really clear that there needs to be an end-to-end approach of this entire process. That is the spirit in which most of these recommendations are put forward.

**Brian Cate:**

John.

**John Coates:**

Mr. Chairman, just in the interest of time on your side and ours, there are nine or ten each specific recommendations. Would you prefer that we walk through each and then obviously take a little bit more time totally?

Or should we in some fashion zip through them or otherwise just open for comment ones that might be more or less presenting people that have had time or chance to do their homework? We have to final recommendations before we leave. I think it is worth going, some may take less time than others.

**Caroline Nolan:**

I might suggest Brian, we have broken ours off into four different broad categories, so perhaps we will step through the first four in each category and try orient this discussion that way.

**John Coates:**

Sure, I have got Manal first.

**Manal Ismail:**

A very quick remark, first I really do appreciate the amount of work done by the ICANN and the amount of overload and things as being achieved, but it is worth noting that during the Brussels meeting, even ICANN insiders, I mean the supporting organizations and people we [inaudible 0:33:00] that was mentioned, the overload and the too many PDP's that are running in parallel.

We are not talking about introducing new participants to the process, but even the insiders of the process were complaining, even people who sometimes are the ones who put the PDP, I mean the initiators of the PDP's, so maybe it is good to prioritize to the extent possible.

I am not suggesting that I can slow down but to the extent possible considered the prioritization which might turn to be more efficient if more inputs are coming up focused on a few PDP's, it might turn to be more effective and might not need to be expanded more than once.

**John Coates:**

Thank you. Caroline?

**Caroline Nolan:**

Coming back to, well thank you for the very helpful discussion. I think certainly our recommendations flow from the same understanding of the public inputs and public comments that we have received in the take-a-ways from the key studies.

As far as your characterization of end-to-end, that is certainly how we have structured our four buckets of recommendations, so from eliciting public comment to aggregating it to incorporating it into board decision making and then communicating it back to the community.

Coming back to the first area, as I noted this differentiation notion and establishing baseline standards for structure in

timing, the second speaks to Chris's point regarding the different processes.

Is there an opportunity to have more adequate coordination, somehow between a collection of staff and constituent bodies of the different comments periods in order to better address the volume issue that Manal had described and certainly was something that we heard from many of the public inputs and interviews.

The third recommendation within that zone focuses on establishing alternative mechanisms and tools for soliciting public input and structuring comments periods that better foster dialogue. Again, this pertains to the notion that there is a call for public comments.

They come in, is there a way to stimulate discussion earlier in the comments period whether via response structured dialogue utilizing new tools that can help create zones of conversation and engage the community in a dialogue earlier.

The fourth within that zone focuses on the quality and timely publication of relevant materials and comments. I think this gets into [inaudible 0:35:47] of having a primer or having materials available to incorporate comments or outreach to a broader group of people.

Within that same zone, new methods of engaging stakeholders and volunteers in the transition process is also a method to explore. Finally within that zone, we spoke about improving opportunities to participate in ICANN meetings.

We mentioned scheduling here. I should say another set of recommendations that we heard, it seems as though certainly in recent meetings, there has been a lot of progress made on remote participation and opportunities to have people participate from elsewhere.

There were a number of very complimentary processes. I will stop there for a moment, look in the broad zone of eliciting feedback and input. Happy to have discussion on those fronts.

**John Coates:**

Chris.

**Chris Disspain:**

This is just a general question for everybody. When do we just take public participation at meetings and translation, again I would ask the question, are we in any position to continue to improve? I mean there is an 80/20 rule here, it costs an absolute fortune to do these things.

None of us as far as I am aware have done any analysis on whether our suggestions that we should improve XYZ are

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actually rationale from a funding point of view or not. Just a question to see what others think.

**Brian Cute:**

I will note that the phrase to the maximum extent feasible is intended to address some of those concerns, perhaps not comprehensively.

**Unidentified:**

Brian, if I may, I think also to answer Chris's...I am paraphrasing, but when we have the MP3 of our interview with [Inaudible 0:37:37] talking about the public participations committee issues and views on all of these, I think they see some of these things as very important as well. We are probably affirming a plan that they already have as a worthy one.

**Chris Disspain:**

So shouldn't their recommendation actually be something along the lines of encouraging public participation committee to continue it's good work in improving...

**Brian Cute:**

I think you will find the final will say that. Yes, it could be that.

**John Coates:**

Comment? Caroline?

**Caroline Nolan:**

Any other comments on that front, on the first step? Okay, I will focus on the second set of recommendations and this is mostly responding to public input and in particular focus

on the role of the staff in interpreting, processing and organizing comments.

This was something that came up in both comments to the review team and also in the context of our interviews and case studies. The idea of whether or not there is a consistent practice or methodology for the summarization and analysis of public comments and whether or not those standards are available to participants.

This was something we did hear quite consistently, there are certainly examples in which, from a policy development standpoint, there are challenges.

The complexity of trying to accurately summarize a huge number of public comments, but certainly from the feedback that we heard from ICANN staff, they are experimenting with a number of different models for trying to input public comments and the summarization of those comments into draft materials and otherwise from a recommendation standpoint, we focused on developing standard procedures for summarizing and analyzing public comments and communicating those more clearly.

It seems to be certainly from the feedback that we have heard that there was a lack of clarity regarding how that might occur and when public input is taken in, how it may factor into the public policy in question. The second



recommendation in that zone focuses on experimenting with different types of public [inaudible 0:40:13] to the previous section as well, but the idea of enabling stakeholders to track the lifecycle of their public input.

So, from the call for public comments to the summarization of those comments, is there a traceability mechanism at work online.

**John Coates:**

Peter.

**Peter Dengate Thrush:**

Just a question because I have given strong indications in directions of various stages and I just wonder if they able to be followed up. Is there, in fact, you have got develop and communicate standard procedures for some, is there in fact a state of standards procedures for summarizing and analyzing public comments.

I have gone through a number of directions to senior staff about doing this and in the end, all I have been told is they will go the market to find the best people who currently do this. I think you can actually see in ICANN, there is an extraordinary improvement in relation to the public comment around the whole new GTLE prices and pick any of the examples.

I am gratified to see the kind of comments that are coming up. They are so different from the ones that were made

five or six years ago. People are now filing their comments in the wrong box. It is such a low-level, easy-to-fix problem by comparison.

My question to you experts is what are the standard procedures for summarizing and analyzing public comments? If you can point us to them, we will adopt them. The difficulty here has been actually finding in the world expertise and taking four hundred comments about the new GTLE program, summarizing, analyzing and distilling them.

We think we know they are a pretty good job, but I am very happy to give...I want this to be world class. So where do we go for standards on this?

**Brian Cute:**

We have been looking at various legislatures who have similar processes working. You have this to some extent in Canada in the federal process. We certainly have this in Switzerland.

Switzerland is a good example because these kinds of processes have to be done in three languages at least to meet the language requirements. I would say over the last hundred years of this kind of procedure, staff has developed some skills to summarize the various inputs in a manner that all those who participated in this process, find themselves adequately represented.

We know for instance, that the Swiss government provides schoolings for people working in government to develop expertise in these kinds of processes, which become part of the everyday work.

There are examples around. It is not an easy task. I have been doing similar things. I fully agree and you've always the specter behind you will unintentionally put something wrong or you forgot an important, frankly was of secondary importance, but I think it can be done.

It is like all these suggestions in this field, I am sure that work is being done in ICANN by staff and staff is continuously looking around to improve that. We feel to some extent, it is meant like an encouragement to carry on what they are doing into this direction. Thank you.

**Unidentified:**

Did the Swiss government have published standards that we can adopt or published formats that we can use or do we just have to go through what the Swiss have gone through and have a hundred years of experience until eventually we

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**Unidentified:**

Yes, I would suggest the letter. The point is of course, that this is not only an abstract art, it is related to substance. In some areas, you do it differently and other areas, you do it in a different way.

I am happy to look around and see whether there some sort of condensed guidance on how to do that. Thank you.

**John Coates:**

Chris.

**Chris Disspain:**

Just to pick up what you said and what Peter said, what you have just explained, which is very useful input is not procedures, it is skills. It is learning skills that help you to summarize and analyze public comments. I can perfectly understand a recommendation that suggests there should be improvement of skills.

Not the same thing, the same standard procedures because I think you have actually misunderstood what you effectively said, it cannot be a standard procedure because it is an abstract, it is an art.

**Brian Cute:**

It is difficult because you always have to take into account the substantive issue you are dealing with. I would disagree to a certain point. I would maintain that it is also a question of procedure. Not because you have to point out the moment when you start this process and you also have to clarify what the result of this process should be.

The summarization in the Swiss process for instance, is guidance for the government, how to finally introduce its draft law into the parliamentary process. The time spent is

proceduralized, the time that is available for summarizing this is proceduralized, the time for input is proceduralized and also over the time that is the format in which you present the results is part at least of the procedure.

Of course, the contents and how well it is done or how badly it is done, this is a question of skill.

**Unidentified:**

We should probably take us offline now, because we are getting - I wondered whether we need to have some kind of administrative challenge process. There are a lot of people who complain that their comment has not been summarized.

You have to take robust view about that because four or five pages of someone's rant down to something the Board will find useful is going to be quite dramatic cutting.

**Brian Cute:**

Do you have a kind of a process where people can challenge the summarization of the [unknown 0:47:41]? Our worry about that is that is going to lead to a series of endless loops of complaints and processes where you stop talking about the issue and you start getting sidetracked into talking about the recording and synthesizing of people's comments.

**Unidentified:**

I think there is a sort of informal process, particularly when certain positions are difficult to understand to go back to

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the organization that has entered this statement and say, “We are about to summarize it in the following way, can we have a quick input on that?” This is the reference of a hundred years.

The players and the organizations, the consumer organization, I don’t know...the Association of Car Drivers, they know each other and they know their counterparts in the administration. A lot of that can be done informally. It is not necessary to have a second round to send everybody, “This is our draft summary, please you have ten days to respond to that.”

Where somebody who is making the summary feels a little bit uneasy, whether this is well done or not, he picks up the phone, calls up the guy on the other side and tries to clear it up. The other side has to learn that a summary is not a one-two-one entry into the records.

This is also to bring across. Again, this is a process of mutual cultural learning and I do not see any reason why this cannot happen and is actually already happening in the ICANN context.

**John Coates:**

Carlos, then Chris?

**Carlos Alfonso Pereira DeSusan:** I just want to make an intensely practical suggestion which is perhaps one way around this would be if you agree to the

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process that said, “A summary will be a maximum of”, you could then have an opt-in process which is provide your own summary or if you cannot provide your own summary, the staff will provide a summary for you, that seems to me would solve the problem immediately, because you have a choice.

You can provide your own hundred-word summary or however many words it is if you choose to do so. [Group chatter].

**John Coates:**

Carlos.

**Carlos Alfonso Pereira DeSusan:** Just for an input so far, a very recent Brazilian experience, we are now going through a [inaudible 0:50:15]. I would not call it internet Bill of Rights because this name is so controversial, but certainly we call it a [inaudible 0:50:24] framework for the Brazilian internet and it was quite interesting.

The ministry of justice opened up a website in which people for 45 days could contribute on general principles that would guide the legislation or soon-to-be legislation. After those 45 days, the [inaudible 0:50:45] were working together with us, our law school in Rio.

We received 800 comments in the first round and after receiving those general principles, we drafted the actual

wording of the Bill of Law. This second period is the one that I think is the most interesting for the discussion we are having here.

During those 45 days, we start to summarize some of the comments. This was really interesting and first of all, we are dealing with a community here that has been said, "It's common to people to know each other, to know their counterparts, to know what is going to be said by a specific person, to know what is going to be said by a specific group."

When you are going to summarize those issues, there is some easy way to shortcut to some easy identifiable groups or opinions. Apart from that, our experience in Brazil like we received 2000 comments in the second round of consultation of our legislation. Of course, this is much, much broader than ICANN policy as we are being [inaudible 0:52:00].

In Brazil, we cannot compare the number of the contributions but there is, I believe, some connection between the work we have done in Brazil and the work we are discussing here, which is the task of summarizing the comments and how to do that.

It seems to me that of course, [inaudible 0:52:20) is fundamental to this subject. There is a little bit of process



that we can start together, national experience or other international experience that could be helpful to do this.

The experience we had in Brazil regarding not only [inaudible 0:52:36] and the process itself, if we go, we can also talk about software, so technology that could be helpful in order to bring comments together so that we could only have the persons who know what the other group are going to say and could help in the summary.

Technological help bringing comments together so as to help staff and to help the person who would be responsible for summarizing those issues to get the subject done. I would just like to point out that we had this experience and of course, it is a hard task, we had to summarize almost three-thousand comments.

It is feasible, of course there were like angry mobs that said, "My comment is not incorporated in the summary." Then again, we are talking about community. I'm on the community, of course, dissenting voices will always be there, but the community itself will learn to deal with that and to identify the major point of discussions.

It seems to me this discussion about community is the same discussion that we have on every social network in which we have a community that can deem that some subject is elicited or not appropriate and they will start to say that so

we can easily identify subjects or opinions that are minority, vocal by only [inaudible 0:54:14] people. Just to point that out.

**John Coates:**

Thank you very much for the comment. Caroline.

**Caroline Nolan:**

Thank you. Thank you for the very helpful discussion. It is certainly on the first recommendation here I think we want to go back and soften the language and revisit the language according to this discussion. The spirit of this suite of recommendations was certainly focused on the idea of experimentation.

I will say or just reiterate much of the feedback that we heard was progress on this front in recent years and also particularly in the context of the new models that were used with the draft applicant guidebook and other types of scenarios for thinking about new ways of incorporating public input into materials and then just to pick up on Cheryl's point.

Regarding experimentations in the zone, particularly around GOV 2.0 processes is certainly a part of our work as well. Moving onto number three, the third bucket that we focus on - the notion of incorporating public input into ICANN decision making processes. Again this was another issue that was communicated via different public participation processes.

The notion of understanding where public input have been incorporated and reflected and/or disregarded by board decision making processes.

As far as the lack of clarity there, community members certainly seem to express the idea that having more explicit and detailed information regarding the rationale for board decision making process in the manner in which community input played a role was feedback that we heard and certainly was the driver behind this last recommendation.

**John Coates:**

Chris.

**Chris Disspain:**

I just want to make the point that we need to be clear that this recommendation actually is almost the same as the recommendation from Working Group 1 on transparency so we need to make sure we do not repeat ourselves. We need to meld those together. Flag that.

**Caroline Nolan:**

Thank you, but we did many of the overlaps, but did not want to take out anybody's opinion. We will keep that in mind, thank you very much. Other discussions on that? I think we already discussed it.

Great, thank you. The fourth issue we picked up, the need for enhanced cross-community dialogue. This was another

piece of feedback that we received. It is certainly cross-sectional issues that we touched on in our GAC discussion and in other aspects of our discussion.

The idea that different constituencies may need to get involved in the public policy development process earlier on. The last recommendation is focused on creating explicit policies and procedures for triggering cross community deliberation among various constituent bodies at early stages in the policy development process.

Obviously, there are numerous interfaces and opportunities for that kind of input. Formalizing it earlier on in the policy development process depending on the needs of the policy, again I think factor into the broader thematic area of trying to stop of the ping pong effect along the input track.

**John Coates:**

Chris.

**Chris Disspain:**

Two things, taking your recommendation first, again you cannot - if you are talking about using explicit policies and procedures for cross community deliberation, in a PDP, you cannot do that, because the PDP rules for each SO are set by that SO in their bylaw and is not appropriate again for it is nothing to do [inaudible 0:58:17] you need to change your policy without process.

It needs to be very careful about saying something like that. It is not in the [inaudible 0:58:30] to be able to do it anyway. If what you are talking about on the left-hand side which is different, the left-hand side is talking about cross community deliberation processes, not within a PDP, just cross community deliberation processes, which is a different thing entirely.

I actually personally think that the danger of having coordination on cross community processes is you lose precisely the thing that made the first [inaudible 0:59:06] work, which is bluntly, we made it up as we went along. What I mean is the way we communicated, we made it up as we went along.

If you try and force the communication mechanism on what is effectively an ad hoc way of communicating, there is a danger there. That is a separate comment from my comment on the [inaudible 0:59:21] recommendation about policies.

**John Coates:**

Thank you, another comment? Caroline?

**Caroline Nolan:**

I am just reading over ours again. I think certainly the vision here was to note the facilitated communication early on in the policy development process. The recommendation is certainly not focused on the particular processes for each of those organizations.

I think coming back to the notion that the end-to-end public input process or policy development process, this was something that felt as though if there was [inaudible 1:00:07] that may facilitate the dialogue between the different organizations.

**Chris Disspain:**

It may very well do, but it is not in the scope of this group, I do not think.

**John Coates:**

Peter?

**Peter Dengate Thrush:**

These things go in phases. I have been around long enough to see the wheel turn from when we all got together originally in Singapore for the first meeting. We had everybody in the same room. Everybody was shouting because they all thought their issue was the most important.

The people who wanted to break the dot.com monopoly and wanted to become registries and registrars were absolutely convinced that without that, the internet would collapse. The rest of us who were there trying to work out the important issue of re-delegating [inaudible 1:00:47] these knew that if that was not solved, the internet would fall apart and you went around the room and everyone did.

So what we did was we would break people up into interest groups and see what you need to sort out and things went quite well.

Now we have another generation come along and you see that operating and you complain vociferously and eloquently about silos and people operating silos and how dangerous this is and what we need to do is bring everybody back into the room all the time.

Of course, the answer always lies in concentrating on what you need for every issue. So I quite like the one on the right, as long as there are ways of triggering it when it is required at early stages. That is all that is needed. The Board's job is to look down on these policy different processes and say, "Are the right people involved?

Are they properly resourced and how do we help?" One of the useful mechanisms from the Board would be, "Hey you need to do that." Anything that is more formal or starts triggering things and things start to happen, I shade Chris's consent, as long as it is able to be done when needed and when agreed to by the parties.

That is fine. Of course, I think that is what we have got at the moment, so trying not be defensive if we can make sure that is clearly understood and available, that would be good.

**Caroline Nolan:** That is a helpful distinction. I think certainly looking at that language and focusing on exactly that was the spirit of the original recommendation. I think we can soften it.

**Carlos Alfonso Pereira DeSusan:** Also, I have to ask a clarification question regarding the recommendations that you are not supposed to make in this specific case. Chris, can you elaborate on that, why we cannot make a type of recommendation?

**Chris Disspain:** You can do what you want to do. What I am trying to make is that by tying it into the earlier stages of the policy development process, in order for that recommendation to actually be carried out, just use the ccNSO as an example.

In order for that recommendation to be carried out, it would be necessary for the ccNSO to have a policy development process in changing its bylaw in order to make that happen. What I was saying was that is not within the scope of this review, because this review is about the Board.

The Board cannot carry that recommendation out. It is specific reference to the policy development process. If you are talking about just having some sort of cross community deliberation generally, different issue.

If you are going to tie it to the very early stage of the policy development process, then that is different.



**John Coates:**

Fabio.

**Fabio Colasanti:**

Could we not get around this difficulty if we just write a recommendation saying the Board should invite, the Board clearly cannot request [inaudible 1:03:52] but could invite, should encourage, should demand?

**John Coates:**

Louie.

**Louie Lee:**

On prompting from an ICANN board member, the ASO had made a recommendation to the ICANN board to accept a way for the ASO to disseminate information early on in the policy development process for each of the policies that are going on within the regions.

The Board in its coronation role is enthusiastically accepting that recommendation and is working with us to have time to make this happen. It does not necessarily have to be a formal change in policy development process just to facilitate this cross community communication.

**Unidentified:**

If you simply took out of the policy development process and simply said, "Constituent voters is early stages of beginning of discussions or discussions and issues", that would be fine.

**Caroline Nolan:**

To be clear, the opportunity here is to facilitate it earlier on in the process across the board and to surface hot button issues in a way to prevent something going up and coming back down and up and down. That was the spirit of recommendation, then we can certainly work on the language to help that.

**John Coates:**

Thank you. Cheryl.

**Cheryl Langdon-Orr:**

Just wanted to recognize at this point in the conversation, I am sure you have looked at it, but even within PDP process, we [inaudible 1:05:33] a product of the GNSO review and improvements has been the PDPSO, yes you have got those letters, that is good and you have looked at that.

What that has also allowed when that SO has changed how it is planning on doing things, it is actually allowed some of what we have been talking about, encouraging individual members, states, members of GAC to be involved, their open workgroup models, they are allowing some of these mechanisms to happen naturally.

I think providing that is recognized somewhere in the report, that will help as well.

**Caroline Nolan:**

We found that document, the draft report hugely helpful. Thank you.

**Brian Cate:**

I know we are going on about this but just again, a view, I am a trial lawyer and one of the first things you work out when you are starting a process is who has standing. Although we have got an open community, I think a little bit of that kind of thinking can be helpful.

We do not want a process that everybody that wants to can jump in to because they like the idea and not a forum to stand up and talk at. If you are talking about [inaudible 1:06:44], that is crucially important to registries and registrars and people that want to enter that market. It is not really important to the manager of a CCTLD.

Any processes that require the ccNSO for example to get involved, that would be very counterproductive. Similarly, you can go around and look at the issues. The re-bidding and the amendment to the jobs contract, that is crucially important to all of the registrars who are in the dot.jobs market but most of the other registries do not give a start.

Requirements are an amendment to a registry contact for example is counterproductive. You have to have mechanisms that require at least some kind of threshold requirement more than just, "Oh I am interested", but just kind of have magpies attracted by shiny objects to get excited about a particular issues.

As a practical manner, while it is great to talk about open processes and everybody, you ought to have some concept in this process that there had to be a standing requirement. Why are you getting involved in this?

Why should we be listening to you? Why should we be giving you the resources and a platform etc. to make this? I am in favor of openness and transparency in participation. You do have to be careful that you do not first of all, require people who are not relevant to become involved or that you allow facilities for people who just want a grandstand.

**John Coates:**

Thank you Peter.

**Unidentified:**

May I please just ask Brian, we have gone through this with some care I believe, although I have top to bottom but we have spoken it through our kind of lens. It does not work speaking through a lens, but you get my point. Some of yours on the left we did not walk through with every sense. Are you okay that we have covered the landscape?

**Brian Cute:**

Yes.

**Carlos Alfonso Pereira DeSusan:**

I just wanted to double check that we did not over dominate that.

**John Coates:**

I think there was sufficient conversation and reaction so we need to take the next step with these.

**Caroline Nolan:**

Great, thank you.

--End of Recorded Material--