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MARRAKECH – GNSO - New gTLD Auction Proceeds CCWG  
Wednesday, June 26, 2019 – 08:30 to 12:00 WET  
ICANN65 | Marrakech, Morocco

ERIKA MANN: Good morning, everyone. Let us give us maybe five more minutes just to see who is coming, and if not, we just get started. If no one else is coming, we'll still get started.

Okay, good morning. I recommend we get started. Who is opening officially from staff? Or we don't do it today? Is it just me or somebody else? Just me? Fine.

So, we have a few people on ... Can we just check maybe who is online and not with us? I saw Ching who is the vice chair from this group. I saw him on video. So, he will be with us. And who else?

MARIKA KONINGS: I think from the members, I think we only have Ching in the Adobe Connect room but we have some others that are observing.

ERIKA MANN: Can we see who it is? Can we have the names?

MARIKA KONINGS: Yeah. I can read out who is in the Adobe Connect room in addition to us. We have Amy Stathos from staff. Ching is there. [inaudible],

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[Jess Hopper], [Lauren Allison] also from staff. That's it. The rest of the people are in the room.

ERIKA MANN: Okay. Thank you so much. Welcome so much for this meeting today. What I would love to do, maybe just do a quick introduction who is in the room here. Some are with this group for quite some years, but some others are new, so let us just start, Xavier, with you. Just a short introduction and then we join it around.

XAVIER CALVEZ: Xavier Calvez, ICANN Org.

EMILY PIMENTEL: Emily Pimentel, ICANN Org.

SALLY COHEN: Sally Cohen, ICANN Org.

ALAN GREENBERG: Alan Greenberg, ALAC.

UNIDENTIFIED MALE: [inaudible], ISPCP.

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MARILYN CADE: Marilyn Cade. I'm with the BC but I'm here as a CSG representative.

ERIKA MANN: Erika Mann, co-chair of this group.

MARIKA KONINGS: Marika Konings, ICANN Org.

EMILY BARABAS: Emily Barabas, ICANN Org.

JULIE HEDLUND: Julie Hedlund, ICANN Org.

JUDITH HELLERSTEIN: Judith Hellerstein, At-Large, ALAC.

MAARTEN BOTTERMAN: Maarten Butterman, board liaison.

MAUREEN HILYARD: Maureen Hilyard, ALAC.

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VANDA SCARTEZINI: Vanda Scartezini, At-Large, ALAC.

JIM PRENDERGAST: Jim Prendergast, The Galway Strategy Group.

ERIKA MANN: Thank you so much, and good morning again to everyone. We have three-and-a-half hours today which is quite some time. We are hopeful ... Sorry?

CHING CHIAO: This is Ching. I was just—

ERIKA MANN: Oh, Ching, apologies. I introduced you already, but please, go ahead.

CHING CHIAO: Yeah. I'm just saying Ching Chiao, co-chair from ccNSO. Thanks, everybody. So, [inaudible] this time? Thanks.

ERIKA MANN: Yeah. Fully. Thank you so much for being with us. I know how difficult it is for you thank you so much. Would you mind

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introducing yourself just quickly? We just did a quick tour and [inaudible].

RUDI DANIEL: Rudi Daniel, Caribbean. Also fellow.

ERIKA MANN: Thank you so much. Sebastien is entering the room, Sebastien Bachollet, ALAC. Still fine? Good, perfect.

Okay. So, we do have three-and-a-half hours today and we like to make progress as much as possible, so that we then have a final packet which we will still have to decide and discuss today how we want to handle it, if we give it back for public comment period or if there's another way of dealing with it. But we come to this point a little bit later. So, can I have the first slide, please?

You should have it on Zoom, so if you go in, you can see the agenda today. Can we have the quick overview about the agenda maybe first? Do we have it on screen or not? And the first item. Okay, here we are. No problem. So, we don't need a roll call. We have it on record who is in the room. Next item on the agenda would be the point asking you whether there is any update you want to make concerning conflict of interest declaration, anything that changed on your side. No? That's not the case? Okay. Then let's move to the next item which will be point three,

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overview of objectives of this particular auction proceeds group on the status of its work. So, now we can go back and please see the slides which we just saw? Amy just joined the group. Sam, oh. Apologies. Amy is [inaudible]. Can we get ... Alan, you want to say something?

ALAN GREENBERG:

I do. I was asked by ALAC to give a brief review of this group. They were doing a roundtable of how are things going all over. As part of that, I went back to a little bit of our history and noted that we first met in January 2017. This group has been going on for two-and-a-half years. We have to finish. It's getting really embarrassing and starting to question is it worth our time putting into these meetings if we're just marking time and deferring decisions again and again. Thank you.

ERIKA MANN:

Yeah. Alan, thank you so much. I hope we can finish it today. Everybody knows I'm one of the persons pushing it hard but it seems to be the tendency at ICANN at least to slow down everything. Whatever we do seems to go slowed down. It seems to be a systemic issue. Maybe one day somebody comes along clever enough to sort this out, this problem. But until then, we just have to do the best and I'm thankful for your comment, Alan.

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So, just a reminder. This is a super quick reminder to exactly what Alan just said. We started January 2017. We had 25 members, 49 participants, and 36 observers. Sometimes some more, sometimes less are participating. But this would be ... If everybody would be with us, that's the way it should look like.

So, the goals and the objectives. That's always super important to go back to them. They are very clearly defined, developing a proposal on the mechanism and to allocate a new gTLD auction proceeds. This way, we provide it to the ICANN board for consideration.

Two things to mention here. First of all, a mechanism, it's an unusual term. It's the structure, what we are talking about for the setting up a fund structure. We use the term mechanism, so just keep this in mind for those who are here the first time. Don't be surprised about this work.

The second one, then you see here the wording. This will be provided to ICANN's board for consideration. We decided to have a very active discussion with the board throughout the whole process. So, we avoided the situation where we, at the very end, will send staff to the board without having debated potential conflicts from the very beginning. So, we are hopeful that we can avoid a clash at the end, where the board suddenly may want to

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say, “We don’t agree what we received from the CCWG.” So these are two important additions.

So, we are expected to review the scope of fund allocation, the due diligence requirement to uphold accountability and proper use of funds, and how to deal with directly related matters such as potential or actual conflict of interest.

This group will not make a determination on particular users of the auction proceeds. We haven’t done this. So, we are doing the structure and everything related to the structure including the goal-setting and the due diligence.

There will be another face which will follow our face which will then do the concrete implementation, and hopefully this face will be able to work much faster than we were able to do. Okay, next slide, please. If there are questions, just please disrupt me. In particular, if you’re not very familiar with these topics. Just please disrupt me and raise the question.

So, here are some of the questions we were asked to – the questions we framed at the beginning. What framework should be designed and implemented to allow the disbursement of the new gTLD auction proceeds, taking into account the legal and fiduciary constraints outlined as well as the existing memo on legal and fiduciary principles?

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So, during our discussion and debate, we always went back if we had a question either to ICANN Legal or ICANN Finance. Xavier always attended our meeting which we greatly appreciated and added information whenever we needed such kind of information. The same is true for the board.

So, when you see there's a reference to a memo and you haven't seen this before, please ask staff and they can send it to you, this memo. It's on the Wiki available, too, if I'm not mistaken. Yeah. You can find it there, too.

So, as part of this second point, as part of this framework, we have the question what [inaudible] limitation of fund allocation, factoring in that the funds need to be used in line with ICANN's mission, while at the same time recognizing the diversity of communities that ICANN serves.

This is a very diplomatic language here about an issue which we discussed from the beginning and we will come back to it again because a small working group is still working on this topic. And this is the question. How can we keep the mission statement and the bylaws as far as they restrict our mission as active and as lively as possible and up to date?

In case there comes a project which is super fascinating and interesting, would we be able to finance it if it is not 100%, maybe

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within the scope of the mission? So, that's one of the very really core issues we debated.

Then, what safeguards are to be put in place to ensure that the creation of the framework as well as execution and operational respect to legal and fiduciary constraints that have been outlined in this memo?

We are pretty much done in this field and we will come back to this point a little bit later but there's still some items which we will have to debate today.

Point four, what aspects should be considered to define a timeframe, if any, for the funds allocation mechanism and to operate as well as the disbursement of funds. We haven't really touched on this and I really believe that's an issue the next phase should look into because it really depends as well. If you have a very small project with a micro amount of money which goes to it, it's very different than if you were to consider a large project with many millions, extreme execution and project oversight. So, I believe this will depend on how the disbursement will be done and the size of the project.

Yes, please, go ahead. Anytime, Marilyn, please.

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MARILYN CADE:

Thank you, Erika. Good morning, afternoon, or evening, all. I've been giving some thought to this. When we get ready to talk about it more, then I'll say more but I'm going to say something very, very quickly. As an example, for instance, to your comment, a grant to do something – an event, etc. – has, in the philanthropy and the development world very different reporting criteria and also is time-limited and extremely specific about what you're going to do. But is it necessarily about measuring so much about ongoing reports, etc.? Sort of like “here's the proposal ...” An example might be funding the participation of a number of people at related events, etc. And the evaluation is about did you recruit people who meet these characteristics? Did they attend? Did they do a report? As opposed to a capability development project which covers multiple years and you have to actually be able to measure whether the skills ...

So, I think this is something for us to explore, because as we've seen in our examples, there are many examples suggested which would look more like – and for now, I'm just going to say the grant type as opposed to the project type. So, I think it would be really good if we do explore that, because from what we've seen from the community and public comments and statements, there is a lot of interest in that first category.

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ERIKA MANN:

Yeah. We can do this. We can mark this as an action item and we come back to it, we put it at the end of our ... And then we see how much we can manage. We, at the least, can make recommendations for the implementation team and give them some guidance how we believe how it can be scoped, depending on the different structure of grants or projects. This we certainly can do. Alan, please.

ALAN GREENBERG:

Thank you. I'll speak to that and then I'll go back to what I raised my hand for originally. I think us setting the guidelines for how we disburse large projects and how we evaluate and what reports we expect on smaller projects I think is an essential part of what we're doing. I think it's a really easy part but I think we need to put it in writing so we're setting expectations. Because, if nothing else, if we don't present that to the board, then we're talking about how to spend money with nothing going back on the check and balance on the other side. So, I think that's an absolutely mandatory part of it. There's going to be a few challenges. We don't want to overburden people. On the other hand, we need to make sure we're using money reasonably. So, there's a balance.

I put my hand up originally on number one, though. The framework of how we're going to do this has been a subject that we've been talking about forever and we have people who

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adamantly feel strongly that one, two, three, or four is the right answer. We took a few off the table and then they came back on the table because various reasons.

I'd like to make a statement, and if it's not correct, I think we need to make it really, really clear. And if it is correct, we need to make it really, really clear.

In my mind, any of the options, whether it's an internal ICANN department that's doing this or whether it's an external foundation that we spin the money and give them \$235 million and say, "Sayonara, have fun with it," or something in between, in all of those, I imagine that the actual selection of projects, receiving of applications and making decisions is not going to be done by ICANN staff. That part of the operation, even if it were an internal ICANN department has to be at arm's length, being given guidelines and then being reviewed perhaps by ICANN staff, perhaps by a community group, perhaps by both. But I can't envision actually having paid salaried staff under the control of the CEO making these decisions in any of the scenarios. If that's a wrong assumption, then someone needs to say so. And if it's an assumption that we're all agreeing on, then let's agree on it because it's going to make the other decisions a lot easier. Thank you.

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ERIKA MANN: Thank you, Alan. You're absolutely right and we have an overview. I'm sure Marika will comment on this. That's exactly true, independent where this future structure is going to be housed. The evaluators we decided and many other points are going to be independent. I don't want to have this discussion right now because we come back to this point. This is just a quick overview about what we have done and not to identify all the problems, because otherwise we get stuck there. We come back to this item.

ALAN GREENBERG: But if we can't put that one to sleep, the other discussion is going to continue to [inaudible].

ERIKA MANN: No, no, I don't want to disrupt the discussion. I just want to say we come back to it. But we already identified [inaudible] which is important which was the question about the timetable related to fund allocation which we really haven't looked so much into. This will be identified as an action item which we have to do. You want to make a comment concerning what Alan said, and you as well, Marika? Okay, please, go ahead.

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UNIDENTIFIED MALE: Just to make very, very clear that whatever option, the panel needs to be an independent panel. That's what the board always has been very, very clear on. So, we are 100% with you. The panel needs to be independent, whatever option may follow. With that, the panel needs to report back to the community and things like that. But that's implementation. But the panel needs to be implemented, no doubt. We don't need to even come back on that, I think. I think we all agree on that.

MARIKA KONINGS: Thanks, Erika. I just want to flag – and we will go there later – in order to indeed get absolute clarity about what is done in the different mechanisms, what are some of the facts that apply to all the different mechanisms, you may have seen that. We work with our Coms team to develop some graphics or some tables. Alan, the idea really behind that is to make sure that everyone understands what doesn't change, regardless of which mechanism is chosen, but also to flag what are still some of the open discussion items. So, we hope we can use that as well for conversations here in the group, but then as well once the group finalizes the report and maybe there are further updates needed to the table. We hope as well that will educate and inform others that are reading the reports, who again, certain things like this one is crystal clear. Because it was clear that from the comments on the initial report, that not everyone had understood that that

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was indeed the way things would be done. So, again, we're hoping that will help with that process, but it requires of course all your reviews to make sure that we got it right. And there are still some question marks that will need to be filled out but that's one of the objectives of today as well.

ERIKA MANN:

Okay. Then let's have a look at the other items we had identified at the beginning. I mentioned point five, what conflict of interest provisions and procedures need to be put in place as part of this framework for fund allocations? Here we identified many different levels and layers of conflict of interest declaration depending on the involvement of the individual person and/or the entity behind this person. So, there's a difference between the conflict of interest declaration we need right now. For example, or for those who are later on are overseeing or looking at the work the evaluator are doing because we come to this point later. Each time the layer and the level of interest our conflict of interest will have to increase, depending on the stage and the seriousness of the stage.

Six was then should any priority or preference be given to organizations from developing economies? [inaudible] implemented and such reason and/or underrepresented groups.

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We have some language provided here but we haven't made any concrete recommendation how to deal with it. Maybe we want to come back to this or we just keep the language as it is right now.

Outside of ICANN, in fund environment which already exists, typically people handle this in basket approaches. They target a certain basket as a certain amount for underrepresented regions or for underrepresented groups. There are different ways in doing this, so we may want to talk about it if we come to this point today, hopefully.

Then, the last item, should ICANN oversee the solicitation evaluation of proposal or delegate to or coordinate with another entity including, for example, a foundation created for this purpose? This is just mirroring what point one is saying, actually. Again, picking up the discussion about the structure, the future structure of the fund. Shall it be in-house? So, a separate ICANN department, independent in-house in ICANN. Shall it cooperate with another entity which already is handling an issue similar to ICANN? Or we selected three mechanisms [inaudible]. Or shall it be a new foundation, an ICANN foundation? So, not a totally new structure but related to ICANN.

Then, we had another one which we dropped. We give it to another entity which exists already totally outside. So, we outsource the whole and we drop this item, this kind of

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mechanism and we dropped before we presented it, our whole comment to the public comment period. Alan?

ALAN GREENBERG:

Thank you. This is on the previous item of underserved areas. I think our real challenge going forward is to make sure that we make information about the program available in other areas. We're not a multi-billion dollar fund where we can allocate a few million dollars to send a team to a country to make sure that they know about it. This is going to have to be done by less aggressive means.

And our real challenge is going to be to make sure that people are aware of it. I don't think we can mandate that we have to give the money up because we're going to have certain standards of what programs we fund. The real danger is the lack of applications from certain areas and how we do that with limited funds is going to be a real challenge, and it's not our job but I think it's one of the things we're going to have to be focused on carefully. Thank you.

ERIKA MANN:

Okay. So, point eight was – and you can see it now on your screen hopefully as well – what aspects should be considered to determine an appropriate level of overhead that supports the

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principle outlined in this charter? We had many discussions about this topic and we had a range from the 3% to 8%. But let's be frank. I don't believe we should go back to this discussion at all. I believe we have a good language. If I'm not mistaken, I don't believe we have not received too many public comments on this item. Again, it depends a bit. It depends on the structure, on the mechanism selected, and it depends of course on the type of project. If it's a small project, overhead will be maybe, depending again on the character of the project, might be much smaller. If it is a big one which needs a lot of oversight and control and [inaudible] many years, overhead will be very likely much bigger.

I don't believe we can work with a fixed number, percentage number we put in, but an indication that we want this money to be used carefully and that [food] and overhead spending we [inaudible]. I don't believe we should go much further here. But if it's needed, we can come back to this point, if you believe my description is not correct.

Nine is what the government's framework that should be followed to guide. What is the governance framework that should be followed to guide distribution of the proceeds? The issues addressed by governance framework could include but is not limited to what are the specific measures of success that should be reported upon? What are the criteria and mechanisms for measuring success and performance? What level of evaluation

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and reporting should be implemented to keep the community informed about how the funds are ultimately used?

So, here are different topics debated and discussed. And I believe on the measuring success and the criteria for measuring it, there are best practices out in the world and we talked about this, which we largely – I think the structure, the mechanism in which will be [set up] in the future will have to copy their best practice models. I don't think it's something which has to be invented.

But of course the reporting structure, then back to the community, it's a quite unique one for this ICANN environment and we will come back to this, because Alan and I, we had a very small sub-group – just two people working on this item in particular – and when we come back to this point, we will present our ideas to you and then we hope to have a good impact from users that we can finalize it.

Ten is – Alan?

ALAN GREENBERG: I think we can talk about it a little bit later today, though.

ERIKA MANN: Yeah. That's what I'm saying.

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ALAN GREENBERG:           Okay.

ERIKA MANN:               Then, item ten, to what extent, and if so, how could ICANN, the organization, or a constituent party of be the beneficiary of some of the auction funds? That’s a discussion we had many times and this discussion had practically two phases, if you remember. So, one phase was shall there be the option open that, in case a project is brought forward to the evaluators group which would, in the past, be supported out of the operational budget but it’s not possible any longer because of budgetary constraints or because it would affect such a height that it would not never have been covered by the operational budget. Shall this be then allowed to be financed out of this fund?

The second question which we came back to is actually ... I forgot the second one. Interesting. Okay, sorry. I may come back to it later when it comes back to my mind. Alan, please.

ALAN GREENBERG:           Thank you. One of the things that came up in the ALAC meeting yesterday when we discussed this was one of the original ways we imagined some of these funds being used was in applicant support for future gTLD rounds. And yet, we are now in the position essentially of not having allowed for that in any of the

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funding mechanisms. I mean, yes, an individual can apply for a small amount of money to help them pay but the timing of the application process for the TLD and the application process for funds are not likely to be in synch enough to do that, and yet it's not clearly ICANN Org can apply for funds as a pile of money to use for applicant support.

So, we may have taken one of our prime uses and not allowed it because of the types of rules we're sending up. So, when we get to that section, let's think about that. And is this something we still believe should be fundable? And if so, we need to provide a mechanism to allow it to happen.

ERIKA MANN: Marilyn, please.

MARILYN CADE: Thank you. I know we don't want to get into debates right now. I understand the point being made. I know there are people in the working group and in the community who do think that auction funds could be used in relation to gTLD applications, but I think this is a very slippery slope and there's a difference between – I use the word again, capability building – so that people can submit an application versus actually taking on the funding of some of the costs of doing it, and therefore even biasing, perhaps

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unintentionally, the evaluation process of the application that will be received.

So, perhaps we should ask legal to be thinking a little bit about, not to deal with it today but be thinking about the implications of using auction funds to create a situation where there's a dependency, and perhaps therefore an inability of the applicant to actually fulfill their responsibilities in the future of operating a gTLD.

ERIKA MANN:

Alan?

ALAN GREENBERG:

Yeah. To be clear, that's a discussion we have to have. I don't think it's today. I was just pointing out that this was one of the original very first potential uses that we may have outlawed along the way, intentionally or by accident. I just think we need a conscious discussion on the merits of it. Is it good that we now don't allow it or is it something we want to fix? That's all. Just a tick-mark to make sure that we cover it.

UNIDENTIFIED MALE:

I think it's important that we make sure that we don't use funds for things that otherwise should have come back in operational

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funds. But beyond that, anything is open for discussion, I would say.

ALAN GREENBERG: Last time the applicant funds for the last round came from operational funds. They never got spent, but that's where the allocation was from. I think that's really a noise factor because that was done on a real short term and there weren't a lot of options at that point. I just want to make sure it's a conscious discussion we have, and whatever decision is we're happy with.

MAUREEN HILYARD: I just wanted to remind everyone, as Alan says, from the outset it was very, very important to us that it wasn't used for purposes that the board already spends or that Org already spends funds on. But I think that it changed a little bit. Of course, once we offered money for the reserve thing – I mean, that was something that just actually made that slight change to what we were doing. But we all considered that that was an exception. That was something different.

ERIKA MANN: But yes, I believe we will come back. We have to stop it on our agenda, so we have to come back to the discussion. Just a general point. My advice would be from – and I worked in many funds,

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bigger funds – much bigger – than what we are talking about or what ICANN has available, much, much bigger. So, my advice is always not to restrict whatever you do in written language too much, because these kinds of funds run sometimes over many years and the time, many things and goals and everything in an organization shifts and changes, so you want to keep the option open as possible, so you don't typically say, "This shall not be allowed." That's always the tricky part because if you put a language in "it shall not be allowed" then you limit anything which can happen in the future and you want to do. So, be just careful in the work we are selecting and then we can still describe that we believe operational budget shall fund, what operational budget shall fund and find something new and fresh. That's the purpose. But maybe we want to be careful in being maybe too descriptive.

I noticed from some of the funds which got hurt badly and had to shut down earlier than they expected because everything they received on request were actually related to something else they forbid. So, it can be tricky. Alan?

ALAN GREENBERG:

Again, in my mind the only [inaudible] thing is selection shall not be done by ICANN staff. It must be at arm's length. I'm presuming we are going to recommend that every three or five years,

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assuming we don't spend all the money quickly, that we review these kinds of things and if the world has changed, the world changes.

ERIKA MANN:

Exactly. If you have an understanding about this, I think that's important. So, point ten is ... And the one item I forgot here. So, to what extent, and if so, how could ICANN the organization or constituent parts thereof be the beneficiary of some of the action items?

So, the first item of this two-faced agenda, we discussed the second was the question whether a constituent part can benefit and can put a project forward. And from a legal, from Sam, we received the advice, yes, if it is a legal entity. Correct, Sam? Good.

So, we come back to this point, if we need to. I believe it's on our agenda. But otherwise we have already advice here. Yes? Go, Maarten.

MAARTEN BOTTERMAN:

There is a second point. Indeed, it needs to be legal [inaudible] can be a legal contract. The second point is no conflict of interest.

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ERIKA MANN: Conflict of interest overrides everything but not in the sense ...  
Okay, we come back to this. We don't have to discuss it now. Alan?

ALAN GREENBERG: On that, I'm not quite sure what a constituent part is. The Registry Stakeholder Group is sort of a part of ICANN and it's defined in the bylaws as a group but not as a legal entity. On the other hand, the ALAC Advisory Committee is deemed to be an unincorporated – what's the term?

UNIDENTIFIED FEMALE: Association.

ALAN GREENBERG: Association, thank you. Lost the word. Which is a legal entity of sorts, but not quite the one we may be envisioning here. So, I guess either now or at some later time we need a little bit of clarity on that.

SAM EISNER: So, in the response that was provided, there was actually some more detail on there. That was the summary that I was agreeing with Erika on. But it goes back to the legal and fiduciary principles of what types of entities can receive funds? So, if the group is of a type that meets that legal and fiduciary requirement and they

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have a project that's appropriate for funding, then they can receive funds.

So, just by virtue of being established within ICANN's bylaws, ICANN is not in a position to say that the entity is an okay entity to receive funds. It has to have something more. So, ALAC, as an unincorporated association, even though that is a form of a legal structure, for example, under California law, which is why we have the empowered community as well, it also depends on the different controls and different things that could be documented within due diligence, because what it comes down to is whoever is evaluating the eligibility to receive funds has a certain level of due diligence over that to make sure that it's an entity that's sufficient to receive those funds in accordance with the regulations that ICANN has to follow.

ERIKA MANN:

There are probably some more questions but we can come back to it. So, just to be clear, this is the two items which we – the board item which we discussed in point ten.

Eleven is: should a review mechanism be put in place to address possible adjustment to the framework following the completion of the auction proceeds work and implementation of the framework? Should changes occur that affect the original

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recommendation? For example, changes to legal and fiduciary requirements and/or changes to ICANN's mission.

Now, I believe we have an answer to this last part – no. I think that's an agreement we achieved here. So, that's a fixed determination concerning the legal and fiduciary requirements or the changes to ICANN mission, but we agree that we like to have a review mechanism. We haven't decided yet when it shall kick in, after two years or three years, that different method, how this is done and [inaudible] anything possible. I checked it again between two and five years. We just have to set and make a recommendation for a date. I believe that's all what we may have to do here under point eleven.

Can I see the next one? Do we have some more? Unfortunately, I can't say the next page, so I'm a little bit limited here.

This is just a quick reminder. Nothing really new. On October 2018, we actually released the initial report for public comment and the public comment then closed in November 11, 2018.

All the topics we just discussed, and some more, we put forward to the public comment period and you still have the link here so you can review it just as a reminder if you want to check quickly how we put this forward for the public comment period.

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We received, actually, quite many comments which touched on all areas and sectors. We had few comments which had no, but very few actually, connection to any of the questions we asked. There were not many. So far, we have actually quite good period of comment period which comments we received back to our questions. Can I see the next slide?

So, these are the questions we want to touch on in a second. These are the outstanding issues which we will discuss today. But just as a reminder, from the public comment period, we received some really good comments. This group was super careful. There was not a single comment we neglected. We went through it from the first comment we received until the very last one. We were very, very extremely determined and careful in addressing all of the comments, all of the concerns, all of the additional remarks we received because we want to be sure that we are really diligent in our work. We don't want to give the impression to the community or to the public that any comment was rejected. And in many cases, actually we changed the text or we prepared an addition to it. So this period was actually extremely helpful.

So, we just finished this, actually, at our last call. We finished the review of the public comment, so we were extremely careful here. So, these are the high-level outstanding issues which we will have to take a decision upon, hopefully be able to finalize them today and take a decision upon them.

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So, the first one is should the CCWG address gray areas related to what falls within and outside ICANN's mission? If so, how?

Just a quick reminder, this is the question which I mentioned during the course of the introduction of what we have done. That's the question what falls within ICANN mission, which falls without? That's a simple answer but there are certain projects which we may receive which [are just on the border]. So, our question is: is there something we have to do here to be more clear?

We have addressed this already in two ways. So, one way was we had a short description about what we – and we added this as a footnote, I believe, later for the public comment. We had a short description about how this can be done. I don't remember the title we gave it, so you will have to remind me, Marika, about the title of this document.

The second way we have dealt with this, that we have annexed examples. In the examples, projects [inaudible] which we may receive, we touched on some of these issues. The way we did it, as a group together, we judged the examples. We said it's with the mission or it's without the mission. So, we [inaudible] maybe within. We are always clear it's within or it is not within the mission. So, we have dealt with this issue to some degree and I

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am doubtful we can go much further. But it's a topic we may want to come back to it.

The second is what edits are necessary, if any, to address the limitation that funds may not be allocated to the project that falls within ICANN's operational budget? We discussed this a few minutes ago and I believe some we will need in particular, maybe even more, advice from your side how to handle it in a way that we are clear that nothing shall be funded what is funded out of the operational budget, and Maarten as well from the board, but which keeps a certain flexibility open in case something really fascinating comes along which we'll be not able to be financed out of the operational budget. Marilyn?

MARILYN CADE:

[inaudible] 85.9% of the comments of this topic on this topic come from me historically. I'm not going to repeat them. But as you were speaking, I was thinking about – I actually think that what we're trying to say is that funds from the auction proceeds should not be transferred into ICANN as opposed to funds cannot be spent for projects which are congruent with activities which are funded in the operational budget.

So, I keep giving examples, but the example would be – used to be five CROP travel allocations per constituency. One was out of region. Now there are only three. If there were projects received

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... So, funds should not be transferred into ICANN to add two more, but if projects were received which were similar in function but the funds are not going into ICANN, to me – and we tend to feel strongly about that because we’re big users of CROP to try to fulfill our mission to enhance ICANN’s depth and participation. But maybe we could think about just that kind of consideration when we come back to that, that funds should not be transferred into the ICANN budget.

ERIKA MANN:

For those who haven’t participated much, you see that’s a discussion which we had many, many times, and we haven’t come to a really final conclusive approach. It’s a tough issue and we have many members of this group who shall stay as flexible as possible and have an open approach and some who prefer more limited approach much more rigid and really ensuring that nothing which is financed out of the operational budget shall ever be able to be financed out of this fund. So, we have to come back to this point.

The next item, I don’t even understand. Do any adjustments need to be made to recommend objectives of new gTLD auction proceed fund allocations in light of these discussions? Yes. Remind me, Emily.

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EMILY: Hi, Erika. Just maybe to take a step back, we're going to talk in more detail about all of these items in a spreadsheet. So, the recommended objectives were the responses to charter question two, so there's text within the ...

ERIKA MANN: Sure. But just remind the group, give just a context, please, to this point here.

EMILY: So, basically the text of the recommended objectives was just the response to charter question two. It's a question of whether there needs to be any adjustments to that text based on recent discussions in the CCWG.

ERIKA MANN: Okay. We come back to this point later. I must admit I haven't seen as [inaudible] slide. But we will come back to it. So, we just ignore it for the second. Then, the next one is what role should the ICANN community play in the new gTLD auction proceeds? Fund allocation mechanism. We discussed this before. That's the question which we will debate in a second. Then, should any additional mechanism be eliminated from consideration and/or de-prioritize in light of public comments and subsequent CCWG discussions? Then, the last item is: is an additional public

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comment needed prior to publication of the final report? We will have to discuss it at the end, and hopefully we come to the most simple answer with regards to this item. Okay. Emily, are you showing the next one or is it Marika?

MARIKA KONINGS: As you know, you all had a homework assignment last week. We cancelled the meeting to allow you time to review the draft final report and the questions we've identified. So, before we go into discussing the outstanding questions, we thought it might be helpful to just briefly take you through the draft final report and just flag what has changed to facilitate your review.

ERIKA MANN: [inaudible] so that they can see it.

MARIKA KONINGS: Yes. Hopefully, you all have already seen it, but in case not ... So, basically, in the report there are a number of updates we've made that reflect the traditional updates when you go from an initial report to a final report. So, those are all marked in redline, but we haven't attached any specific notes to them or flagged them for further consideration. But of course, if you see anything in there that you think we've missed or is inaccurate or needs further explanation, you're of course encouraged to do so.

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In addition, you'll see as well throughout the document that we've marked, in a number of cases, you'll see a CCWG agreement and a number next to it. Those items flow from your review of the public comments received. As you know, for each of our conversations, whenever there was an agreed approach or agreed changes to the report, we took those down in that overview which you can find on the Wiki page.

So, for those items where we believe that the group either already agreed on the language or it was pretty clear what the intention was, we've made that change. We did link it to the specific CCWG agreement, so you can also check back and make sure that we got it right and didn't overlook anything there. Again, those we haven't specifically highlighted, because we believe they're in line with what the group discussed and agreed. But if you believe otherwise, please flag those.

Then you'll see certain items that have been highlighted in yellow. So, either those are items where you basically indicated that that was a specific area that you wanted to review further and decide how to proceed or what changes to make or it's areas where there was indeed some discussion around it and a proposal to make changes but with specific language not yet agreed or reviewed, where staff has taken a stab at writing up some language that we hope meets what the group discussed and meets your intentions there. Again, we want to make sure

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that is indeed correct, so specifically calling attention to those items.

And as well, with the yellow highlighting, there are also some items that we just need to update such as the attendance records and then some more administrative items. So they're more for ourselves to make sure that we don't forget about those.

So, what we then subsequently did is pull out those yellow highlighted items into a separate document and that's where we are basically going to go to next to facilitate your conversations on those outstanding items. But again, it's not our intention to limit it only to those items. If you've spotted anything else in this draft final report that you want to discuss or you think needs further review, we hope you will flag that and we can of course add it to the list. But those were at least the ones from a staff perspective where it's clear that there needs to be either further conversation or discussion and more specific guidance to staff if or how you want to change certain sections or add specific language to a certain part of the report.

As I mentioned before – and maybe, Emily, you can briefly share the graphics we've done. In conjunction with sharing the draft final report, we also shared with you some graphics that we managed to develop with the assistance of our Coms colleagues. Again, the objective there is really to make sure that everyone is

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on the same page on what the division of responsibility looks like in the different mechanisms that we're still discussing or that are still on the table. So, A, B, and C. And you've seen here we've made a breakdown of those different items. Again, in certain cases, we think it's clear and agreed. Or that's at least our understanding, and again if we got that wrong, flag that and let's discuss that further.

But also a couple of items that specifically relate to mechanism B where we actually haven't gone into the detail of how the division of responsibilities would look like. So, that's at least one item we flagged at well that the group may need to specify further and I think it's also in one of the questions, I believe. We need to specify further what that division of responsibilities would look like between ICANN Org and an external entity.

Then we also have another document that we prepared and that goes a little bit to the point that Alan made as well that we realized as well through the discussions on the review of public comments that there were a number of misconceptions around the characteristics that are basically shared between the mechanisms. I think there was certain areas the feeling that, for example, the role of the board might be different depending on whether you would be a mechanism A, B, or C when it comes to legal and fiduciary requirements or the role of ICANN Org might change.

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So, this is our attempt to put to bed some of those potential misconceptions or really be very clear about what the common characteristics are regardless of which mechanism is chosen. As you can see, there are of course some nuances in some cases. But again, we hope that this helps the broader understanding, but also the group's understanding, of what will be the same regardless of which choices is being made.

Again, I think all these materials are really intended to facilitate the next step of finalizing the report, addressing the outstanding issues, and getting into a shape that everyone feels comfortable submitting to the charter organizations or putting out for another round of public comment, if that is the objective or agreed approach.

MARILYN CADE:

Thank you, Marika. We do have expensive comments, but I'm going to make an observation about the graphics. I think there is an unintended – I'm hoping it's unintended – message that is being sent in this chart in particular by using a rating approach that is conveyed by the color chosen above the column. I understand, but I, too, had a background in communication and marketing and yellow usually means warning and orange and red means fire, don't go there. And blue means go. Across the top of

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the chart, a neutral blue – that is the one on the left-hand side – conveys a neutral message.

So, I would ask Coms, rather than my having to go through every chart, which I’m quite capable of doing, of course, to take a look themselves at the real importance of complete neutrality, particularly if we go out for public comment and we are dealing with people who are struggling to understand the depth and then they go to the chart and it goes, “Oh, everybody prefers ... Oh, blue is the good thing. Orange and yellow are warnings.”

EMILY:

Hi, Marilyn. I’m Emily from Coms. That’s a fair point and that was completely not the intention, so we can revise to make sure, but thank you for flagging. That’s a fair point.

ERIKA MANN:

Okay. Any further comment with regards to this oversight which you just saw the way the document is now drafted for your review? Is this clear, so where you can identify a really critical point in yellow which we still need to debate and where we need to take discussions, and those changes which are highlighted in – was it red or was it violet? Which we already approved in the document.

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EMILY: Hi, Erika. So, only the items that are highlighted in yellow are the ones that still need to be resolved.

ERIKA MANN: Yeah. I know this. I'm asking whether those which we have an agreement already upon, how are they indicated in the document?

EMILY: Just redline.

ERIKA MANN: It's just redline. That's what I mean. Redline. Not purple or any other strange color.

EMILY: No.

ERIKA MANN: So, it should be easy for you when you do the review to identify and just please do the review so that we don't have at the very end before we take a decision shall it go for public comment or do we have a different procedure that we have to open the debate again? I would like to avoid this. Yes, please?

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JONATHAN ROBINSON: We just lost the image there. Quick comment along the lines of what Marilyn was saying where it says mechanism A, mechanism B, mechanism C. I would just put another line in there underneath that or somehow find a way of just a little internal department, charitable structure or something that summarizes, so that anyone – we tend to do this where we all know A, B, C is very familiar but actually anyone who is reading it and less familiar with it might dislike.

ERIKA MANN: It's actually underneath, so we put a little—

JONATHAN ROBINSON: I see. I saw the definitions were there but it's really about putting it at the top of the column, either replacing mechanism A with the name of it or adding it and putting it underneath. I realize the definitions are underneath. Thanks.

ERIKA MANN: That's very helpful because it's true. We have a different way in reading documents. Some really look at the stars and in the footnotes and some don't, so it might be easily overlooked. So, thank you for this.

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Okay, next topic, if you don't have any further comment. Okay. You all feel confident? Fine. Next item please.

MARIKA KONINGS: I think the next step is to start going through the open items. We reorganized ... The document we shared on Wednesday still had all the same questions but Emily sent out yesterday an updated version, so we reorganized a little bit the order to really focus on the audit. The topics that may be better addressed face-to-face. So I think that's where I will get started now, unless ...

ERIKA MANN: No, no, Marika. Just go. Let's show it. Let's show the next one. Let's go into the discussions and let's take a decision as quickly as possible, so we get done as much as possible. That's very difficult but I hope you have [inaudible] so you can read it there, actually.

MARIKA KONINGS: Yeah. If everyone has as well in their email, inbox email from Emily yesterday. Again, we've tried of course to put as much context here as we were able to, but of course all these issues need to be reviewed and in the full context of the report and the different responses to the charter question.

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So, this first one concerns Annex C and is also related to section 4.2 which includes a summary of the guidance that is included in Annex C. I don't know if it makes more sense, instead of me reading it, to give everyone maybe a minute to review this item.

ERIKA MANN:

I don't think so. You need to read it. Just make a short introduction to the topic. What is the decision we have to take? What are the alternatives we are looking at and what are the alternative decision-making we have to take about this topic?

MARIKA KONINGS:

Well, the main question relates to this section is based on the feedback that the ICANN board provided in relation to Annex C and that feedback is contained in the question for CCWG member input. So, I think the question is here really based on that feedback, is any further guidance needed and any further changes needed in relation to in the context of Annex C?

Maybe, to be more specific, because the board added here the board would like additional clarification about Annex C objectives and recommendations, which should be considered mandatory versus aspirational. So again, I think that is the specific question. Is that something that needs to be further clarified in the context of the four points that are listed here?

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ERIKA MANN: Maarten, would you want to give a short introduction about the purpose of the board recommendation on this one, just to give a little bit more background and flavor what your intentions were?

MARIKA KONINGS: Just to help Maarten maybe a little bit, because Annex C relates to guidance for proposal review and selection. So, we did take an excerpt here of some of the points that were made in here but I think the board's comments went to the full Annex C as such. And again, I think it may be helpful just to look at the text that has been written there and Maarten may want to further illustrate it, but I think it's really about there should be further clarity about what the role of these points is. Is it purely optional considerations or are these mandatory nature when it comes to guidance – it's still guidance but higher level guidance or a more softer guidance, I guess.

MAARTEN BOTTERMAN: Yeah. I think it's important to take into account that it's really about fiduciary duties, taking it right, that it's meant also to be used in a way that's cost-effective, not wasting money. That way, I would say that it is never 100%. Sometimes we will need to see how much it fits in our mission and how much it doesn't. But

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basically, we'd be happy to ... There are some key items which is mission, which is good use of funds, and in line with fiduciary duties. Otherwise, we are flexible, too. We are not trying to set where the money needs to be used for.

ERIKA MANN:

Let's have a quick look at Annex C, so that everybody has a reminder what we are talking about because I sense it's such a long time ago that some may not even remember what Annex C is. So, let's have a quick look. You'll remember we decided that we would have guidance which we will put forward. In those areas where we don't take final decisions, we will put forward to the next phase, the transition team.

So, these are guidance for proposal review and selection and this is what we are talking about right now. And this is the recommendation. The comment we received from you, Maarten, from the board concerning this item that you were wondering whether more detailed description is needed to be sufficiently clear in our advice and guidance we give to the team.

MARIKA KONINGS:

And if I can flag as well there's a second section here that we can, of course, consider that at the same time but there is some language that was developed as well by a small team that the

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group will also need to look at. I don't know if you want to take those two items together and review this as Annex C review. So, there are two items here. One is the language that's here in red that addresses I think a number of comments that were made and goes indeed to this question of if it has been funded before through the operational budget, does that mean it is excluded or some guidance [inaudible] to that. There's no I think hard or fast rule there but indeed some guidance that's provided on how that needs to be dealt with. As I said, there was a small team of people that developed that language and wanted to put that back to the full group.

Separately, there's a comment I think from the ICANN board that basically goes to the whole Annex C in relation to what is really the status of it and whether there needs to more specificity when it comes to mandatory items and optional ones. Again, I don't want to put words in your mouth, Maarten.

ERIKA MANN:

Yes. So, we have two questions here. That's what Marika is saying. So, we have one which is small group was working on. This is the one which you see a recommendation here in red. We come to this in a second. But I'd like to finalize first the topic, the comment from the board. And I just want to hear, are you fine with the way

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we are approaching it right now or is there still something which you believe is missing from the [inaudible]?

Again, we like to [inaudible] that we have comments at the very end from the board, so if it's possible, we like to address them right away.

MAARTEN BOTTERMAN: The mandatory part is that it fits in mission and values and that it's not covered by the operational funds. When it comes to priorities and goals, there's more flexibility.

ERIKA MANN: Okay. So, what I recommend we do here, not right now because we can't do the writing here, we will review the text. I'm looking at you, Marika, what the best procedure – and Emily, what the best procedure for this is. Because I would love to have the group, if possible, to see the new recommended text based on what we just said. Maybe it's just a tiny word or two words which we need to change to be maybe more clear and guidance what Maarten just was recommending and we can bring it back to the group maybe later.

MAARTEN BOTTERMAN: [inaudible].

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ERIKA MANN: You're fine with it, the current text? Good. Okay.

MARIKA KONINGS: So, we can note that no further changes are needed to Annex C. Is that item—

ERIKA MANN: That's what I was just—

MAARTEN BOTTERMAN: That's my impression.

ERIKA MANN: Perfect. Read it again, Maarten, so that you're really certain, and if there's a question, come back any time at the end. We will [inaudible] maybe half an hour, just to review all the things we discussed in the case we set, read it again and then come back to us, so we keep the last half an hour for such kind of reviews of reviews which we are doing today. Okay?

MAARTEN BOTTERMAN: Yeah, will do. But I think the basics are very well understood and consistently also portrayed by you, so I'm confident.

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ERIKA MANN: I appreciate this. Thank you, Maarten. Emily, please?

EMILY: I think if any edits are needed at all, it could potentially just be a clarification of those two gating questions that the board has provided at the beginning of the document, so the board has provided the guidance that it needs to be within ICANN's mission and it cannot be under the operational budget and here is our guidance in addition to that. It could be as simple as that.

ERIKA MANN: Do a draft and we can, at the end, the last half an hour, go and sit together with Maarten, find a second and then bring it back to us. But right now, I understood, Maarten, as the board is in confirmation of what we have a text here.

So, then let's have a look at this tiny group, the work the tiny group did. Who was actually a member of this group? Jonathan, Marilyn, Judith. Okay. Who would like to maybe quickly present the text? Emily, Marika, just do it.

MARIKA KONINGS: Again, this was discussed quite extensively, both in the small team and as well as the CCWG because there was some original

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language that was proposed. The CCWG then discussed it and provided some feedback that was taken to heart by the small team, who then provided this language. So, the addition that the group proposes is that consistency with the ICANN mission is a necessary but not sufficient condition for funding. Evaluators may consider the scope, openness to innovation, and impact of the proposed project in light of the overall purpose of the auction proceeds. Evaluators will be informed by ICANN Org’s budget and associated documents concerning categories of projects already covered by ongoing operations as well as any legal and fiduciary constraints. Examples provided are specifically intended to be illustrative, not definitive.

ALAN GREENBERG:

Yes, I have my hand up, but not for this section.

ERIKA MANN:

Can I just raise maybe one question? And whether the last sentence [inaudible] and not have included here because I believe we have to come back to it in a separate context. Examples provided are specifically intended to be illustrative and not definitive. I believe this is a reference to the annex with regard to the examples. We haven’t taken a decision here yet. If we really want to have this example public available or not or just

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for evaluator’s guidance. So we may want to maybe not have this last sentence included here.

ALAN GREENBERG: If we get rid of the examples, we’ll get rid of the sentence.

ERIKA MANN: Good. Fine. Perfect. But we just want to mark it here. Good. Marilyn?

MARILYN CADE: What I would say is the following. If any examples are presented, they are only. But I agree otherwise with Alan. That’s the acceptable approach as well. So, we just put it in square brackets, and then if we get rid of the ...

ERIKA MANN: You noted this? Okay, fine. Then, do we have an agreement here? If somebody is not agreeing, please raise your hand now, just as an indication. It’s not a vote, just an indication. That sounds great. Okay, let’s move on. Next item please, Marika, the next topic.

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MARIKA KONINGS: I'm just checking. So, the next one we go to is section 5.2 and there's also corresponding text in 4.2 which relates to the objectives for auction proceeds. The questions of the group there will need to think about is, is this language overly broad? Should it be revised in light of recent CCWG discussions? Are there any additional questions the CCWG needs to ask Org or the ICANN board to resolve this issue? And this refers back to our agreement in number six, the CCWG to review the language of this recommendation, and number two, to see whether it's overly broad. Although, the CCWG noted that the restraining factor of the ICANN's mission is already referenced in the report. So, let me just scroll down.

ALAN GREENBERG: Before we continue, can I ask what the proper way is for getting in the speaker queue? Because neither raising hand in Zoom, nor raising my card, seems to work.

ERIKA MANN: You are not a happy person today. I can see this. You are grumpy. You didn't sleep well.

ALAN GREENBERG: I am grumpy.

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ERIKA MANN: I can see this.

ALAN GREENBERG: I would like to talk on the previous item.

ERIKA MANN: Never experienced so grumpy. Just raise your hand. Put it up if I don't see you. I do this. Alan, go ahead.

ALAN GREENBERG: Thank you. I'm back on item number ten, the previous one. I wanted to point out that under the questions in the right-hand column, we have two questions. Is this project in ICANN's mission? It does need to fully cover all aspects of the mission but must contribute to the mission. And the second, is this part of ongoing operations?

So, I'll note two things. Number one, that second part of number one, it does not need to cover all aspects of ICANN mission, which I think it says it does not need to replace the whole ICANN function, which I find somewhat redundant. I don't think any projects are going to try to replace the whole mission of ICANN. The proper answer to that one is, yes, is it within the mission.

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The second question is: is it part of ongoing operations? And I presume the proper answer to that is no. So, we phrased two questions. One of them seems to have a redundant part and the appropriate answers are opposite. So, I think those need to be rephrased so that they read consistently and make sense to people. It's almost a trick. We've trained you in the first one to say the right answer is yes, but then the correct answer is no to the second one.

ERIKA MANN:

Alan is grumpy and I don't understand what you mean.

EMILY:

I understand. Actually, I just put that in as a segment from the notes that Maarten was clarifying what the board sees as gating questions. It sounded from his response – and we'll confirm – that we may not actually need to do anything to Annex C. This was just for context, that that was the discussion that had taken place. But I understand. You're saying one is phrased in the negative and one is phrased in the positive.

ALAN GREENBERG:

If we're going to keep those questions anywhere, they need to be really clear and not phrased in a trick way.

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EMILY: Yes. Understood. Thanks.

ERIKA MANN: Okay. Let's go back to the next item now. Can we see it, please, the document? It's much easier to make the introduction if we can see the text. So, it's very difficult, actually, to follow if we can't see the text. So, please be so kind, just do it again, Marika.

MARIKA KONINGS: Yeah. I think this was one of the items as well where the group basically agreed to come back to it once it was able to see it in the context of the full report and other language that's added and other disclaimers that area available in other places. So, the question here, for the group to consider, is this language overly broad? Does it need to be revised in light of recent CCWG discussions? Are there any other additional questions the CCWG needs to ask Org or the ICANN board to be able to answer the question of whether this is overly broad or not? And then I noted as well then the other specific agreement in this regard that the group agreed to review this language, or the original discussions, and the CCWG did also observe that the restraining factor of ICANN's mission is already referenced and that may make it not overly broad.

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I do note there is a change already in this language. That was one of the agreed items based on the CCWG's discussion that is reflected here. So, that's the ask.

ERIKA MANN: But who was the main group actually making comments with regards to this? So, what is the ... If you just can go back to the main conflict, comments we received.

MARIKA KONINGS: That will take me a few minutes.

ERIKA MANN: Yeah. Okay. Because I believe we can conclude this. I don't believe there's anything embedded any longer which we need to discuss. I think we finalized this topic and if there's not anybody raising – Alan is doing it – I believe we are done with this. Alan, please go.

ALAN GREENBERG: Thank you. On reading it, I have a question. Would someone applying for money for what essentially is government lobbying fall under this category or not? It's something ICANN does. It does it in a limited extent and it reports it.

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ERIKA MANN: Uh-uh. It's excluded. We have a language for this. And we have advice for it in a text which we annexed from Sam.

ALAN GREENBERG: Okay. Is it excluded somewhere else? Because it doesn't seem to be excluded in this particular wording.

SAM EISNER: I don't think that we would need to have something like that reflected in this level of wording here because it is actually an exclusion. It has to be considered at the time of evaluation. If the funds are intended to be used for lobbying, there will not be the ability to give that. So I don't think we need to put that in there.

ERIKA MANN: Sam, would you prefer that we have a footnote related to the memo here? Because we annexed the memo anyhow, so should we make it just a footnote here?

SAM EISNER: We could. I think it just has to be clear that ... And I feel like the report is clear that the legal and fiduciary requirements and the limitations imposed by those are primary in consideration as well.

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ERIKA MANN: Okay. So, you don't believe a footnote is needed. Okay, fine. Then I believe we can finalize this item here, this topic. Just looking around, anybody who wants to continue the discussion about this item or agrees that we can conclude it. Please?

MAUREEN HILYARD: Thank you. I just wanted to say that this was one of ... The specific objectives here were amongst the very first things that we even discussed and they've just been maintained. I think it's fantastic. Great. Thanks.

ERIKA MANN: We're just resurfacing certain topics because staff and I, we believe and we did a review and we had a discussion in this group, that we came back to certain topics and this was part of it. So, we just want to be sure if we conclude it and we come to the conclusion now, it's done, we are really certain about it. Okay, fine. Wonderful. Next item, please, then, Marika.

MARIKA KONINGS: So, the next question relates to Annex D. You can only see a small part here but this is basically the annex that has a number of example projects listed for illustrative purposes.

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So, the question here for the CCWG to consider is do you have any initial thoughts about whether adjustments need to be made to the CCWG’s approach to Annex D?

Know that the outcome of agreement 38 will assist in this discussion and agreement 38 was leadership team to send a request to ICANN Legal clarifying the risks of providing a list of example projects and how to mitigate any potential risk. Emily, is this one of the questions that we still need to send?

EMILY: Yes.

MARIKA KONINGS: Actually, this is one of the questions we haven’t formally relayed, so I don’t know if Sam is in the position to comment on this on the fly but otherwise we can maybe collect some initial thoughts on what the group believes and then follow-up for a written response so the group can decide how to deal with this annex.

ERIKA MANN: Yeah. Just to add some context. So, when we decided to come up with this idea about the example project, it was, if you remember, it was exactly the idea to understand what kind of project we believe would fall in the mission and what kind of project would

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fall [inaudible] the mission. So, this was the basic and the original idea of the annex of example projects.

Now the question is, which is a much more trickier one, shall this list be actually publicly accessible and shall people be able to see it in the future with the risk that they might want to copy projects or shall this be just a list which is available to the evaluators in the future for internal judgment? That's some legal questions involved which maybe someone would like to answer a little bit later how we want to deal with this. Or we just keep it public but we make a strong – we maybe increase the wording which we have right now what the purposes of this list. Vanda, please.

VANDA SCARTEZINI:

Yeah. To my personal experience in my region, give this list as example for the public. Normally, it generates a lot of confusion. People try to use the same words, not copy the project, not a problem, but trying to understand the words written in that proposal must be into their projects in some way. So, I've been in some areas. Those interpretation of examples is not so clear. So, I'm completely against to be public, but it's a kind of indication for the evaluators can be useful for that. Thank you.

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MARIKA KONINGS: Thank you. I have Marilyn and then followed by Alan. Marilyn, please. I keep you to the end, [inaudible].

MARILYN CADE: Vanda, thank you for those comments. I'm going to not support them, however. Look, there's no detailed description of a project in that list. It's headline news that's in that list. So, there's nothing really to copy except the headline. And yes people might use the same headline but completing a project proposal means you have to provide the description, so you might end up steering more applications towards a category, but it's not like we're publishing an example of a project.

Over the years, I have done grant proposals, I've evaluated grant proposals, etc., but over the years at the IGF where I also work extensively, we've learned that we do need to provide some illustrations of categories that are acceptable. Not the detail of what the workshop should address but certain things that will need to be addressed. So, if we were publishing detailed examples of this is project A, could be three months or three years and it would have 17 activities, etc. If we were publishing something that detailed, I would be concerned. But I don't think publishing what I think of as headline news, and that is the category is doing anything more than being illustrative and then we just say over and over and over this is an illustrative list and

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should not be assumed to automatically influence the acceptance of the project or to exclude other kinds of projects being submitted.

ALAN GREENBERG:

Thank you. I support Marilyn 100%, but I do it for two reasons. One is I think she's correct, that it is a really useful tool to try to guide people into doing applications. But the second one is something different, something we never discussed, actually – at least I don't recall discussing it. I'm assuming this is not going to be a secret fund that we never tell anyone how we're using it. I assume we're going to have a fair amount of public disclosure about what projects we fund which might well include the title, a good paragraph or two, maybe even sub-sections if it's big, the duration of the project and probably the amount of money.

So, once we start doing these, there's going to be a huge public record of what we're funding and what we're not. The examples will become moot at that point. So, unless we're planning to do this all in secret and never publish anything and tell anyone how we're using the money but simply say, "Trust me, we're doing good things. It's only \$230 million, so what do you care?" I'm assuming it's all going to be public anyway at a good deal of detail. So, it's rather moot. Thank you.

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ERIKA MANN:

Thank you, all. Sam, I'm looking at you. Is there anything from the point of view which you hesitate from a legal point or risk factor for ICANN, potential litigations or whatever. Or maybe not a litigation on this case, but somebody who wants to bring it to a court of something which relates to a project which is similar which is described here as positive but then gets rejected by the project evaluator might want to bring it to a court and argue but it's in line which was in the Annex C. Do you see any potential risk factor here?

SAM EISNER:

Thank you, Erika. I think that's one of the big concerns that we have, actually. I know that I have a pending action item to get back to the CCWG and I'm sorry I haven't done that in writing yet regarding the use of accountability mechanisms after, but this goes right into it and I can speak to some of that when we come to the appropriate time today if you'd like.

I'm going back to our note that the board itself sent to the CCWG earlier on the process concerning this. Many of the concerns stay the same. I know that there's also been evolution of the document, too. The less we talk about specific organizations or develop examples based on specific use cases and go to more generalized categories, the risk is reduced, clearly, and it gets to

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more of that exemplar type situation that Marilyn and Alan were talking about.

But we know the history within the ICANN community and it is a bit different from applying for a session at the IGF. These are funds. This is someone trying to gain funds to do a project and there's a lot on the line for it. So, if we look at how people might use challenges or accountability mechanisms or use it to criticize the efficacy of the program, if there's someone who believe that their project matches with an example that's been publicly shown as something that the CCWG considers within mission, then we raise opportunities for challenge.

I also do have a concern with the note that the CCWG considers something within mission and whether that's a sufficient basis to put it out. Everyone in the room has their ideas and hopefully we're all very well aligned on what's within ICANN's mission and what isn't, but in the end, it's the ICANN board that's the arbiter of the mission, and so any other group stating what their belief of something within mission is can't be binding on the ICANN board.

ERIKA MANN:

Maarten, you give me a sign when you want to come in, but I take Marilyn. And I'm looking around if somebody else wanted to add something. Marilyn, please.

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MARILYN CADE: Thanks. So, just very quickly, Sam, as an example. Most development funds are the categories that will be accepted are listed and are defined. So, to give you an example, which might be helpful since they're government examples which have rules and regulations, etc., take FAO, for instance. And all of their grants have to be related to food and food safety and agriculture.

Take HHS, for example. Health and Human Services in the US. Or take [DIPT], for example, from the UK. I think this idea that there's no existing environment where in fact funds do identify the categories. They publish them. And since the examples I gave you on purpose were from international organizations and governments because there are very strict rules, regulations, and penalties for misuse and misdirection. So, I'm hoping that ICANN is not becoming so concerned about a single misstep that we are going to be living in a white straight jacket.

ERIKA MANN: Alan, please.

ALAN GREENBERG: Yeah. If we are really going to be subject to [inaudible] accountability measures, the ability of anyone to appeal the selection committee's decision, we're going to be living in a world

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that maybe we want to cancel this whole thing because I really cannot imagine that. I mean, just imagine a scenario of we've already funded \$70 million worth of projects that do X and we declare that we're not doing them anymore and someone said, "But you funded the last one. It's identical. You have to fund me." If the appeal mechanisms that we have within accountability can be used to appeal decisions of the selection committee, I can't imagine that going forward. And if we can't figure out a way to make sure that doesn't happen or that cannot happen, then I question how we're going to manage this program properly because everyone who has their money ... Typically, for any given program, the vast majority of applicants have their project refused. We only accept typically a minority of projects, and if everyone can appeal, I'm not sure how we can proceed and handle this. Thank you.

ERIKA MANN:

Yeah. I think that's an important point which is an addition to the discussion we have but it's an extremely important one. Sam?

SAM EISNER:

Do you want me to address that now? Okay. So, Alan, we agree. Building an auction proceeds program where there's also the ability for individual applicants who were not successful in the program or to want to challenge or for other others to want to

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challenge whether an individual was appropriate to receive it, we don't think that's the appropriate design either. We think that would be a misuse of the auction funds. That's not what they were intended to do, to fund challenges over the grants.

So, we've had conversation before and I think that there's been some discussion from the board level, and I believe also at the CCWG level that there's a level of agreement that there should be a carve-out from ICANN's accountability mechanisms for using reconsideration or the IRP over individual grant decisions, so that we don't walk into that.

We have had an ongoing conversation within the CCWG within recent months regarding whether or not there's any avenue for having a different type of recourse mechanism. So, we've done research over various programs and there are programs around the world that have an immediate reconsideration – don't think of that in the ICANN world. But an immediate request for a reconsideration, basically, to the deciding panel to see if they've missed anything in making their grant decision.

So, from the research we've done, we would recommend that having something like that where it's at the right level – it's at the decision-maker level and not at the board level for accepting the [inaudible] that there is an opportunity for challenge.

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So, someone who comes into the ICANN system, believes that they've had an opportunity to have a level of due process by the actual decision-maker – and it's not really building in a lot of process. These are existing, immediate, “Hey, did you think about everything? Can you reconsider my application once more?” type of thing at the decision-making level that could give a level of due process, a level of people being heard and understood if their application really wasn't sufficient to get included into a tranche or whatever other reasons were there.

Then, we would still have the base-level issue of if someone believes that the program itself was developed or is being managed outside of ICANN's mission, ICANN always should be held accountable to that. So, there could be broader uses of broader challenges to the system. This isn't about ICANN trying not to have a level of accountability in the decision that are being taken over it.

But I think that there are ways that we can build in some pressure releases to make sure that people have the opportunity to be heard and considered at the appropriate level at the appropriate time in the appropriate venues in the program without always resorting to ICANN's accountability mechanisms.

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ERIKA MANN:

Thank you, Sam. I've seen you, Alan. Just a second. Just for those which are new, so that we don't confused, we are discussing right now three topics. So, topic one, the number one is shall we have this Annex D with example projects attached to the final document, so it's publicly visible? Or shall it be only [inaudible] future evaluator and not be visible to the public and therefore nothing can be copied? So, that's the first question.

The second question, then, is – and this is the role which the ... Shall there be an appeal process and shall the existing appeal process, if a project gets rejected, in particular if a project is taking ... Let's say this project list is public and it's taken and put forward as a project idea and evaluators reject this idea. So then the question is, in general, shall there be an appeal process which relates to the current ICANN processes, appeal processes?

We said previously, no, we don't want this and I think we have an agreement in this group. In particular, Alan who insisted on this in past discussion. And we have an agreement. Now, Sam is bringing up another topic and she is saying there's a kind of standard process and procedure in many international fund environments, which is true, where once your project gets rejected, you can immediately go back to the same group who is rejecting it. So, not the ICANN. Any ICANN appeal process to the same group of evaluators and you can argue you misjudged one or two aspects in our application, and therefore you rejected it

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because you misjudged what we actually put forward to you. That's the last discussion which we have not taken into consideration. Alan, please. Sorry for being so long.

ALAN GREENBERG:

That's fine. I support that. If a project is rejected because you didn't provide XX and the answer comes back, "Look at page three," that's a completely valid process. It should be a very lightweight process, but it's a completely valid process.

One of ICANN's accountability missions, accountability mechanisms, being used to say "you funded that project for \$7 million and it's outside of the mission". That's an interesting one and probably that should be allowed. We have to think about that as we go forward in the implementation to make sure that if indeed they are correct that the applicant does not end up getting specifically disadvantaged. We can't pull back the money after they spent half of it because we made a mistake. We're going to have to think about that one carefully. Thank you.

ERIKA MANN:

Great. Oh, Vanda, apologies. We need, afterwards, we need to take a break. We have 15 minutes. So, Vanda, please.

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VANDA SCARTEZINI: Yeah, just one minute. One alternative that we use in the [inaudible], for instance, is during the process of evaluation any project, we give the opportunity to the applicant to present to the small board, the evaluators, the issue and defend it, so you almost dismiss most of the further questions about because they have the opportunity to explain each point to this small group. So, it's up to them. They can open for interview. It's half-an-hour. You can explain your points, explain even key points in the whole project why it's important, why it's new, blah-blah-blah, why it's in the mission and they can go and present themselves. And this relatively reduced to zero the further questions because they have the opportunity already, before they make decisions. Just a suggestion.

ERIKA MANN: Thank you so much. I agree, Vanda. This is what many evaluators do and I'm pretty sure the evaluator we will establish, they will do something similar in case of a complicated project. That's a typical state of the art procedure. Yeah.

So, I think we have an understanding. No appeal process, [inaudible] to what we know at ICANN. But we are in agreement we like to have an immediate quick going back to evaluators in case something they feel in a particular project that's misunderstood, so that's a part as an action item we have to put

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as a recommendation somewhere so we can notice. Then we still have to decide when we come back from the break, do we keep the Annex D example project or not, public or not? So, we do this once we come back. We have 15 minutes break.

MARIKA KONINGS: You can make it a little bit longer.

ERIKA MANN: Oh, no, let's keep it. I want to get this done. Let's try to be here back in about 15 minutes. Thank you so much.

Hi, everyone. Just a reminder, can we get seated so we can get started, please? Okay, let's go back to the last topic we discussed. Can we see the slide again?

MARIKA KONINGS: I'm sorry, where do you want to go?

ERIKA MANN: The slide again. This was about the annex, the expert group annex. Maarten had to join a different meeting from the board and we do have Becky now. Thank you so much, Becky. Becky, we are discussing right now, we are at the topic where we are talking about the annex which relates to the list of examples. We had three discussions here and we will come back to them.

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So, the first one, just a refresher to everyone. The first one was shall we keep the list of examples public or not or shall they only be visible to evaluators, with the caveat that the list is already of course public, because we had already annexed the list when we brought the document forward for public comment period. So maybe we should have a little bit more relaxed attitude about the list and maybe have a stronger disclaimer what the purpose is of this list of examples.

The second topic which we discussed related to the question whether there shall be an appeal process, and if there is an appeal process, shall the appeal process relate to existing appeal processes within ICANN?

Everybody here, there was not a single one actually supporting this idea, so we rejected this idea. We don't want any appeal process, official appeal process, which reflects upon the existing models inside of ICANN. We don't want this to be copied.

But then Sam brought up the idea which reflects best standard practice in some of the bigger funds that in case a project gets rejected, the team lead shall have the opportunity to go back once to the group of evaluators and just request in case they believe they are treated unfairly and reevaluation. That's something totally different and we believe that's a good idea.

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There was nobody arguing against this. So, we will still have to do the drafting, but that's where we are.

But the outstanding items, so the decision about appeal process is taken, no appeal process. The decision about, yes, there shall be for a one-time process open for people whose projects got rejected to go back to the evaluators and get it reevaluated. So, we still have to take a decision. Shall this list be public or non-public?

Alan and Marilyn made rightly the point saying there is nothing included in the text, which is problematic, and as long as the disclaimer is well-drafted and it's well-understood, the purpose of this example is there shouldn't be any conflictual included or potential legal case included, if the disclaimer is drafted well.

Vanda raised the point on a side discussion a little bit later that some in developing countries may have an issue with such kind of lists because they may look at the list in a different way than we do, those more from the western world context, because we will understand the disclaimer and we will understand it's just a list of examples. But some in the developing world may look and screen the list and say if nothing is included, what they would like to do, they then would not put a project forward because they believe if it's not included, at least as an example, it may not be

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relevant. I understood you right, Vanda, yeah. So that's an issue which we then have to—

VANDA SCARTEZINI: Yeah, like a framework. They don't understand that's the framework [inaudible].

ERIKA MANN: So, it needs to be captured in the disclaimer as well. Just strengthening that this is a list and things which are not mentioned don't mean that they are not worth being funded. So, this needs to be then included as well.

So, what is the tendency of this group? First decision is what do you believe, public or non-public? Only visible for evaluators or public visible, this list?

VANDA SCARTEZINI: If we agree to have a very clear statement, that the framework means nothing, there is just a very clear statement about anything inside the mission is what is [matters].

ERIKA MANN: Yeah. The disclaimer needs to be super crystal clear. Yes, please?

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**BENJAMIN AKINMOYEJE:** Thank you. My name is Benjamin and I'm from NCUC. I think a public list that shows examples of acceptable grants or applications is totally okay. Mozilla does it. ISOC does it. And it doesn't mean an exclusivity, [inaudible]. It just means examples of this and anything else innovative. So, I think it will help, just to share people's ideas to know where to start from. And you don't want to copy the exact thing. You want to make something added to yours to make it unique and acceptable. I don't think it will be [inaudible]. Thank you.

**ERIKA MANN:** Thank you so much, Benjamin. Ed, please?

**EDMON CHUNG:** I think it should be public.

**ERIKA MANN:** Anybody who is opposing the idea it's public? Would you like to comment?

**RUDI DANIEL:** A couple of things. Someone mentioned the fact that when you have a list, it should really be based on broad concept categories as opposed to focused, like "these are the kinds of projects that we're going to fund". I do also agree that such a list is going to be

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understood, perhaps quite differently, whether you come from the north or the south or developing country. So, I think we just need to keep that in our minds. Yeah. Thank you.

ERIKA MANN: Yeah.

RUDI DANIEL: But I do believe it should be within that context. I think it should be public. But also it might be necessary to have broader guidelines for the evaluator.

ERIKA MANN: With regards to this list, broader guidelines?

RUDI DANIEL: With regard to the list, yes. So, there might be an expanded version of the list, specifically geared towards the evaluator.

ERIKA MANN: Thank you. Alan?

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ALAN GREENBERG: Thank you. The evaluators are going to have to be given a lot more information, both pros and cons, than we're talking about in any public list. That's number one.

Number two, as I said before, we're going to be published. We're going to have to be publishing what projects we fund, so the secret is going to be out of the bag pretty soon.

Lastly, no matter what you write, someone is going to misunderstand it. There's just no way to prohibit that.

The question I have, however, on the bylaw mandated appeal processes and such, do we end up needing a bylaw carve-out to make sure that they can't be used, except after the fact to say we're out of mission or something like that? Yeah. Okay. Thank you. Just something to note then.

MARIKA KONINGS: I think staff already included language to that end in the draft final report. Maybe worth for Sam to have a look at that to make sure that it's sufficiently written in a way that it's clear, but I think we already captured that based on previous agreement.

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ALAN GREENBERG: Anytime I don't know what I'm talking about, blame it on my focusing on EPDP. And why Marika doesn't have that same problem, we don't know. Marika is magic.

ERIKA MANN: She just has a different brain. Sam?

SAMANTHA EISNER: One thing I'd like to work with staff to do is to see if there's any way that we can use a second comment period on the report to help shorten some of the timeframes on the bylaws change, if that's going to be needed, if we can flag it in some way that maybe we can coordinate with the board because we have an obligation for public comment on a bylaws change and this would be an empowered community. This is one of the fundamental bylaws, so if we can do something to flag a bylaws change when it's going up for public comment before it gets to the board, then the board can take action. We'll have to look at it but we might want to save some additional time, so that we don't create a [inaudible] in implementation just because of the bylaws change.

ALAN GREENBERG: The implementation is likely to be long enough that it's not really an issue.

MARIKA KONINGS:

Another item that we have on the list [inaudible] just following up on Sam – and probably another question for Sam – is indeed this notion of whether a second public comment period is necessary based on the changes that are made but it's also linked to this question. I know in a PDP context, the board would have another public comment period, regardless of whether we do a second one or not, prior to consideration of the report. I don't know if you can answer now, but it might be helpful for the group to know whether that is the case regardless, because that may help inform as well from the group's perspective whether it needs to do a second public comment, or whether by that public comment prior to board consideration, whether that is sufficient opportunity for people to weigh in on the changes if the group deems that they're not of such a nature that the group needs to do a second public comment period because the changes made are the result of the original input provided.

ERIKA MANN:

We come to this point in a second. Let's not discuss this right now. Let's stick with this one. It's a good reminder that we don't forget it, but we want to finalize this point item here.

So, we have an agreement, I believe. Public list. Nobody is rejecting with the caveat the disclaimer will be strengthened. The

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disclaimer will reflect everything we discussed, what we like to see included in the disclaimer. So from, again, reviewing, is it sufficiently clear it's only a list of examples. It's not served to be copied. Neither does it serve that everything which is not mentioned will not get funded. These are items which need to be mentioned in here. We have to mention again that the mission, of course, the gating environment.

So just to be clear that this is mentioned in the disclaimer as well. And then, I believe, Sam, you will have to do a review just to see that any kind of legal concern you may have is phrased in such a way that it leaves as much as possible. You can ensure it is not because it's missing in the language, in the disclaimer, it can happen. So, just review the test. The same from the board point of view. I think, Becky, it's good from the board point of view to look at the disclaimer, that you feel confident with it and you can send us back some signal in case you don't like it. So, action item. Who is doing the drafting of the disclaimer, the first? Shall we do it?

MARIKA KONINGS: We'll work with Sam.

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ERIKA MANN:

Let's do it with Sam together and then you send it to this group. Perfect. So, we get this back for another review. Perfect. Okay, well done. Who is doing the drafting action item for the review, so that a project review goes back to the ... Yeah? You look at standard practice, how this is handled in other funds and then you copy the best example which is appropriate for our environment. Perfect. Any other item? Alan, you want to make a comment? No.

Okay. So, we have an agreement here, yeah? Somebody wants to object to it, please let me know now. No? Fine. Marvelous. Next item please. And yes, we will review the list just in case to see if some examples are too concrete or [inaudible]. I believe we have done this already. The example is. But we will do another review as action item leadership team and staff just to see that all the examples are sufficiently not too clear and not mentioning any particular institution. We will do this. Can you put this on an action item? Okay, next topic.

MARIKA KONINGS:

Next item is here on 21 and you'll know that we added some language up here to clarify the independent evaluation panel as we discussed earlier. But we also included here a placeholder for a description of the role and responsibility of the community advisory panel. I think, as you know, that has come up in a

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number of the comments in relation to what is the role of the community and how that would work in practice. Erika and Alan had an action item on that one. There was already some language included in the comments documents that was shared. I just want to flag that was something that is just a placeholder for now with some suggestions for discussion and to get the conversation basically going here. But I think Alan and Erika might be better positioned to introduce that.

ERIKA MANN:

Alan, I give it to you in a second. Just two things just for the introduction. So, that's a topic we haven't decided about in the comment public period, so we haven't had an example which we would pull forward. But we had debated and discussed a topic but then we never brought it forward for the public comment period. But then we received comments and then Alan and I were tasked. It was the two of us actually to come up with some ideas. So, we took two pathways. We looked at two ideas which were brought forward to us.

One was the advisory role of the ICANN community and the second one was evaluation after a certain period of time of the work the evaluator's have done, which is again standard practice. So, that's what we are talking about. Alan?

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ALAN GREENBERG:

Thank you. And a caution. The words that are here were pulled out of a draft document when it was in the midst of being drafted, and among other things, omitted a complete sentence which was critical and had one with some confusing wording in it. So, I wouldn't focus a lot on the words.

The concept that we're talking about is, number one, an advisory panel. The prime role of the advisory panel would be to do an annual – probably annual – review of the process, look at the projects. Are the evaluators doing a good job and following our mandates? Do we feel anything needs to be tweaked? Essentially, a community group overlooking the external arm's length of selection process, selection and management process of the projects. It's not just selecting the projects, but the review of them, the evaluation is successful, all of those aspects.

The secondary purpose that we came up with was to be available as a resource to this selection group, the evaluation group, should they have a situation where they are really unsure of how to respond. It's an edge case. It's something that seems to have merit. But they need some advice. It may never happen. On the other hand, it's a resource they could go to if they're not sure how to proceed in a given particular project.

So, those are the two main functions. We were talking about people being on this group, at least nominated by the ACs and

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SOs, but probably with some sort of selection process. I won't say the NomCom. But something akin to that to try to make sure that the people on the group actually have the skills that we need to do the work properly and are making the right commitment. So, that's where we're sitting on that.

The second function – and it wasn't clear if this is the same group or a different group – do to an every three year, five year, assuming this process is going to go on for a while, overall evaluation of are we on the right track? Do we need to change the ground rules? We said we will not fund X kind of projects, but in retrospect, the world has changed and that's something that's needed now. Essentially, do we want to do a review periodically? Is this the same group? At some level, it would be convenient not to have to select and convene a whole new panel to do the review. On the other hand, the effort involved in such a review is such that the people who may volunteer for the annual type work might not really be the right people to sit down and do an intensive review. So, we're sort of thinking that it really should be a separately convened review panel. And that's where we sit right now. We haven't refined it with anymore detailed words. But those two main functions for the advisory group and then a review panel.

ERIKA MANN: Becky, yes, please.

BECKY BURR:

So I think it's going to be critical to see the words. The one note of caution ... I mean, the notion of doing an evaluation of how are we doing against the criteria and then whether the criteria are the right criteria, that kind of stuff, makes a fair amount of sense to me. I'm just a little concerned about the resource on the edge cases because I'm not sure, for example, what kinds of edge cases. There could be edge cases about: is this within ICANN's mission or not? And then that may have a separate path from does this meet the criteria? But if you add in another group in the evaluation, then you raise potential sources of appeal and that kind of stuff.

So, not passing any judgment on this other than to say the first and the third purpose seem to me to be sensible, subject to writing caution on that second one.

ALAN GREENBERG:

If I can add something. The reason that it was added in is this is the group that, at the end of the year, will say, "Hey, you were doing a very good job because you didn't understand." So, this is a way of getting them involved in the decision process to make sure we stay online.

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To be honest, being parts of evaluation panels like this before, I doubt it's ever going to be used. But it sounded like a reasonable escape hatch. Maybe it's not worth the risk.

ERIKA MANN:

Yeah. I think it's a topic we need to discuss. I believe it is maybe not a bad idea to have a body which is not a board, automatically or immediately the board, not immediately ICANN Org but which reflects the diversity of the community and can give some informal advice. So it's not saying something in ICANN legal terms. It has a different gravity automatically. So, sometimes you just want to have a quick chat about something. Do I understand? In particular, if you're evaluators and you don't come from the community. So, keep this in mind. There are external people who are evaluating this. So, they need just a quick check. And it's handled in other environments. It's not something new we are totally inventing.

Again, I agree. It's the language and how it is going to be designed in precise terms, if we believe it's a good idea. There are many comments which would love to see more community engagement, so we have to take this point seriously. We can't neglect it. And it's particular become important to have a layer between board and ICANN Org and the mechanism which is a bit more informal. If let's assume 60% of projects are neglected from

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developing country, just take an extreme case – or 70%. You automatically want to have a quick check what is going on. Maybe there's a concrete reason. Maybe there's something totally wrong. Maybe not. So, maybe you just want to have a sounding board. So, this was the idea, Alan and I, when we looked at the comments which we believe maybe could be one [inaudible]. Maybe it's not the ideal one. Just think about it. And the evaluation, that's the review of what the evaluators are doing. This needs to be done. That's done accordingly, to best standards. Marilyn?

MARILN CADE:

Just very, very quickly. The thing that struck me was we have to be careful about the words we use and that word, evaluation, since somebody else is doing the evaluation, we may need to use the word assessment or examine. It seems like a small thing.

ERIKA MANN:

Emily, please.

EMILY:

We have a comment from a remote participant. Anne Aikman-Scalese says, "Many ground-making organizations suggest outside charitable organizations develop a point system for evaluating grant applications. The points or percentage points

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align with the grant-making guidelines. This makes it much easier to defend grant-making decisions as objective if challenged.”

ERIKA MANN:

Yeah. We want to take note of this recommendation. It’s certainly something we want to include in the guidelines, I would recommend just as an example to look into for the implementation team. I don’t think it’s our role to do the work, but as to put this forward as a recommendation in our guidelines is certainly a good idea. Just to look at the best practices and best standards how to do this and this is one example. Good idea. Thank you so much.

So, how do we bring this forward, this item? Shall Alan and I present you a written text? Yeah? Would this be ...? How much time would you need? Is this a topic, Becky, you would have to go back to the board?

BECKY BURR:

I think that we probably would have to go back to the board just to help ... But we can do that quickly. Maarten and I have been keeping the board up to speed all the way through so we can do that.

Let me just try to clarify the thing that’s really concerning me. So, any role for this panel that relates to individual applications, that

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seems to me like bigger picture ... We have to talk about it, but that one seems to me to be completely impossible. But we have an edge case question that involves an application or a group of applications, that just seems to be an invitation for disaster.

ALAN GREENBERG: Even though it's a community-based group, not the board or ICANN Org?

BECKY BURRY: It just raises all of the conflict issues that we'd have to get. Then it adds an external process to what we've described as an independent evaluation. Let's look at the words. Let's look at the writing. But my gut instinct on this is not based on a conversation with the board. So, maybe I'm wrong but that one just strikes me as asking for trouble.

ALAN GREENBERG: Let me give you a bit of the origin. There was significant input from people who believe the community, some group made up of community volunteers, should actually do the selections. I think that's completely impractical. It's a heavy workload. It's time-sensitive. It's probably a full-time job for whenever it's being done and I don't think it is a vehicle that should be done by volunteers at all. But this added back that component that there could be, in

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certain cases, some community input into the process, bowing to those who felt that there should be community involvement in the selection but limiting it to the edge cases, to the special cases where clarity might be needed. So, that's the origin from those who really thought we should be doing all the work. I think that's just impractical from an operational point of view. But it brought in a component of that. So, that's the history of it. It may be impractical.

ERIKA MANN: Sam, you wanted to add something to it. I saw you.

SAM EISNER: No, I'm going with what Becky was saying.

ERIKA MANN: Thank you. Okay. That's a topic we have to clarify. I think I understand the concern. The concern is about conflict of interest. You will then have community members which come from certain communities where others may have put project forward. But there's a way you can either anonymize totally the name of the project owner or you can do this. I've done this in the evaluation where a similar situation exists between the European Commission and the European investment bank where I sit on the board. We actually looked at concrete examples. We could even

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see the names. So there are ways of doing it but you have to sign, of course, extremely hard confidentiality clauses with super-high liability risks in case you would ever talk about this outside of this room and you would only see the document when you debate inside the room. There would be never anything transmitted by email, for example.

There are different ways of doing it but I think the concern is understood and Alan and I, we will have to maybe see what we do with it. What is your feeling about this from the others in this room? Can we just get a little bit your understanding? There's another way of doing. We can just neglect the comments which we received and say it's not appropriate for our environment.

ALAN GREENBERG:

Just to be clear, what was being suggested was not that this group would make decisions but would provide input to the evaluators which could then be ignored or not.

BENJAMIN AKINMOYEJE:

I think for evaluators that are from outside, it will be good sometimes for them to get context or just give them an idea of [inaudible] this is coming from, just for if the evaluators choose to use them as a resource. Where is this coming from? If they choose to, if they don't have clear understanding, rather than just

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[inaudible] whole concept came about or why we decided this. Bring in external persons who are neutral to help select people. But at some time, this neutral body might want to have some understanding just to [inaudible] maybe between two very closely linked idea, just to ask. So, I think it won't be hurtful if we have them, but as I said, not to counter a system already established. So, I think it's a good resource to have, in my opinion. That's what I think.

MARILYN CADE:

Thank you. I'm a little concerned about the group taking on a role that is specific to questions about an individual application. I kind of feel like we need to ensure that we're working in the sunlight, not in a dark closet. Having kind of a shadow around, "Okay, I'm an evaluator and I have questions." If they are general principle-type questions, then we need to keep educating the evaluators as opposed to coaching them on an individual application. It's going to add more time, but it's also going to add potential issues of influence or direction and it's not taking place in any way in the sunlight.

I think if there's an opportunity for the evaluators to say, "We're identifying a gap in our knowledge and understanding, so what we would need would be a workshop with informed people to

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talk through examples of the kinds of questions,” not specific to a particular application.

I also think we have to be careful here that we’re not creating some kind of additional bureaucracy unintentionally around the role of the evaluators.

ERIKA MANN:

I mean, there’s another option what one can do. I was just listening to Marilyn, and Alan I, we could integrate this all into the round of the review of the project. So, after two or three years. If a case comes up which is super problematic, these cases then tend to continue for longer anyhow. This would be another option but maybe [inaudible]. I see Alan is not happy about it, so there you go. We need to find a solution which we are all happy about.

ALAN GREENBERG:

I think there’s a difference between handling things on a timely basis for an individual project and re-guiding the overall path.

ERIKA MANN:

Yeah. Please?

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RUDI DANIEL: I'm not convinced that there's value at that stage in the game of introducing another community thoughts on what is going on. The other thing, I just wanted to ask, I want to backtrack a little bit and say are these funding calls, are they going to be blocked or are we expecting funding calls to come in at any time? Because this is important because if you say, well, the initial funding call may be quarter one or quarter two or quarter three of that particular year, it gives us an opportunity then to have a review after that of the whole process, whereby one or two or three projects would have been funded. Then we'd have something to work on and then a review team can come in and review that process and move on. But I'm not convinced that we need the community to come in at that stage. The value of the community is at this stage in public comments. So, I don't know.

ERIKA MANN: Yes, please?

EDMON CHUNG: I personally think a community advisory panel is useful. We can set it up – and I very much actually agree with Marilyn that it shouldn't be looking at individual applications even if they are anonymized. The applications should be probably abstracted out. Maybe they're at the salient points that the evaluators want to ask this panel.

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But conceptually, we can imagine a panel that would before the first batch comes in would discuss with the evaluators, and then at the end of the first batch, have a review and then, thereupon, maybe a few years – two years, three years – review cycle like that. But the first batch is probably going to be useful, both before and after. I think the community advisory panel would probably have its greatest contribution there in the review. That’s my idea.

Just one more thing. When we think about this, we might need to also try to imagine how this might be composed, like how would it be constituted? Because that might affect how we think how it would work.

ERIKA MANN: Okay. Alan?

ALAN GREENBERG: Listening to the comments, does the concept of saying the advisory panel is available as a resource but not with respect to individual project applications? Does that make more sense?

RUDI DANIEL: Yeah. Most certainly, yes.

ERIKA MANN: Sam, go. I don’t want to always call you. Just go.

SAM EISNER:

Thanks. I think that some of the original descriptions I was hearing actually sounded as if we were instituting some changes to the mechanisms. The more that you insert layers, it could result in a change to the mechanism. So, as you're working through the next draft of this, if you could keep in mind would it change roles and responsibilities within the mechanisms as we understand? The more you go to what you were just saying, Alan, the less I think you have the ability to impact a mechanism.

I think that there's actually a very important item here that Marilyn is touching on, which is the role of proper training of the panel and educational opportunities. That could also be some place where there could be opportunities to liaise with the community or advisory panel of the community members to help frame what the proper training tool are, to help frame the scope of the [inaudible] and to serve as a bit of a resource on that.

So, I think that there are ways to help bring in community views and also keep the independence of the process at the same time and make sure that the community inputs are received or sought in that more sunlight fashion that Marilyn was speaking of.

UNIDENTIFIED MALE:

I think we have guidance.

XAVIER CALVEZ:

Just to add on to that in the same spirit as what Marilyn and Sam just said, I'm going to use common words for the purpose of anything. The multiplication of parties into the overall evaluation process makes it a little bit more complicated and less transparent from the outside, even if everyone inside is clear on what they are supposed to do and not to do. And if there is some kind of an advisory body, we need to be really careful to well-define the roles of the independent panel that evaluates of the organization staff that supports whatever it supports of the board, etc., because then if you have an advisory panel on top or in addition, wherever it fits in the process, how does that affect what the board also does, if you see what I'm saying, and the role of the board in validating and ultimately approving disbursements across the organization?

So, I think let's be mindful in whatever design we provide of enabling a sufficient clarity of the roles and responsibilities so that the process can effectively be operated and the roles of each parties are sufficiently clear so that they can be executed as they are intended to be. Certainly, the advise that can be provided by a body from the community standpoint can definitely be helpful, I think how to provide that advise – how to leverage it – is something we want to be really careful in the design of the mechanism. Thank you.

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ALAN GREENBERG: There was an intent that we had clear wordings by today. It didn't happen but we'll work on something. Perhaps provide options but we'll make it really clear.

ERIKA MANN: Yeah. We will do this. There's just one thing to add to it. Again, we are still struggling about the wording and the role for whatever it is, advisory panel, will do in the future. So, Alan and I, we continue working on it and we will present it to you, of course.

The other one is the question related to the review which kicks in after a certain period of time, typically two, three, up to five years. And this review, it's a professional review. It's the review of the work the evaluators have done, and of course it will reflect upon what we have guided them to do as well. So, is everything clear? Need something to be adopted. What these kind of reviews then do – at least the ones I have overseen in professional funds – they publish this. So, everything is published. Of course, if a concrete name shows up of a company who applied for a fund, the name of course will be blackened, so people will not see the name. But the rest is of course published, so that there's transparency about the recommendation. The concern about what was done and the recommendation for the future, for the evaluators, so that they continue and maybe on a slightly different path.

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So, Alan, we do this again. We do a draft and we send it to this group as early as possible. Please.

ALAN GREENBERG: One issue I think I'd certainly value some input on is in ICANN we do reviews by the community and we hire professionals to do the reviews. Which way should this one go? What we're looking at is not only did the evaluators do a good job but is the overall program doing what we wanted the auction funds program to be doing? Does it need re-steering or just tweaking?

ERIKA MANN: Or maybe you can do a mixture. So, coming back to the European investment bank, they always do a mixture of stakeholders and professionals.

ALAN GREENBERG: Yeah. We don't do that in ICANN. We don't tend to mix the two but we certainly—

ERIKA MANN: Yeah, I know. I'm just—

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ALAN GREENBERG: Certainly, I've participated in groups which have external people on it plus some internal people. Does anyone have any guidance, any thoughts, of which way we should go on this one?

ERIKA MANN: Marika?

MARIKA KONINGS: Definitely no guidance on that question, but I just want to note that there is a section in the report that addresses an issue I think based on what the group has previously discussed, so it's important for you all to review that and I think it has that notion of that there's some kind of review that takes place, most likely by the mechanism or on a yearly basis. Did the process go as we anticipated? [inaudible] after each round of applications or whatever they decide is the way, [inaudible] immediate improvement we need to make to the way the program is managed and then a more periodic review that is carried out, kind of the overall. What we're recommending here is still relevant. Are there changes that need to be made? I think that's reflected by [inaudible] and which section. But again, please have a look at that and make sure it aligns with what you've discussed. And you've just raised a question about that as well, so it may be something that needs further explanation or clarification or guidance.

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ERIKA MANN: Okay, let's conclude this item. I believe we have an understanding. Alan and I will come back to you with a text and recommendation. If we can do an alternative scenario, we will do it. If not, if you believe there's just one model, we will just present you with one idea.

Last item on the agenda for today and we just need to review, and this can be done very quickly at the end, all the topics which we already have to take a decision upon, so that you just are aware and you can guide your community and just draw attention to it so that they feel confident with it. Can you present the last item?

MARIKA KONINGS: You want the next topic?

ERIKA MANN: Yeah. The next one.

MARIKA KONINGS: I don't think there's a specific page here. It's a more general question in relation to the ranking of mechanisms and the selection of mechanisms. I think as you recall for the initial report we did a survey amongst the membership asking whether there was a specific preference for the mechanisms that have been

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outlined, and based on that, the initial report provided some guidance on the preferences of the group. I think all of them were kept on the table, although I think it was clear that mechanism four didn't receive any support and would likely be discarded for further consideration. I think it was also indicated that that stage, one and two or A and B had the most support based on the ranking but C was still as well on the table.

So, I think we're now getting to the point where the group needs to consider how to proceed. Is there a need to do an additional ranking to see if there's a clear preference among membership, so that either one mechanism is put forward to the ICANN board or the mechanisms are put forward in a certain order or whether the group basically wants to put forward any mechanism they believe is viable and leave the determination up to the ICANN board. So, I think that's one of the things the group needs to consider as we move towards a final report because the report will need to come with some kind of level of support for these recommendations. Again, we have a ranking but there was an indication of course in the initial report there was still a lot of flexibility around that, and based on the input received, the group would further consider how to proceed with either narrowing down the mechanisms or providing guidance on a preferred state, or indeed just putting the options – the viable options – on the table for ICANN board consideration.

ERIKA MANN:

Just a quick reminder. Mechanism A is in-house ICANN, a new department. Independent. Completely independent. B would be in cooperation and partnership with another entity. C would be an ICANN foundation, so not a separate new foundation, giving the money to an existing foundation but an ICANN foundation. And D would be giving the whole fund, the whole amount of money, to an existing separate fund or different entity.

We neglected D. From quite early, we said we don't want this. We had done ... Before we sent everything for the public comment, we had focused on A and B, but then the comments we received – and we already had some community members which favored C. But then in the public comment, many came back and said we want stronger independence and favored more model C. So, that's where we are. We need to find now either a hierarchy which we recommend to the board, however kind of hierarchy this is going to be and you decide. Or we are clear and we can say we only want model – and I'm saying now a number and not A, B, or C. We want number 10, 11, and 12. So, just not to express any preference. Judith and then Marilyn.

JUDITH HELLERSTEIN:

I also think – and we had discussed this before with Erika – that we need to also better explain what are the reasons several

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people went with mechanism B instead of C was because there was a fear, one, setting up a foundation would be difficult and time-consuming and expensive. So that's why several went with B because we did have concerns about conflict of interest and wanted to make sure that it was totally independent of ICANN. I think that we want to, as we discuss before, that the cost is not much of a factor in setting up an internal foundation and it's not difficult to do. It's something that we want to discuss.

Also, some people went with A but with the understanding that in turn ICANN department would still not be selected, that it would be outsourced to someone else. I think that's very much confusion why people went with A or B, or even C in that point. Thank you.

ERIKA MANN:

Thank you. Marilyn, please. Alan, I have you.

MARILYN CADE:

I'll say what I was going to say, but first of all, I need to ask Judith a clarifying question. You're interpreting people's decision-making. Are you interpreting what your group's decision-making was?

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JUDITH HELLERSTEIN: I'm interpreting – at least I know from the people in our group and people who I've talked to, others, what their thoughts were when they made, why they picked A, B, or C.

MARILYN CADE: And the group you are representing?

JUDITH HELLERSTEIN: Is At-Large.

MARILYN CADE: Okay. I think it's important for us always to remember that there a lot of new people here and we have three categories of participants. We have members who are appointed and sent by an organization and who are accountable to that organization and they are the only people who vote. We try to avoid voting and made decisions by consensus. But as I am sent by an organization, the CSG, ultimately I am responsible to them for making sure that I am speaking about what their interests are. So, when I talk about my understanding, it is my understanding of what my group who voted to send me here is interested in. And I think that's a very important point, because otherwise, we begin to reach the idea that we are in a position to take all input equally, and ultimately we're not, because the group is open to observers. We have had extremely low attendance from observers and also

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from participants. And I think we have to keep in mind that we don't want to be challenged about the legitimacy of our process but to adhere to our terms of reference. So, I make that comment to go on now to answer your question.

I am very much on the record but I'm going to repeat it quickly for the benefit of people who are new attendees today. From the CSG perspective – and I think Anne is online and has spoken about this herself individually – we are extremely concerned. First of all, as everyone would expect, major corporations very often have their own foundations and are very experienced in the separation of church and state requirements and legal requirements, etc. It doesn't mean that the person is necessarily from big business or that is participating in ICANN had that responsibility but they certainly were experienced within their company.

So, there's significant concern on the part of the CSG members who are participating about the reputational risk to ICANN of option A and we are not ... Our preference has been expressed for B. Our preference has been expressed for C. So, I would prefer that we try to agree on sending two recommendations over to the board. But here's my perhaps very tough question. It's going to be extremely disruptive if having worked for more than two years in what is supposed to be a community process to make recommendations, to be overridden by the board. Extremely disruptive. Perhaps I should repeat. Extremely disruptive.

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That doesn't mean that the board doesn't have the ability to do so. However, we keep saying that decisions are taken and advised in a bottom-up consensus-based manner by the community.

So, if the decision is taken to put forward a recommendation that has received a number of strong expressions of concern, then I think we are going to have to figure out how we address that in our second public comment period.

JUDITH HELLERSTEIN: Just to clarify, I am also an elected member of At-Large.

MARILYN CADE: Judith, I wasn't making a comment about you. I was making a comment for people who are new that we have different categories because not everybody is familiar with the way that cross-community working groups or established or that they're different from just a group that's open to anyone.

ERIKA MANN: Alan, please.

ALAN GREENBERG: Look, we've been debating this now for close to two years because the issue came up early in the process. There have been, as we've pointed out initially at the very beginning of this

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meeting, some misconceptions about what the various options meant. There were people who strongly believed that if we pick an internal department that implies that it is ICANN staff members doing the selection. So there have been misconceptions along the way. But there have also been strong views from various points of view and lots of people using words in various ways. Judith before used the term an internal foundation. I'm not sure what that means. I think it means a foundation wholly controlled by ICANN, like PTI, but it's very much a separate corporation.

So, we've had different terminology. We've difference of agreements. We've had misunderstandings. Chances are, if we come up with a recommendation, somebody will have disagreed with it. Our challenge is to try to find a consensus role, a consensus position, that I'd like to think we can try to do now that we hopefully can get the definition straight so everyone is talking the same language. But we may well have something that not everyone agrees with and that's the nature of the beast.

ERIKA MANN:

Xavier?

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XAVIER CALVEZ:

Thank you. I just wanted to come back to help clarify the point that Judith was making earlier on the Mechanism A and the fact that this mechanism is represented as an internal ICANN structure and support as opposed to the other mechanisms that are slightly different. And in that Mechanism A when we say ICANN department, which I think is just logistics, but ICANN Org organizes and manages basically the process, this is not to say that ICANN Org does the evaluation. The evaluation, like for any of the other mechanisms, would be done, I think we all agree, by an independent panel. It's simply that, as opposed to foundation being created, or a third party being involved in the operation of the process, then ICANN Org would be solely involved in the organization of the process. However, the evaluation would remain being carried out by an independent panel, like it would be in any of the other two mechanisms. So, I'm hoping that helps clarify.

I think Marilyn was pointing out to the challenge of the board potentially coming on the backend of a process with a different decision than the one that would have been made by the panel. It's obviously an entirely undesirable outcome for which it is therefore very important to have the right steps up front in the process so that there's no – ideally, no – challenge on the backend because we will have checked correctly up front the consistency with the mission, the lack of conflict of interest, etc. that the

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fiduciary duties of the board require it to pay attention to. And it would be sad that on the backend of a process of evaluation we suddenly find out that these preliminary criteria were not originally met.

So, from a process standpoint, I think we need to make sure we do the right checks in the right sequence, so that [inaudible] Marilyn was pointing out. I actually just [inaudible]. Thank you.

ERIKA MANN: One external question and then I would like to make a proposal.

UNIDENTIFIED FEMALE: This is a comment from Anne Aikman-Scelese. If someone within ICANN has the power to hire and fire grant-making staff, independence will come into question if only via the appearance of impropriety.

ERIKA MANN: Yeah. We have many, many questions in the comment period which actually relate or bring ICANN's independence into question. So, there's a kind of concern which we have to address. So, I don't know how we are actually bringing our selection process with regards to a single mechanism and actually forward, because I believe ideally we just have one recommendation. If we

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can't have one recommendation, we definitely shouldn't have more than two.

I believe – but that's my very personal belief. So, please don't take this for any position and I'm not ... So, I'm relatively independent in this group. My opinion is between one and ... So, mechanism in-house, A, and mechanism foundation. Both are somewhat ICANN institutions. ICANN would be – the foundation would be – a new constituted foundation related and attached to ICANN. So, it's a long-term investment.

JONATHAN ROBINSON: Sorry, Erika. Just to check. Did you mean A and C? Is that what you said, when you said—

ERIKA MANN: A and C. Did I get it wrong?

JONATHAN ROBINSON: It just wasn't 100% clear to me which are the options.

ERIKA MANN: Apologies. Yeah, A and C. So, either it is in-house or it is a newly created foundation. But it's an ICANN foundation. Like many companies do. It's not something completely unknown. But the independence of course is higher. The independence is higher in

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particular to the public because the public sees ... Even if internal structures are, to some degree, identical between an in-house operation and a foundation. For the public, it looks a little bit different. And of course you have different audit procedures, etc.

So, I would take these two models not as a total opposition but I would see them as a model which both are workable definitely. The concern in the community clearly is higher with regards to an in-house model. At least that's what we sense from the comments we receive.

So, just my proposal. If we can select just one model, we would have clearly probably select these two, ignore model which we have currently still on the table, B, to build a cooperation with a separate entity. I don't think anybody is favoring this any longer. I haven't heard a single comment supporting the idea to build a corporation with a separate entity. So maybe we are now then ... If we can't select a single one, we are proposing two but we will clearly have to say what this would mean. Alan, Jonathan, Becky. Was it you? We have eight minutes left, I'm reminded.

ALAN GREENBERG:

Okay. I think Anne's comment is really, really critical. If we decide that A is the right option with the understanding that it will be a contracted group that does the selection, but then ICANN says, "According to our contracting rules, only our purchasing

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department and someone else can get involved in the selection, and they have sole ability to do the firing,” that becomes very problematic. So, if there cannot be any other external involvement other ICANN staff involved in selecting and firing the group, we have a real problem and that whole method probably becomes unviable, whereas if there’s a foundation with a separate board, it becomes a different issue. So, I think we may need some clarity on that and I only say it because I’ve been involved in other things with ICANN where we’ve been told that the contracting rules are in violet and cannot be changed and have to be done only by staff. So, that may be a make or break one for option A.

ERIKA MANN: I have Jonathan, Becky, Benjamin.

JONATHAN ROBINSON: It’s Jonathan for the record and I am a mere participant. I found myself as a participant, or speaking on my own behalf, pretty much agreeing with you, Erika. I think if we are to ... I like the idea of trying to get down to at least a couple, if not one, mechanism. And to the extent that we’re able to do that, I think I agree with you that they should be A and C.

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What I wasn't clear on, and maybe I suspect it was because I wasn't concentrating or missed something, is if there is an opportunity to then take A and C out in a further public comment because one option, if we were to do that, would be to put it out for public comment and say, "Look, the group settled on A and C. And by the way, it would be ideal if we were to just present one method to the board." If we cannot settle between them, we could pass A and C to the board, but in an ideal world, we would settle on if not a hierarchy, a choice of one. So, I think that could be – that's both my comment in support of what you said earlier and perhaps a suggested way forward. Thanks.

ERIKA MANN:

I want to go around. I want to really have everybody. Thank you. Becky? You want to skip? Benjamin. Somebody here which I'm missing? No.

BENJAMIN AKINMOYEJE:

So, with Alan's intervention now, I'm thinking again. But ordinarily I would have gone with the first one, A, because it's less expensive and it's using in-house staff. Most organizations will have grants giving units and they have clear procedures of what to do, independence and all of that. But with Alan's intervention, I'm thinking again what if something goes wrong? So, that's my stand. I go with A.

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ALAN GREENBERG: To be clear, Alan’s intervention was a question to which we haven’t had an answer.

ERIKA MANN: Yeah, Benjamin. That’s one of the points is the money. I come to you, Xavier, in a second. Keep in mind, many companies when they created their foundation, they often outsource their own people and hand them over and said, if you have an agreement, for the start 20 people and later up to 50 people. So, that’s somebody you need to look into. There needs to be somebody from the financial side really looking to what the difference in cost it would mean. Xavier, please.

XAVIER CALVEZ: Thank you, Erika. I just wanted to point out the fact that I think everyone here agrees that when we say independent panel, it needs to be independent in the selection, in the mechanisms, to identify and appoint members of the panels. Need to be designed such so that the members are effectively independent. How we go about that, we’ll need to talk about that later. This becomes implementation at the end of the day. You need to set the principles, set the requirements, justify why the requirements are set the way they are.

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Then, after that, it will be our job as ICANN Org to help organize a process that leads to that desired outcome. I think you should make very important points to describe very well your desired outcomes which is an independent panel which makes a lot of sense. Then, how we go about it is how we will transparently, in collaboration with the community, be able to demonstrate this is how we are suggesting to do this, so that the panel is independent. I think that getting into procurement procedures [inaudible] is a completely distracting conversation because it's not actually relevant to the problem. Thank you.

ERIKA MANN:

Marika. We have three minutes.

MARIKA KONINGS:

Thanks, Erika. This is relevant to the next item which I don't think we have time to discuss now, but it's a comment on the public comment. There are, of course, other ways in which you can get input. To Jonathan's point, taking this out, all the SOs and ACs are charting organizations of this group. You could also go back with a direct question or find other ways because a public comment period will of course add to your timeline. Of course, it's also an alternative but you may also want to consider other ways in getting that feedback on whether you can whether you can [inaudible]. Just a suggestion.

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JONATHAN ROBINSON: Just a quick response to that. Marika, just for the record, I would have no objection to a more efficient mechanism than a public comment period if we had some very directed and specific questions, A or B. I think putting more open-ended questions through that kind of mechanism is a problem but having directed specific questions to the group once [inaudible] resolve is a useful tool. So, thanks for highlighting that.

ERIKA MANN: Okay. So, we have [inaudible] on our list. We're at the end now. Only two decisions to take. So, one is the decision we're just talking right now about. Do we build a hierarchy or can we make a recommendation for a single model? And if we have decided about a hierarchy, how do we present it to the SO and the AC and to the board, so ideally they can come back to us with some more comments and let us know what they favor.

Then, the second one is do we need to go to a new public comment period or can we actually handle the few remaining questions in the sense that we put them forward directly to the SO and ACs? And of course we have the board obviously involved anyhow. Then we get a response back quicker and faster than if we would go for a public comment period. So, these are the two remaining. All of the work is done. So, what I recommend ... It is

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done. You want to point out ... I know. Marika always wants to do more work. I think we have done most of the work. I'll give you a second just to explain what is still leftover.

So, what I recommend ... Jonathan, can I come back to you? Because you jumped on this. Marilyn and Alan. We just sit on the question how we would present the mechanism and in the case we would select ... The group would recommend to select just two mechanisms, how we would then present it to the SO or to the AC, or to the public comment period, depending on what we decide. Then we can send it to the whole group. Can I recommend this? Yeah. No rejection, so it's approved. Somebody else want to join? No? Okay, fine. Perfect. You want to remind us what we still have to do?

MARIKA KONINGS:

Yes. Thank you, Erika. So, following this meeting, staff will go ahead and update the outstanding questions document by marking what has been completed. There are a number of items in there that we don't think [inaudible] to the nature of the issues we discussed here but it will still require the group to review and make sure that you're comfortable with what has been suggested.

Of course, you also need to review the report. We'll also make updates that we discussed here that the group agreed to. So, I

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think our question is what will be a reasonable deadline for you to review the report, review the outstanding items so we can indeed move to closure? So, we're going to recommend 19<sup>th</sup> of July.

ERIKA MANN: Is this okay for you?

MARIKA KONINGS: Does that work for everyone as a deadline, final opportunity to flag any further issues that need to be discussed? 19<sup>th</sup> of July?

UNIDENTIFIED FEMALE: When are we having the meeting?

ERIKA MANN: The 9<sup>th</sup>.

MARIKA KONINGS: No. We'll have the deadline the 19<sup>th</sup>. We need then to assess the nature of the issues, see if that requires a further conversation as a group or whether we can resolve some of those issues by mailing list. So, I think we need to decide by the 19<sup>th</sup> what has come in to determine what [clause], if any, we need or if there are other ways to resolve the issues.

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ERIKA MANN: What is the deadline then for you?

MARIKA KONINGS: 19<sup>th</sup> of July.

ERIKA MANN: No, for the call, the next call when we come together again.

MARIKA KONINGS: Ah. Well, I think we need to determine on the 19<sup>th</sup> of July the number of issues we received to see if we need a further call or whether we can provide a next iteration of the report.

ERIKA MANN: No, no, no. We need to fix a call. Fix the call a week later, after you receive the comments back on the 19<sup>th</sup>. What is the week later? Because otherwise we will never come to an agreement. Just fix it.

MARIKA KONINGS: It's the 24<sup>th</sup>. I'm on vacation. 31<sup>st</sup> July?

ERIKA MANN: Yeah, go for the 31<sup>st</sup>.

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MARIKA KONINGS: Okay. Next call, 31<sup>st</sup> July.

ERIKA MANN; Yes, please, Marilyn.

MARILYN CADE: Thank you. I don't know if Ching is still on the line. Perhaps I might invite the co-chairs to make an inspirational call to the members in particular to remind them that this is a chartered working group. The GNSO has discussed it but not in this level of detail and I think the members have to take it back to their ... They need to be planning it around this deadline.

ERIKA MANN: Excellent idea, Marilyn. I will put this on our action item list. I will discuss this with Ching and we will do it. Absolutely. Totally right. Excellent idea. Is there anything you want to mention?

PETER: Yes. I've been listening to the discussion and I'm still trying to get my head around some of the discussion. I'd like to support the idea you raised, like on the mechanism. Still open it to the public but prior to opening it to the public we should do an assessment because leaving it open-ended to the board, they can just go with

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anyone but it's good for us to do an assessment and come to a conclusion on what is good for the community. That's the comment I want to make.

ERIKA MANN: Thank you so much for supporting this. This small group will work on it and then we will present it to you all. Just be sure that you are on our distribution list in case somebody ... Because we have some new participants here. In case you are not on it. Please ensure before you leave the room everybody has your e-mail address, otherwise you will not receive the updated information. Thank you so much. Okay, have a great day. Enjoy. There is food over there, apparently.

UNIDENTIFIED FEMALE: Not for you.

ERIKA MANN: No, not for us.

MARILYN CADE: Wait a minute.

ERIKA MANN: Not for us. We're going to the cat's corner or dog's corner.

MARILYN CADE: Wait a minute. Wait! We had to work three-and-a-half hours and we don't get—

RECORDING: The recording has stopped.

**[END OF TRANSCRIPTION]**