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UNIDENTIFIED MALE: Let's get down to business.

CHERYL LANGDON-ORR: We're a minute past the appointed 15 of the hour. Yeah, I've got back to back calls as well, Mathieu, so a hard stop is fairly important.

UNIDENTIFIED MALE: Hi, everyone. Can we remember to mute our mics if we're not speaking? Thank you.

SAMANTHA EISNER: Hi, everyone. This is Sam Eisner from ICANN Legal. Thanks for taking the time to set this meeting out. We've been working closely with Sidley and Alder on continuing to move forward on the bylaws. Holly and Rosemary, are you each on the call?

UNIDENTIFIED FEMALE: Yes.

SAMANTHA EISNER: Okay, great. Holly, do we want to maybe discuss this the way we did last week, where you took the group through the additional questions that we had sent?

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

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HOLLY GREGORY: I will try. I may have Rebecca take us through the CWG-related ones. But certainly.

SAMANTHA EISNER: Okay. [inaudible], did you have the question document that was circulated last night?

UNIDENTIFIED FEMALE: Yeah. We did have it. We have it.

SAMANTHA EISNER: Okay. Brenda or Grace, is that something you can project into the room?

UNIDENTIFIED FEMALE: Sorry, Sam. I had that on mute. So to project the document into the room?

SAMANTHA EISNER: Yeah. That would be great.

UNIDENTIFIED FEMALE: Okay. Great. One second.

SAMANTHA EISNER: Thanks.

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UNIDENTIFIED FEMALE: I also wonder, Sam, if it's worth giving the group in general some flavor of the progress that we've been making.

SAMANTHA EISNER: Yes. I think so. I imagine it'd be [inaudible] Do you want to [inaudible] on that, Holly?

HOLLY GREGORY: Yeah, just very generally. Drafts have been of various sections of the bylaws for both CWG and CCWG have been flying fast and furious between the legal team. It's a very cooperative tone. People are working really hard. We look like we're going to have something for you on the deadline that you can all then review and weigh in on. It will need certainly global proofreading. We haven't yet had time to look at it as a whole because [inaudible] on individual sections.

But given the very short timeframe to get this done in, I'm pretty pleased with how it's coming along. It's all a long way of saying it won't be the final polished product that we will expect at the time that you see it. But it will reflect a lot of hard work from the teams and a lot of cooperation.

Oh, and, Sam, I don't know if you have anything to add to that. Or Rosemary.

SAMANTHA EISNER: No.

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[ROSEMARY FEI]: Just that we'll continue to work on it after we send the draft on Saturday to do all that final polish and cleanup. I don't think we have an exact estimated time for when we could get that done, but it'll probably take a few days. Does that sound about right?

HOLLY GREGORY: I think it will be a process during the time that CCWG and the Bylaws Subgroup are reviewing it.

UNIDENTIFIED FEMALE: Holly, just to add to that, I'm not sure this is the right time to discuss it – maybe it's something for closer to the end of the call – but I know that we've anticipated that there might be questions that we provided to the Bylaws Coordination Group that aren't fully resolved yet. But we still want to make sure we get the bylaws packet out to the community for that initial review. This of course would be before the public comments start. So we did want talk to the Bylaws Coordination Group a bit about how it would continue working and answering some of the small questions while the groups have the bylaws under review before the public comments open.

HOLLY GREGORY: Okay. I guess let's turn to the questions now. These are questions that we sent to you and our apologies. I know that they came last night. The first one regards enforcement, and we just want confirmation that the decision whether to trigger and enforcement process is made by the

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decisional participants who supported the exercise of the community power. This is in the event that the Board has failed to comply with a request by the empowered community, the user community power.

Any discussion? We can –

BERNARD TURCOTTE: Holly?

HOLLY GREGORY: Yes?

BERNARD TURCOTTE: This is Bernie. I thought the Chair would be on. I've had some communications with the CCWG on this, and it seems that the preferred mode of decision would be to use the same process as is used for the IRP before going to help the community decide if it should go into mediation followed by IRP.

HOLLY GREGORY: Bernie, just to let you know, in the Adobe Room, Mathieu's hand is up. Mathieu, if you want to...

BERNARD TURCOTTE: Okay. Great.

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MATHIEU WEILL:

Well, I think Bernie was perfectly on spot on the conversation we've had. Jordan Carter was the lead in this part of the CCWG report. He joined because obviously it's quite an uncomfortable hour for his time zone. I think this level of [inaudible] in introducing the notion that a decision could be made by only the decisional participants who support a power. We believe that it's interesting to flag this issue as maybe not fully resolved in the report, but stick to the existing escalation process. It seems to us to be in the spirit of the report as it's been designed, although we are aware that it's creating longer delays.

HOLLY GREGORY:

Okay. That's fine. That's very clear. That's fine. That's absolutely fine. It means that there's eventually two escalation processes, the escalation at first to use the community power, and then, when it gets sort of refused and blocked, an escalation path to decide what kind of [inaudible] process. That's absolutely fine. Thank you for the clarity.

Okay. The next question relates to a request from the CWG Stewardship Design Team around the IANA budget. It's a request that we include in the bylaws, language relating to a three-year reserve for PTI-related expenses and contingencies.

As you know, the final proposals for both CWG and CCWG contemplated that there is an annual IANA budget the empowered community gets to weigh in on. The request for this rolling three-year reserve was not specifically contemplated by either the CWG or the CCWG final proposal, and it hasn't been a subject of public comment or review. So we want guidance on how we should address this request.

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Any comments? I see Kavouss has his hand up.

KAVOUSS ARASTEH: Hello? Do you hear me?

HOLLY GREGORY: I do.

KAVOUSS ARASETH: I don't think that there is any rationale behind this proposal to have a reserve three-year budget put aside for the PTI operations. PTI operation is not totally disconnected from the entire ICANN operation. It is affiliated, and I don't think that, if there is any problem in the ICANN totally having a three-year budget for IANA functions and operations by PTI would dissolve the whole issue. You [face] the problem probably everywhere, and I don't think that there is any rationale or any sound argument. And there's even the practicality of this – having three years' budget aside for IANA functions/operations.

This is an operational matter, and I think before going further, we need to ask or request ICANN to provide the information. Even if there is any decision, I don't think that we should include that in a bylaw. It is an operational issue and has nothing to do with the fundamental issue to be put into the bylaw. Thank you.

HOLLY GREGORY: Lise, I see your hand is up.

LISE FUHR: Yes. Thank you. Lise Fuhr, one of the two Co-Chairs of the CCWG. We have discussed the principle of having a fund or money set aside for IANA services, and that's our PTI. That has been agreed by the group as such. When the Design Team brings it forward to the Bylaws Coordination Group, it's more to, in a timely fashion, bring this up and actually try to have a bylaw drafted, even though it's not been decided by the CWG.

We will actually discuss it later at our call today, if we think it should be a bylaw or not, but we have supported the principle of having this kind of financial autonomy and money to cover a reserve fund. Thank you.

HOLLY GREGORY: Thank you, Lise. I see that, Greg, you have your hand up. Greg Shatan?

GREG SHATAN: Thank you. I think Kavouss actually stated the reason why it is important to have this reserve: because we do intend there to be a certain amount of financial autonomy, or at least separation, between PTI and ICANN, not quite as much if it were, say, a proof of bankruptcy remote vehicle, but the idea is that it should be able sustain any financial issues that occur at ICANN without necessarily even noticing them, which is the idea for a separate reserve.

Furthermore, as Lise notes, this is something coming out of the CCWG, so I think at this point it becomes an implementation question: how to implement it and whether it goes into the bylaws or not. But certainly



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the idea is to cement it in there as one of the key criteria of the PTI-ICANN relationship. Thanks.

HOLLY GREGORY: Thank you, Greg. Cheryl, I see your hand up.

CHERYL LANGDON-ORR: Thank you, Holly. Following on from Lise and Greg who have the right – I can assure you – as one of the active participants in DT-O, we have been talking about this. We have been advising this, and we have had this discussed in CWG for a significant amount of time, and certainly before we went to publication for our CWG recommendations.

So let's make sure we're really clear. This is not a new and sudden concept. However, it is clearly implementation, and we may indeed be able to deal with it under implementation. I want to compliment to the record the excellent work that Xavier and his team are already doing with DT-O on this matter and other related issues.

That said, DT-O will be discussing this further in the CWG call following on with this call. CWG may get back to us with a committee of the whole opinion. But that opinion, should it be that they feel it needs to be some sort of bylaw, I would like to think a lighter touch if needed at all. It was important to have it flagged to the Bylaw Drafting Team. That was the intention when we passed the message on via Becky.

But let's not cloud the issue with "This is new." This is not new. This has been a longstanding discussion. Certainly it may very well be dealt with

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purely under implementation. But let's see what happens with the CWG call to follow. Thank you.

HOLLY GREGORY: Thank you, Cheryl. I see that Cherine has his hand up. Cherine?

CHERINE CHALABY: Yeah. Hello? Can you hear me? Hello? Can you hear me?

HOLLY GREGORY: Yes.

CHERINE CHALABY: Okay. Thank you. Sorry for weighing in a little bit late on this topic. I only have points to make. One is I'm not clear how this three-year would fit in with the caretaker budget because the caretaker budget guarantees on an annual basis. There is fund and continuity. Or the IANA budget.

The second point I'd like to bring to your attention is that, if we put something into the bylaws, we have to be clear that, in the event of a separation – or let's say the annual cost is about \$8 million to \$10 million. Let's say we create a reserve fund of \$25 million. If there is a separation but the new operator doesn't have the right to take that whole \$30 million or so with them, I'd like to just put this for consideration.

So we need to have some protection into the bylaws [that's] not as straightforward as that.

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Thirdly, I think creating more funds is more complicated. We already have a reserve fund at ICANN. What we could do is consider that the reserve fund is sufficiently of the size that can cover those three years, rather than create another separate fund.

Those are points of input for the discussion. I have not personally reached the conclusion whether it is in the bylaws or not, although I am more leaning towards that this is an operational matter. We already have the caretaker budget, and I'd be happier with a bigger reserve fund, including in that an amount for the IANA fund. Thank you.

HOLLY GREGORY:

Thank you, all. That's very good input. I see that Mathieu made the point that this really isn't the point to substance if weigh in on this issue. We raised it simply because it was a matter that was not clearly put forward in the CWG proposal.

We will draft a light touch bylaw for consideration in the first instance by I guess the CWG Stewardship Design Team and for this group. So I think that that's the direction that we have based on the conversation here, and I guess a final consideration of how it gets included can be left for another conversation. But we will go ahead and draft that light touch for you to take a look at.

The final issue also relates to a topic that isn't set forth in the CCWG proposal. It relates to: currently, ICANN has policies that provide limitations on who can serve as a Director. For example, the Chair of an SO or an AC can't also serve on the Board of Directors.

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We wanted to confirm that the Chairs of the decisional participants, and also the persons who may be designated in their stead to serve on the EC Chairs Council, which is the group that actually makes sure that the empowered community's wishes are implemented, cannot be nominated or serve on the ICANN Board. This would be consistent, as I said, with other provisions in the current bylaws, which we've set forth in the document on the second page.

I'd like to open that issue up for your input and guidance. The notion here is that it's meant to try to avoid the conflicts of having decisional participants on the – the Chairs of those groups and key folks who are implementing empowered community's wishes also on the Board of Directors.

Clearly, it's not a blanket prohibition for all time. It doesn't mean that if you once served as a Chair of an SO or an AC as a decisional participant that you could not become a Director at some point when you're no longer serving that role for the AC or SO.

I see Cherine has reflected that it makes sense to avoid a conflict of interest. We thought that this was in line with the notion of avoiding conflicts, avoiding the appearance of conflict.

I see Cheryl agrees. I see that Mathieu has his hand up. Mathieu?

MATHIEU WEILL:

Yes. Thank you very much, Holly. I fully agree on the principle of avoiding conflicts of interest here. My point is also to stress that notion of a Council of Chairs, or whatever the name is, is definitely part of the

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implementation. I understand it was a construct that came in the exercise of drafting the bylaws. Because it has the name “council” it just gives an idea of concentration of power, so I would encourage the drafting teams, the lawyers, to provide some clarity, comments, notes – I don’t know – that explain exactly why there is a need for a council. You know that in our groups there has been a lot of discussions about avoiding concentration of powers, avoiding specific groups to be empowered, and specific individuals.

So it’s certainly a notion that we’ll need to educate about if we really need it. So that’s a confirmation on your question, but it also raises the need for clarity on the CCWG side, at least, on why this group is absolutely required.

I hope that’s clear. Thanks.

HOLLY GREGORY:

That’s very clear, and we agree. It is absolutely necessary, and there is a memo that we can point you to. We also note that it is contemplated specifically in the CCWG proposal in relationship to the IRP. But it is needed more broadly to make sure that – you have to have someone make sure that the decisions of the community get implemented.

Now, it’s really a pass-through. There’s not a lot of action that this group has to do, but they have to make sure that a notice is given to the community and things get posted. It’s very, very ministerial. It’s not a decision body.

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So we will make sure that that's clear. It's drafted with a very light touch in the bylaws, but we had to have something in the bylaws. We could not leave it fully for an implementation stage. It's a place [inaudible] in the bylaws. You'll be able to expand on it, and we agree fully with all of your points. We're very sensitive to the concerns about the community that they don't want it to be a center of power, if you will.

Kavouss, I see that you have your hand raised.

Kavouss, would you like to weigh in? We're not hearing –

KAVOUSS ARASTEH:

Separation of powers... I fully agree that we have to properly address that into bylaws that these decision-making persons could not be there, in the management or in the executive power. The only thing is that it should be associated with some time [within] five years or six years. I remember there was some timeframe associated with that, but I don't recall exactly the time. So it must be associated with some time. Thank you.

HOLLY GREGORY:

Kavouss, I apologize. I didn't get the point of timeframe. Associated with what timeframe? For serving on the EC Council?

KAVOUSS ARASTEH:

Yes. My point was that people involved in the decision making could not serve as a Director in ICANN. Perhaps we should put some time, within five years of their last participation, in the decision making, or within six

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years of that. After that, if they are not involved, they are candidates or they are available to be that. So we should say that it is not for [others]. It is just for time, until the time they are in the decision making, and after that, sometimes also they should not participate in the directorship before because they have been involved in decision making for some time.

This is something in all organizations, as such. If somebody is holding a position in the legislatives, they could not be the executives. After some years, they could be, but for some years, even if they are not in the legislatives, still they could not. So we should have some time associated with that. I don't know if I explained it properly, or if still you need further explanation.

HOLLY GREGORY:

No, I understand it now. I just want to point out that the current provisions that are in the current bylaws around no person who serves on an SO council can serve as a director or liaison. I don't believe there's a timeframe around that. I believe it's about simultaneous service.

I also note the point that this would be a new requirement that's not in the CCWG proposal – question of whether a discussion around time period should be left for further discussion and implementation. We could begin with the provision of – right now, it can't be simultaneous. I don't know how people feel about that.

I see that Greg Shatan's hand is up.

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GREG SHATAN:

Thanks, Holly. I agree. We should not go on making new requirements here. We should mirror the existing one, which is simultaneous service is prohibited, but not moving from one to the next. Take, for example, when you want to disqualify Jonathan Robinson from being on the Board of ICANN for five years. Or Byron Holland, or James Bladel. It doesn't make sense. The idea is to avoid people wearing two hats at the same time, not to insulate the Board from the community or disqualify the most active and respected members of the community from serving on the Board.

So I think we should just mirror what we have here in Article 6, Section 4.2, and just go there. Anything beyond that is beyond the remit of this organization, to say the least, of what we're doing and I think actually is counterproductive and counterintuitive. Thank you.

HOLLY GREGORY:

Okay. I see some agreement with that on the chat and some clarification from Sam Eisner around what the current provisions provide. I take it, Greg, that that's your old hand.

If there are no more comments on that, those are the outstanding issues we had. I do note that there are probably some more outstanding issues coming down the pike. We are going through the CWG draft bylaws and have some questions that we will be sending to you all in the next 24 hours or so.

I also know that Becky has circulated some language about a potential new language on the regulation issue. I know that we've just gotten it,



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as has ICANN Legal, and now would like some time to think about it before having a discussion with the group.

Is there anything else we should be talking about on this call? Any other business? I know, Rosemary or Sam, if you have anything, or anyone in the group – Greg, is that a new hand?

GREG SHATAN:

Yes. It's a new hand. I'm just trying to think, since we're going straight from here to the CWG IANA meeting, just to reset what we need to bring from here to there in terms of – obviously, we have one of our Co-Chairs on the line. She may already have that completely under control, but I thought, nonetheless, it might make sense if we were to make sure that we're bringing the right things back to the CWG.

HOLLY GREGORY:

You know, we need more time. We've got some very broad parameters to those questions, but they may get resolved when we pass them by ICANN Legal. So it's a little bit premature to raise them with you.

Rebecca, did we get all the answers that we needed from them on the old punch list?

REBECCA GRAPSAS:

No. I think that was going to happen on the [poll].

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HOLLY GREGORY: Okay. So there's one issue. Rebecca, do you recall what it is? We sent you – I think you have some issues that you're going to be discussing on the call, but we sent you I think yesterday – I don't have them in front of me. I apologize. There were very fairly simple.

REBECCA GRAPSAS: [inaudible]

HOLLY GREGORY: Yeah. I'm sorry. We're going to have to circulate a draft later today. I see there's a comment from Kavouss.

KAVOUSS ARASTEH: Yes. If I remember, we have not decided on this issue of the reserve account and the inclusion of that in the bylaw. There are two different issues. Having a reserve account for three years or each year is one issue, and cross-referencing and putting that in the bylaw is another issue. I have no difficulty with the first one, but I have serious difficulty in putting it in the bylaw because of the nature of the issue, which is operational.

So I think we have not yet decided if there is any [need if we] go back to the CWG could say that the issue was discussed at this group, but they have not decided yet whether it should be six-year budget, and, second, whether or not it should be in the bylaws. It has not yet been decided. Am I right or wrong?

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HOLLY GREGORY: Kavouss, I think, when looking at the other comments that were made, we agreed that we would draft a very light touch bylaw for consideration so that we have something to look at. I think that that was where I understood the center of the comments to be.

Greg, is that a new hand or an old hand?

GREG SHATAN: Sorry. That one is an old hand.

HOLLY GREGORY: In that case, we don't have anything else. Lise has indicated in the chat that she has the questions that we've sent around super majority and 30 days. I think they're going to be very straightforward.

Thank you. I think we can close the call.

UNIDENTIFIED FEMALE: Thanks, Holly. Thanks, everyone. Bye.

**[END OF TRANSCRIPTION]**