
AKRAM ATALLAH:

This is Akram.

UNIDENTIFIED MALE:

Hello, everyone. We're gathering, and we'll be starting in a few minutes.

BECKY BURR:

Allrighty. We are here in L.A. with the Bylaws Drafting Team. We've had another very full day and made a lot of progress.

Somebody's got a voice. We have circulated either late last night or earlier today questions regarding reconsideration and enforcement that we will be going through in a minute, and those questions will be coming up. We have one additional question regarding the escalation process that came down.

Just to summarize where we are, we have gone through all of the bylaws and we've made assignments for the next turn here among the legal teams. So I think a lot of lawyers will be spending a lot time over the weekend probably revising/turning a new draft so that we can keep our schedule to get it out to the CWG/CCWG groups for review before it's shared.

Chris, did you want to say something? Okay.

Holly, are you going to lead us through the questions on the reconsideration process? Okay. At this point, I will hand it over to Holly, and hopefully we will get those questions up in a moment.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

HOLLY GREGORY:

Thank you, Becky. We have four questions that we've circulated yesterday about the reconsideration process, and I see that there has been some e-mail exchange around them.

The first question has to do with the timing of the Board Governance Committee's recommendation regarding the reconsideration request. The relevant paragraph, Paragraph 26 of Annex 8 of the proposal, included a provision that the committee's final recommendation to the Board shall be made within 90 days of receiving the request.

The draft bylaws that were provided by ICANN Legal provides that the Board Governance Committee shall endeavor to produce the final recommendations of the Board within 90 days of receipt of the request.

The reason for this change was there's an outer limit of 135 days from the committee's receipt of the request to the Board decision. So the notion was that, if you had this hard 135 days, then maybe the 90-day period could be not quite such a tight deadline. There could be some room for movement if needed to. But in any event, the 135 days is a hard-set deadline, so we wanted to find out your views on that.

With that, I'll stop if anyone has a suggestion or comment.

BECKY BURR:

I just want to reiterate that we are not proposing a change to the overall time limit at all. That remains exactly what – as the in the proposal. This just provides some internal flexibility within that overall time frame.

HOLLY GREGORY:

Unless someone has a comment, we will take silence as [ascent]. I see a comment Cherine that that makes sense.

I will go on to question number two. Question number two relates to the page limit for rebuttal to the Board Governance Committee's recommendation on reconsideration. You'll recall that this rebuttal process is new. Currently, there is a page limit for the argument in support of a reconsideration request of 25 pages. So we were suggesting that it would reasonable to have a 10-page limit on the rebuttal, and we seek your guidance on whether or not that is okay.

I see some people are typing, so I will wait and see. There is some response. In not seeing a response, I will continue on. So I take it that the 10 pages is okay.

Item three regards posting substantive Board discussions at the option of the requester related to the discussions around a reconsideration request. There were concerns that were raised. A requirement of such recordings and transcripts being posted could show the Board full and frank discussions. It's been suggested that that posting option be reconsidered.

I see that Bruce has said he thinks that the page limit's a good idea, but on this next issue, is there any commentary? I believe Andrew Sullivan sent an e-mail. I don't know if he wants to speak to it.

BECKY BURR:

Holly, if I might just add, this is an important issue. We have a very specific recommendation in the report that suggests that substantive

discussions on reconsideration should be the transcripts and recordings should be made available.

I want to note that I did have the opportunity to e-mail back and forth briefly with Robin, who was the rapporteur for the reconsideration work effort, and her perspective was that the group understood that in limited circumstances there would need to be some confidentiality protections and that the sense of the group that was [at those] in appropriate circumstances could be accommodated. But she reiterated the sense of the group that the norm should be that this kind of work should be done in the open and transparent.

I think, on the other hand, as we discussed here, there are certainly legitimate confidentiality issues that could arise in these things, depending on the nature of the request for reconsideration. And there are also, I think, very real privilege issues, where reconsideration is a prelude to something that amounts to an IRP or something that is litigation-like.

So I think this is a very hard question. I just wanted to put that out there in light of the drafting proposal.

HOLLY GREGORY:

So are there any comments or discussion on this? Andrew?

ANDREW SULLIVAN:

Hi. As I said in my note, I don't really have a strong feeling about what the right answer is here, but I am really nervous about anything that looks like it's encroaching on the substance of the proposal. The

proposal is a community thing, and if what comes out the bylaws drafting is not really, fully consistent with that, people are going to squawk.

So it seemed to me that, since the principle here is that the posting should be at the option of the requester, surely if there are concerns about confidential materials or something like that, maybe the way to write this is that any redaction that needs to be made for reasons of confidentiality or privilege could be negotiated between the requester and the Board.

HOLLY GREGORY:

Chris?

CHRIS DISSPAIN:

Hi, everyone. Hi. I appreciate what you just said, Andrew, but the difficulty I think is it goes beyond. And I've said also that what's in the report and so on – but I don't think that actually helps us to solve the problem. It goes beyond just mere confidentiality of information.

In discussing reconsideration requests, one is often aware that, if the reconsideration request was to be denied, it's likely that there would be an IRP. The discussion of the reconsideration request would be highly restrained if the Board or the BGC was having that discussion in an open manner, knowing that the chances are there'll be an IRP, because the discussion would have to take into account that everything that was said under the umbrella of discussion of the reconsideration request could be used in an IRP.

I'm going to put this as bluntly as I can without – and I know you'll understand; I'm just using shorthand here – but horse trading between Board members about opinions, persuasion to look at something in a different way, one way or another, all of that stuff is very delicate. If it's public and therefore can be used at a later stage, that is going to severely constrain the way that the Board deals with reconsideration requests or the BGC deals with reconsideration requests.

If that's what you want and that's what the report says, then so be it. But I just want to be very clear with everybody that it's going to be very, very difficult to have an open and frank discussion, especially given A) the confidentiality issue, and B) the possibility of what you say ending up being used in an IRP. Thanks.

HOLLY GREGORY:

I see that Steve DelBianco has his hand raised.

STEVE DELBIANCO:

Thank, Holly. I think Chris' [has] captured most of that. I don't think Andrew was on point in worrying about confidentiality. This is really about a fulsome debate that the Board may or may not have on a reconsideration request if they know that the words and discussions – or horse trading, as Chris said – will be recorded and used later on.

I frankly believe that is the intent of the proposal, and that stems from a reaction that the reconsideration requests over the past several years have been a complete and unmitigated waste of time. We get perfunctory responses back, and the community feels completely unsatisfied with the kind of response that we get.

So this is not an opportunity to complain. That's not what I'm doing. I'm just suggesting that the community will view the requirement for having a recordation or transcripts – they'll view that as necessary to have the reconsideration request debates suddenly become substantive instead of perfunctory, rubber-stamped denials of reconsideration. It is that intent that we have to capture.

So if we have to cabin some portion of this transcript or recording for confidentiality, everyone will understand. That's fine. But I don't think we can say that the Board's debate needs to be in secret because horse trading happens. So I think Andrew's right. This one is going to be very tricky to negotiate.

Becky, you know this process the best, and it surprised me at the beginning of the conversation when you expressed the concern that the transcripts and recordings could compromise the fulsomeness of the debate that the Board has. I'd really like to defer to your judgement on how we can split this and make sure that the community gets a substantive reply on a reconsideration without constraining the way in which the Board considers it. Thank you.

HOLLY GREGORY: Thank, Steve. Mathiew?

MATHIEW WEILL: Yeah. I'd like to sort of side with Andrew in terms of process. I'm not going to be discussing anything about the substance and the merits of any of the alternates here, but it seems to be that one of the options is closely aligned with the CCWG report. I think that, when that is the case,

we should certainly provide the bylaw draft that most closely represents the CCWG report as it has been adopted and maybe flag that there is a question and alternate proposal that has been considered by this group but also that would be slightly farther away from the CCWG report. That should be reported back for the CCWG consideration if it felt to be a necessity. But the draft itself should have as its baseline the closest we can find to the report, and any of the substance discussion should be reported in the CCWG when we report back on the draft.

That would be my way forward in terms of process here because it's not our position in this group to have a substantial discussion about the merits of these alternates. Thank you. That's my proposal.

BECKY BURR:

Okay. So just to recap that, the proposal would be to essentially draft alternate versions of the bylaws, one that is faithful to the report, one that addresses the concerns that have been expressed here in Los Angeles, and allow a debate in the community on that.

Chris?

CHRIS DISSPAIN:

Thanks, Becky. I just wanted to pick up on what Steve DelBianco was just saying. Steve, I guess I'm going to ask for your help because, unless I misunderstood you, what you said was that – and I'm paraphrasing – it would be okay for certain parts of the discussion in the BGC or the Board to be closed.

What I'd like to get some help on – not on this call necessarily, but just generally – is how we would go about deciding which bits we could close and which bits we couldn't so that the BGC or the Board has clear guidance about how that would work. Thanks.

BECKY BURR:

Thanks. Bruce has asked for somebody to post the provision in the report, and I will just read it to you. It basically says, "Recordings and transcripts should be posted of the substantive Board discussions at the option of the requester."

Okay. Anybody have any comments on the approach that Mathiew has suggested, which is that we draft, essentially, alternate versions?

Shall I take that as a, "Yes. That is how we will proceed"? Thanks. Holly, back over to you.

HOLLY GREGORY:

Thank you. The final question for consideration today arises from language in Annex 8 that currently states that the scope of permissible requests should be expanded – this is reconsideration requests – should be expanded to include the purpose of reconciling conflicting or inconsistent expert opinions and expert panel opinions. This appears in Paragraph 7 and 15.

We know that this issue was discussed at length in the context of the IRP, and then CCWG ultimately decided that the dispute resolution mechanisms would not be used for this purpose. That change was reflected in the IRP section, but it was not reflected in the request for

reconsideration section. We think that this is an oversight, and we would recommend and would like the authority to make a conforming change to remove it from the reconsideration section and would like your comments and guidance.

I see that Steve DelBianco is agreeing that they are not to be used for the purpose of reconciling differing opinions, and I take it that that would mean we would remove it from the reconsideration section.

I don't see any hands or other comments. Mathiew, I take your note that we need to make a special note in the document, the documents of choice. I'm not quite sure that we want to put it in the bylaws but maybe in a cover note to the bylaws. But we can talk about how to do that.

I see that we've got some support for this. Okay. So we're good on that.

Do we want to talk about the new question that we are certifying to the group?

BECKY BURR:

Yeah.

HOLLY GREGORY:

This relates to enforcement. The question is, in the event that the Board refuses or fails to comply with a request by the empowered community, to use the community power. As you know, there are a couple of pathways to proceed. The enforcement process can go through mediation and then community IRP, or through a Board recall.

The question relates to that first pathway that contemplates mediation, and we wanted to confirm that the decision whether to trigger – I’m sorry; it goes to both pathways – the decision whether to trigger and enforce that process is made by the decisional participants who supported the exercise of the community power. And that is not for decision today, but for you to think about.

So, Becky, I don’t have anything else.

BECKY BURR:

Okay. So those are our set of questions. As I said, we have now gone through the entire document and made assignments for turning versions of this. The lawyers here will be drafting away so that we can meet the very tight deadlines. I would expect that we will have more questions as a result of the next turn.

Steve is asking how the discussion went today about the affirmation of commitment reviews. We had a very good discussion. I think there was not a lot of contention. There were clarifications, including the clarifications that you provided. It may be after the next turn that we have questions, but we felt like we had enough to move forward on and without raising any questions from the group.

All right. Okay. With that, I think we will close – oh. John?

JOHN JEFFREY:

Yeah. I was just going to say, since we are continuing the drafting into next week, there might be a good opportunity to renew some of these meetings, have them after we’ve gone through the sessions with the

lawyers again. So as we move through the next drafts or the revisions of the drafts, it would be very useful to set up a handful of these meetings next week as well.

HOLLY GREGORY: Andrew, one of the reasons there won't be a call tomorrow is a number of us are traveling and will be in the air.

JOHN JEFFREY: And I'd just like to take a quick moment to thank the lawyers from [inaudible] and from [Adler] for being highly cooperative. I think the engagement has been very productive, and I think we're all working very hard to make the best new bylaws that we can that reflect the community empowerment. So I want to thank them, and particularly observers who took time out of their work schedules to come and help us, Bernie and Becky and Chris. Their participation has been very important to this whole process. So thank you.

BECKY BURR: Thanks, John.

HOLLY GREGORY: Thank you.

BECKY BURR: One question Jordan has asked: when we might see a next turn. You guys had a discussion about that.

HOLLY GREGORY: I think we're aiming for the turn to be around about April 2nd. Right? And we're doing some internal turns, but we're not sharing that [inaudible].

BECKY BURR: Not with the group? Okay. We will probably have pieces of that that comes out of [inaudible] between now and then.

Okay. Thanks, everybody. Have a lovely weekend. Bye-bye.

UNIDENTIFIED MALE: Thank you.

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