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TERRI AGNEW: Good morning, good afternoon and good evening. This is the At-Large Ad Hoc Working Group on the Transition of US Government Stewardship on IANA Function on Tuesday 16<sup>th</sup> December 2014 at 13:30 UTC. On the call today we have Tijani Ben Jemaa, Cheryl Langdon-Orr, Olivier Crépin-Leblond, Gordon Chillcott, Tomohiro Fujisaki, Remmy Nweke, Alan Greenberg, Roberto Gaetano, Glenn McKnight, Yasuichi Kitamura, Aida Noblia, Fatima Cambroner. Apologies, we have Eduardo Diaz, Alberto Soto, Mohamed El Bashir and Jean-Jacques Subrenat. Just joining us is Suen Ojedeji. From staff we have Heidi Ullrich and Terri Agnew.

Our Spanish interpreters are Sabrina and Veronica. I'd like to remind all participants to please state your names when speaking, not only for transcription purposes but also for our Spanish interpreters. Thank you very much and back over to you, Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you Terri. The first Item on our Agenda is the adoption of the Agenda itself. We're going to be looking at the usual operational community progress outside of ICANN, and then we'll be following up on the IANA CCWG 21-day consultation period that's now open, that will close in a few days' time. The ALAC has a statement for this. Then the recent development in the work of RSP 3 where structural arrangements of the MRT and seat allocation at the MRT are currently being discussed. Finally, Agenda #5, if anybody has feedback or comments they want to make regarding the CCWG on Accountability, whose second call just finished about half an hour ago.

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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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Any amendments to the Agenda are welcome now. The Agenda is approved. We can go through Agenda #2, the review of the AIs from our last call. There was one AI, for Alan to hold the pen on drafting a statement and for all the volunteers to help Alan in that task. This has been done. We can go to Item #3, but I see Alan with his hand up?

ALAN GREENBERG:

Thank you. I did manage to do an update of the statement yesterday, incorporating any of the comments that I undertook sufficiently. There were a number of questions from Fatima that may well need to be incorporated, but I didn't quite have a good enough grasp on them. I did what I could. I submitted it during by December 15<sup>th</sup> LA time. Sadly they appear to be using UTC time to decide what date it is and therefore it didn't get published today, which is unfortunate, but it will be out tomorrow and it's out there for public consumption if anyone happens to wander by.

OLIVIER CRÉPIN-LEBLOND:

Thank you Alan. We'll be discussing the statement in a moment since it's one of our Agenda Items. Let's go to #3, and that's the review of other operational community progress work in the RIR's work in the IETF. Are there any updates regarding this? Tijani?

TIJANI BEN JEMAA:

Thank you Olivier. The RIRs have already had a Draft of their proposal to the ICG and it's now up for community comments. I think perhaps we need to read it, because it's important to know about, especially for us

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as Members of the Accountability Working Group, because I see that the Accountability Working Group are very aware of the CWG work, and the coordination with them, but they are not [unclear 00:05:00] Coordinating Group; with RIR or with the IETF. I think that we need to read the proposal that's now up for comments. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you for this update Tijani. As far as the IETF concerned there was a final call until the 15<sup>th</sup> December. That closed yesterday. I did see a lot of discussion on the IETF mailing list regarding this call, with some possible small amendments to be made, but we haven't seen the final paper now. On the RIRs, as you've mentioned there's been some work with the CRISP – the Coordinated Response from the different RIRs. They have, as far as I understand, held several calls. Seun, did you attend some of the calls of the CRISP in the past? I thought you did.

SEUN OJEDEJI: Yes. I attended one of the calls and another one I think they had yesterday. I was not able to attend any after the first one, maybe because the role of people attending, it's more of a [unclear 00:06:44] role. [unclear] attract me much to attend particularly anyway. I think on that particular community, they've developed a Draft proposal that's currently somewhat not in its full mode yet, but they said they'd release something more full on the 18<sup>th</sup> of this month. I think that's Friday. I think [unclear 00:07:41] we can then make comments on accordingly [unclear] the IANA community.

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OLIVIER CRÉPIN-LEBLOND: Thank you for this. I know that staff has also put links in the document in the main Wiki, which has links to the CRISP. I'm not sure whether we have a link to the proposal itself. If we don't, can I ask as a follow up that either Seun or Tijani, since you're following this, you can let staff know of the location of where the work on the CRISP is located, and to find out if we can have one of the latest versions, or at least a link to the current working version of the CRISP so we can be aware of this. Tijani?

TIJANI BEN JEMAA: I already provided the link to the Wiki on the CRISP. Everything is normally on this page. I think it's best to have the most updated version and that's there. I think it's already on the page of this IANA issue group.

OLIVIER CRÉPIN-LEBLOND: Correct. I've noticed this. I've put a link to it in the chat as well. We also have a link to the different calls of the CRISP. Any other updates on the other operational communities? Seeing no hands I think we can move swiftly to the next Agenda Item, and that's the follow up and the 21-day public consultation that's now open. I invite you all to go to the policy development page that has this text. I must say I'm slightly confused at the moment. I see a first draft submitted and a second draft. The second is an update on the first. Alan, can you take us through the document please? We have 30 minutes to discuss this Item.

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ALAN GREENBERG:

Let me start talking about it. If you're looking at the workspace there are now two versions of this huge document, as Olivier noted. The first is identified as First Draft. That's the one that went out last week. The one that was updated yesterday is called Second Draft. It's still subject to review for the next few days and any comments received by Friday we'll do our best to integrate them over the weekend and submit it to the public comment on Monday, which is the close of public comments. The version that went up yesterday has a few changes in it.

The substantive difference on the two documents is on the first document the titles are blue, but the second one isn't. That gets lost when you cut and paste from Word into the Wiki. Colors get lost. The titles right now are in black. I'll fix those when I get a moment. In any case, if look at any version, there are both red-line and clean copies of the new draft, which is the first version published to the public comment. There are both Word and PDF formats. The changes are relatively minimal.

There is a disclaimer at the end of the introduction which says we know things are changing and to the extent possible we'll update this document to reflect things that have changed. That's in reference to the discussions going on right now in RFP 3 where they're fleshing out some of the issues on the MRT and perhaps others. If indeed they answer any questions definitely, answers that we've raised, in a way that are either satisfactory or not satisfactory, we'll incorporate those into the document. At this point they have had some discussion but it was mostly Q&As and nothing definitive has been decided at this point. Olivier, if I'm misspeaking and you want to correct what you said then please go ahead.

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We have a disclaimer. The bulk of the document has not changed. I don't believe there were any changes, other than perhaps one typo corrected. In the Recommendation 1, which is essentially to lead the concept of Contract Co, there were two changes made. Number one, I took the bullet on "ICANN is divesting itself on IANA." That is should, in some extreme situation, the Multistakeholder Group decide that ICANN indeed cannot do the job, that's equivalent to in the scenario with Contract Co where RFPs are only issued if there's a significant problem, that they're issuing an RFP. I've moved that as the last bullet, because it really is the final way to address a problem.

I've added a statement. It wasn't clear to some that we were really talking about ICANN getting rid of IANA in that situation. I've added an extra sentence which hopefully will clarify it to some extent. There's a significant section that was added in response to some comments that Olivier has made, both on a previous conference call and in the Wiki, on referencing the Address Supporting Organizations. I think that was rather astute to notice; that the Addressing Group is representing two different ways. There's the ASO, which is a standard SO within ICANN, so it has the same sort of status as the gNSO or ccNSO. They put people on the Board and it's purely within ICANN.

But then there's also the NRO, which is composed of essentially the same groups, but organized as an entity outside of ICANN. That was an interesting way of looking at things, and I've tried to take that model and retrofit IANA into it. Since there are not other organizations to make up the external one, like there are with the RIRs, then I've put some comments in that this could be created in conjunction with the other ISTAR organizations, and this would lend a certain degree of continuity,

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should we ever have to divest ourselves as ICANN – that that part of the structure supporting IANA is outside of ICANN and always is outside of ICANN.

That's all the changes that were made. As I said, there were other comments made that I think need further enlargement, and I've answered some of them or asked further questions on the Wiki. That's all I thought was ready to capture, as of last night. I turn it back over to you Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. One of the concerns that I've had was the constant complaint that the ALAC plan does not have strong separability or strong issues or severability; in other words being able to change the operator of the IANA functions. As you mentioned, I think that with the IANA Resource Organization and the IANA Support Organization we would have the ability, if there was a need for such a thing, to cut the link between the IANA SO and the IANA RO, and therefore the RO could decide to allocate the work of the IANA functions... I'd hate to say the contract, but whatever it's called at that time, to another organization than to ICANN.

This, with less interference than if it was an organization that was wholly within ICANN. That also does help us a bit more with regards to the funding of that independent organization. The discussion here is also in the middle with regards to the MRT, the Multistakeholder Review Team. Could the Multistakeholder Review Team find a home inside this IANA RO? Another interesting question and possibility. Alan?

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ALAN GREENBERG:

I realize I do have a small error I need to fix in the document. In the bullet I moved to the end, the one on divestiture, that should make reference not only to the MRT but also to the new classes of organizations that we've suggested might come into being. Two things. First of all you used the term "severability". That's a term that's used in the SSAC Report and it means something very different from separability, that is being used in the CWG. I think we need to be very careful on use of these terms.

The separability issue is to be able to separate IANA from ICANN, or whoever has responsibility for IANA that week. That says you can unplug IANA and put it into some other organization if ICANN or some successor, manager of IANA, is not doing a suitable job. Or, as some people have suggested, we go to RFP every five years and if anyone comes up with a better offer then we switch every five years or whatever. That's separability.

Severability is a term that's used in the SSAC Paper to say that the different functions within IANA do not necessarily have to reside in the same operational entity. IANA as you know it today, if you honor the separability requirement that SSAC believes is very important, it says that the root zone can be managed by a completely different group than manages the IETF protocol parameters, and by yet a third group in the extreme that manages the IP addressing for the RIRs. That's severability. I don't think there's anything in our proposal, or for that matter the Contract Co proposal, which says you cannot have severability.

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Our current actual structure of an IANA staff may make severability a little bit difficult, depending on just how they have separated those responsibilities and databases and things like that. It may well require restructuring of the current IANA to ensure that it may require additional clauses in the Contract Co contract. None of what either of us are looking at, as far as I can see, violates any of the requirements and recommendations of the SSAC Report, which is a very interesting document in its own right.

Regarding the separability – that is if ICANN is given the IANA contract by NTIA, nominally in perpetuity, that there is a way in the worst case of having the multistakeholder environment say, “ICANN, you can’t do it anymore, you must give it up and it must be transferred somewhere else in a way that we specify,” and that is in our Report. It may not have been read or understood but it is there. So in the extreme case it is separable from ICANN. We’re simply saying let’s not build that infrastructure until we get close to believing it’s necessary. I’m not sure to what extent that answers it.

In terms of the SO and the equivalent of the NRO, I’ve fleshed them out as much as I could based on what Olivier said, and anything I’ve captured until now. It certainly could be fleshed out more. Remember, as soon as we’re saying all of this within ICANN, it becomes essentially an accountability issue, to make sure that the proposal is acceptable to the community and obviously to NTIA. I don’t think we need to worry about it at the same level as the CWG is, where it’s outside of ICANN and therefore completely out of the scope of the Accountability Group.

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OLIVIER CRÉPIN-LEBLOND: Thank you. Tijani?

TIJANI BEN JEMAA: Thank you. I have my idea about the separability as is in the CWG, not of the SSAC Report. I want to be sure that when you speak about separability you are speaking about separating the IANA operational from the IANA operation, or separating the IANA as a whole? I want to understand, because there are two aspects of IANA. There is the IANA operations and the IANA oversight, and this is something that I don't see clearly. Second point, regarding the MRT, I am afraid it will be something common with CCWG about this MRT. I think that it will be dealt with also in the other group. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you for this. Tijani, I didn't quite understand your second question. You mentioned the MRT works in common with the CCWG?

TIJANI BEN JEMAA: No-no. The MRT is the accountability part, so it will be also addressed in the CCWG.

ALAN GREENBERG: A couple of things. Let's talk about separability first – not severability, which is separating the different IANA functions to be managed by different IANAs – IANA 1, IANA 2, IANA 3. But separability has been used by the CWG, and it's one of their principles. It's that the IANA function could be listed out of ICANN and put somewhere else; general electorate

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is now going to be running it, the UN will run it, the ITU will run it, Tijani will run it out of his business. That's the way they're using the term "separability".

There's also a clause in the current contract that says – and remember, the current contract is with ICANN – that says ICANN must keep separate the policy setting part of ICANN from the operational part that's running IANA. To that end, at one point they were on different floors. There is no operational staff that overlaps. People aren't assigned both to the policy group and to IANA.

They obviously share finance and HR and things like that, but they don't share any real operational parts. If ICANN were still to manage IANA, that clause would still be in the contract. If IANA were transferred to ICANN, as we're proposing, that would have to be added into the bylaws or something like that, or import some significant document to make sure we're committed to keep doing that, even in the absence of a contract. Did I cover the questions you were asking, Tijani.

TIJANI BEN JEMAA:

Yes, you did.

ALAN GREENBERG:

On the MRT, we're not proposing an alternative to it; and that is the dual function IANA SO and IANA RO. The latter being completely outside of ICANN. We weren't trying to trash the whole proposal. We were trying to say some parts of the proposal have merit and some parts don't. At that point we were keeping the concept of an MRT, which

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right now, maybe we are trying to transform it into this dual-pronged ISO/IRO. It's not clear how it's going to evolve.

To the extent that there was still an MRT it would be organized by ICANN, just like ICANN has put together the CWG and the ICG, which are bodies that were created by ICANN. The ICG is explicitly not part of the ICANN, the CWG is. Both of them have Members that are participating from outside of the normal ICANN family. But they're organized by ICANN. The difference with the Contract Co is they've not yet specified who it is that pulls this group together. Who submits the request to the various entities to name your five people, or your three people, or however many there are. That debate is going on right now.

Who is it that decides four years from now the world has changed and the representation is no longer representative of the multistakeholder body that's relevant in the Internet naming world, and that it needs to change. It's completely unclear right now who does that, but clearly it can't be ICANN because by the time you need to reconstitute an MRT ten years from now, ICANN may be out of the picture altogether. They may have taken the contract away from ICANN, and as I said, Tijani is running it in his basement. So it can't be ICANN doing it, probably. Why would they trust ICANN to do it, if they took IANA away from ICANN altogether?

It would seem foolish to say, "We don't trust you to run IANA but we trust you to set up the multistakeholder body that controls IANA." That's a conflict. In the CWG model I don't know who's going to do this orchestration. Maybe it will be decided in a few weeks. Right now it's

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certainly not known. In our model ICANN definitely has a strong role to play in it.

**OLIVIER CRÉPIN-LEBLOND:** Thank you. There were discussions on RFP 3 with regards to the status of the MRT. Greg has put forward that it's going to be just a committee, that would be a bit like the ICG. The ICG was convened by ICANN to start with. There's a big question to who convenes the MRT and then there's certainly a legal problem in that if the MRT is not convened under any organization of sorts, then the individual members of the MRT might be liable to the decisions of the MRT, and that question was not answered during the call.

**ALAN GREENBERG:** The other issue, and it's a very large one in my mind, is if the Contract Co articles of corporation and bylaws make reference to the MRT, they've got to make reference to some real entity. There's got to be a piece of paper or document describing what the relationship is, otherwise it's completely undocumented and can change at somebody's whim. I'm not sure who the somebody is. I'm not sure how this MRT can exist without any formal status; not belong to anyone, not able to sign a piece of paper, and yet it's the controlling entity of the most critical organization in the Internet world – at that point Contract Co. I have a real problem understanding how that's going to happen. I'm waiting for that to unfold. Presumably someone has an idea.

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OLIVIER CRÉPIN-LEBLOND: Thank you Alan. I've noticed Seun is offline. He's dropped from the call. Are there any other comments or questions from anyone else until we get Suen back? Alan, are there any specific points you wanted us to look at in the statement that's now been sent out?

ALAN GREENBERG: I don't think so. The only substantive change to the document is your idea about a replacement for, or augmentation of, what was called the MRT. I think we want to keep the concept of MRT mentioned there, because it's a concept that the people in the CWG feel comfortable with. I think your suggestion of what may well be a replacement of it has a lot of merit. That's why I try to focus on that. We need people to either enhance on it or identify specific problems with it. I know Fatima did a large post and I tried to address some of her questions. I was a little confused along the way because she seemed in some cases to be referring to the CWG model and not the proposed one, but I put some comments in and I hope she'll be able to elaborate, perhaps now or on the Wiki.

OLIVIER CRÉPIN-LEBLOND: Let's go back to the queue. Suen?

SEUN OJEDEJI: Thank you. I want to try to be clear about our proposal. I think it's not what I think it is. I think our intention is we're proposing a no-contract route, and if I understand Recommendation 1 well, we're saying that there's no need for the Contract Co. That is we're looking at [unclear

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00:36:55]. I think the issue of separability intends [unclear] policy from operation. It's something that we can propose from inside. In terms of severability that is with the intent of moving IANA out of ICANN again. It's the intent of the proposal we're trying to give, if my understanding is correct.

What I perhaps understand is we're proposing some strong accountability mechanism within ICANN that [checks with 00:37:49] Board and [unclear] processes, and ensures that there's good accountability within the organization. It's that [unclear 00:38:02] we're saying that because of that there is no need for the Contract Co, which we also largely think there's no need for the MRT. If we're saying that we then need to ask an external ASO-like situation, I thin something like that may, in the long-run, be applicable, when we're looking at IANA as the whole.

Maybe IANA as a whole, and for [the conception 00:38:37] and just [unclear] community. I don't know. IANA as a whole. Then we can say, "Okay, we want to [hear from 00:38:48] group to just—" [unclear].

OLIVIER CRÉPIN-LEBLOND: Thank you Suen. Alan with a reply.

ALAN GREENBERG: Thank you very much. I think that's pretty much what we're talking about right now. Whether we call it an MRT or not I'm not really one to argue about. There was an accountability CCWG Meeting this morning, and I found that very positive and encouraging. There was a lot of

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support for very strong accountability measures. There are people on the group, regardless of what CWG position they back, that are looking at the kind of accountability features we're talking about. There are people that are saying, "We need that accountability regardless, and there must be a way of getting that accountability."

That's a very important part of our position, because one of the largest reasons people have looked at the Contract Co model is because they do not believe that we can get strong accountability in ICANN. They do not believe that we can have a way of the community essentially overseeing the Board. There's a strong belief in the accountability group, by a number of people, that we must end up back. Now, that may mean we have to change ICANN into a membership organization. There may be some very strong, structural changes that have to be made. But ultimately we must end up with an organization that can be controlled by the multistakeholder community and not unilaterally by the Board.

That's a common feeling, regardless of who backs the proposal. The fact that everyone seems to be believing that that's necessary implies that they also believe it's possible. If it's possible, we don't need Contract Co. I think that meeting today, which is the first real meeting – the second one held, but the first one talking about substance – is a very positive support of what we're looking at. If we can get good accountability into ICANN, that is the Board cannot act unilaterally but the multistakeholders have a say, through whatever mechanism we come out with – and that may require reincorporating ICANN as a different entity, but nevertheless that can be done quickly should we choose to.

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It puts a level of proof behind the kind of concepts we're putting forward. So the exact details of how the multistakeholder community will effectively control ICANN, and could therefore also cause it to divest itself of IANA in the extreme case, there's some very strong support for that model. I'm encouraged by it, and I'm not as worried about the details as I was even a week ago.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. Fatima?

FATIMA CAMBRONERO: Thank you Olivier. First of all I apologise, because during the first part of the call I was only on the phone, not on the AC. Now I'm in synch with what we're discussing. Secondly, I'd like to express to Alan my gratitude for his work. This is no easy job. I admit that some of my questions or comments may have been confusing, and I am happy to see how our proposal is being shaped and the way we're moving forward. Congratulations. I have a question that's no life or death question, but why, in Recommendation 1, do we say that an RFP would not be necessary?

Why wouldn't we need an RFP every certain number of years, and if so, would we have an assumption of automatic contract renewal? Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you Fatimata. Alan?

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ALAN GREENBERG:

I think the main difference between our proposals is that in our case there is no RFP. We are saying that ICANN will essentially be given the responsibility by NTIA for managing IANA. It will stay there and do it under the direction of a multistakeholder body. The ongoing net effect is the same with Contract Co but without an RFP, because there are no two bodies. RFPs are between someone who essentially, in a normal sense when there's money involved, between someone who wants work done and has the money to pay for it, and trying to find someone who's capable of doing the work.

There's no money involved, but right now the NTIA is still in charge of making sure that IANA happens and has found the contractor to do it - ICANN. To replace NTIA with another entity that's still periodically going out for contract is what the CWG is proposing. It's all in the eventuality that ICANN suddenly goes rogue – is suddenly incompetent to do the job anymore, can't fix it, and there's now way the Multistakeholder Group can convince it that it has to do something differently. We're saying that we believe that can be fixed, as people on the CWG said today, it's essentially, if ICANN is to go forward, that we put the multistakeholder body in control of ICANN.

That's not how it was organized 12 years ago when it was incorporated, but that's not the way that we can succeed going forward, and that's true, from my perspective, for the ICANN policy part as well. We cannot have policy organizations that cannot have essentially full control. There's got to be checks and balances, of course, because any group can do something stupid, but that's the direction that we need to move in.

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in that case, there is no need to give responsibility... Right now, NTIA is in charge. No one issues an RFP to NTIA and NTIA bids on it. It's just that NTIA is the boss.

We are proposing that ICANN is mature enough, and can be made responsible enough to the community to take that responsibility on itself, instead of giving it to something like Contract Co. If we ever got to the state where ICANN proved incompetent to do this, then we're providing a mechanism by which it can be divested, it can be given out to some other organization. Heaven help us – maybe we even have to build Contract Co at that point. But since most people seem to be working on the assumption that's not likely to happen in the near future, then we don't need to build that infrastructure today. I'm not sure to what extent that answers the question, but I hope it did.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. I'm looking at the way that other operational communities are filing their proposal. They're not looking at having a Contract Co. They appear to be having the idea of contracting or having an MOU with the IANA functions operator. Is that the way that our plan aligns with the other operational communities?

ALAN GREENBERG: Yes and no. The difference is that should the IETF become dissatisfied with how ICANN is managing their parameters, they can go and find someone else to manage their parameters for them. That's the severability. That is the protocol parameters would no longer be part of the same management operation, and we'd have to have an IANA 2

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managing the protocol parameters, and the IETF would go to some other organization to do that for them. The difficulty we have is the policy part of the Internet governance overall scheme that's managing the policy for the names part, is it's internal to ICANN.

So under today's structure the gNSO cannot say, "We are taking the responsibility for IANA away from ICANN." The gNSO is an integral part of ICANN and does not have that authority, under today's bylaws.

**OLIVIER CRÉPIN-LEBLOND:** Thank you. If there was an IANA RO, which would be semi-independent, in the same way the NRO is, would that satisfy the severability?

**ALAN GREENBERG:** Hopefully it would. Again, we have to make sure that some organization outside of ICANN can give instructions to ICANN, and ICANN will follow them. I don't know if anyone was on the accountability call earlier today, but that was a very strong focus of discussion. We've been told in various forms, by ICANN lawyers and ICANN Board Members over the decade that the Board has the ultimate fiduciary over ICANN and they cannot take instructions from someone else. On the other hand, ICANN does subject itself to binding arbitration.

Someone on the call today said, "Yes, but there's a clause in the bylaws that says they can wriggle out of that." I don't know where that clause is, but that's a discussion we need to have with lawyers who really understand Californian Law, or any corporate law for that matter, and say, "Is there a way that the directors, under certain ways, can give up

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authority?” I know certainly other companies all around the world subject themselves to binding [lever 00:50:45] arbitration, and they have no choice but to either go bankrupt or follow the instructions. I don't think ICANN is different, but we need to know for sure.

It's time to stop having this guessing game of what are we allowed to do and what are we not allowed to do, and know. As I say, one of the alternatives is to change ICANN into a membership organization. We know that that can be structured so that the members have ultimate authority. They may have to remove the whole Board to do it, but they have ultimate authority. Members, like stockholders, can pass resolutions, and that are binding on the Board. The catch in that case is can we find a good set of members? When I say a good set of members I'm talking about ones where the organization is not captured by some special interest.

At the same time, you really want members who are really well-informed, because otherwise decisions become what we often call “beauty contests” and you vote for the person who has the most charisma without the voters understanding at all what the real issues are. I think it's one of those things that we need to look at. Jean-Jacques made a comment about Californian Law. I suspect we're going to have the laws of any jurisdiction have some rules, and we need to know what those rules are.

OLIVIER CRÉPIN-LEBLOND: Thank you for this Alan. Certainly there was one person on the accountability call that mentioned that they ran a not-for-profit

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organization and they are accountable to their members. The board is not structured in the same way, as far as accountability is concerned, as ICANN is. So they didn't see this Californian Law as being any boundary, or any opposing rule, to what could be built. Anyway...

ALAN GREENBERG: Olivier, for clarity for the people who weren't on the call, they run a Californian not-for-profit that is subservient to its members.

OLIVIER CRÉPIN-LEBLOND: Correct. Next is Seun Ojedeji.

SEUN OJEDEJI: Thank you Alan for the explanation. I think there's [access 00:53:27] I'd like to...

OLIVIER CRÉPIN-LEBLOND: Seun, can you speak closer to the mic please? Because it's difficult to understand you.

SEUN OJEDEJI: The two other communities, the [RIRs 00:54:02] and the IETF, they are able to sign MOUs and then [unclear] operates IANA. [unclear] they are not [unclear 00:54:21] to sign MOUs. Now, for instance, this is one of the reasons why this Contract Co is in the [unclear]. My comment is that Alan, from our proposal, we are recognizing that ICANN is the home [unclear 00:54:45], right? Just like IETF is the home of IETF. We are

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recognizing that IANA is [unclear 00:54:52] is the home of gTLDs and we are saying that there is really no need for ICANN to sign an MOU with [unclear 00:55:00].

We are saying that there should be an agreement... There should be an accountability mechanism within ICANN to allow the policy community [for development 00:55:15] to allow and ensure that the operational of IANA is properly developed for the community. Is that what you're saying with that proposal, Alan?

ALAN GREENBERG:

I can try. We've got to be a little bit careful when we say "the policy community in ICANN". If you look at, for instance, ccTLDs, there are ccTLDs that claim that ICANN has no jurisdiction over them. We have to be more inclusive than just what is in ICANN today. Some people have mentioned that in the future there may be gTLDs that do not belong to ICANN. I don't the gTLDs would claim they're not subservient to gNSO policy, but we may have to be more inclusive than just ICANN.

Essentially we're saying that just as the IETF or the RIRs can unilaterally say... We're expecting their proposals to say, "We don't want ICANN managing our numbers anymore. We want to take them outside of ICANN." They can make that decision. Presuming whatever will come out of the ICG will ensure that they can make that decision in the future. Similarly, IETF can say, "We don't want to necessarily take it away from ICANN right now, but you'd better change what you're doing," and the threat is, "We will take it away, if you don't do it better."

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The net effect of that is that the names community, the multistakeholders associated with the names community, can do the same thing. That's the net effect, and we're trying to do it without the complexity of RFPs and Contract Co, and the potential risk that comes with that, and try to ensure a high level of stability. If we were to change the IANA contractor, where you suddenly say they're no longer the people who are working in Southern California; they're going to be a new group in Geneva, they're going to have to build their systems from scratch...

There's a certain amount of risk involved in that kind of cutover. My personal position is I want to avoid that kind of thing like the plague, unless it's really necessary.

OLIVIER CRÉPIN-LEBLOND: Thank you for this Alan. Seun mentioned in the chat, "How will they do that?" Seun, would you care to expand on this please?

SEUN OJEDEJI: Thank you. I'm trying to get positive about this. You're saying that just like IETF and [unclear 00:58:42] are able to take out their function, then the names community should be able to do that also. I'm wondering, do you mean they would be able to form a new ICANN or something? I'm trying to understand how that would be possible. I'm assuming the ICANN is [unclear 00:59:09] as the [unclear] community. If you are saying that the [naming community 00:59:16] should be able to take ICANN and then take operation of IANA, of names out of ICANN, I'm wondering how...

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It's just like saying AFRINIC [as an RIR] for instance, should be able to take the operation of numbers out of AFRINIC. It's the same AFRINIC. I'm trying to understand why we need to make that feature there. That is my concern, Alan.

ALAN GREENBERG:

Let me try. First of all, I think it's more important to focus at the first level – of not “How do we take it out of?” because if IANA was not doing the protocol parameters properly, or address allocation properly, I would think the first level of remediation to fix this would not be taken away, but can we fix it? If you look back a number of years, IANA in ICANN was not doing a very good job, and the solution was not for NTIA to take it away from ICANN, but to make it clear to ICANN that they'd better fix it, and ICANN did. ICANN put some good managers in. They allocated the resources to it, and IANA is working well.

So the first level is not going to be taken away. That's a threat. But the first level is fixing it. That certainly is within our capability right now. The question comes up of what if ICANN refuses to fix it, or is incapable of it? Is there a mechanism for getting it out of ICANN? Under today's model there isn't, because the Board is ultimately responsible and can do what it wants. We, and the rest of the community, is suggesting that we need to move away from that model.

We need to move away from the situation where the Board can take actions that the multistakeholder community disagrees with, if we can get the multistakeholders to all agree with each other, and that's going to be a problem. If we had half the RIRs wanting to move away from

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ICANN, and two out of three want to move, or three out of five want to move and two out of don't, we have a problem. They're not going to move. Presumably the majority wins and they're going to have to come to some agreement. But if everyone thinks there's a problem then that can move.

We have to make sure that that can happen within ICANN. That's the whole issue on accountability, with the IANA transition or not. We have to get to a mode where the multistakeholders really have some level of control. I will quote what I said in another forum. It's time for us to stop preaching how good multistakeholder is to the rest of the world and demonstrate that it can really work. If we can't do that then I think ICANN is going to disappear, regardless of IANA. That is something I think we want to avoid.

OLIVIER CRÉPIN-LEBLOND: Thank you Alan. One of the concerns and one of the supports for the contract organization and so on, was that the waving of the stick saying, "If you don't do what we want you to do, we will take that contract away from you," was a strong enough deterrent for ICANN to follow the instructions that it was being given. With the model and the proposal that we have here, is this able to also wave a big stick?

ALAN GREENBERG: The divestiture requirement is just the same stick. The mechanism is somewhat different, but again, if you take General Motors and say, "General Motors is required by its stockholders to sell of Cadillac," then they have to sell off Cadillac. That's the level of control stockholders

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have. It's not easy. These details for the mechanism are not something we're going to go into, but we're looking at that same level of control. Yes, I believe [unclear 01:03:59] can be built into it.

OLIVIER CRÉPIN-LEBLOND: Thanks Alan. A question from Loris Taylor in the chat: "Will ICANN bylaw changes be proposed at some point, and which body will take the lead?"

ALAN GREENBERG: I think the accountability group has that squarely in their lap. Right now – and we've heard objections; there are some people who are saying that in the future the ICANN Board should not be able to unilaterally change the bylaws. Right now they're required to put them out for public comment, and presumably they listen to public comment, but they still are the group that passes the bylaw changes. There are some people saying that cannot happen, that must not happen. Certainly in membership organizations for instance, you can have members voting on bylaw changes, or not. That depends how the bylaws and articles in the corporation read.

Right now, the Board must change the bylaws, but they're going to be under severe pressure by the accountability group and the world watching them, if reasonable proposals are made and they refuse to do that. Again, I think that sinks ICANN in the long term, if the Board will not make what we and the multistakeholders consider to be reasonable changes.

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OLIVIER CRÉPIN-LEBLOND: Thank you Alan. I realize time is ticking, so we need to go to the next point in our Agenda. In the meantime, the 21-day public consultation period closes on the 21<sup>st</sup> of this month, so I'd ask everyone to monitor the responses to our statement. This is, as Alan mentioned, a working document. There's still a chance for us to make amendments and submit an updated position by the end of the 21 days. Alan, would you want people to respond on the Wiki, in order to be able to bring their input in, or how?

ALAN GREENBERG: We've been quite flexible. We prefer inputs on the Wiki if they can be expressed reasonably well, but this is an eight-page document, which for better or worse we did not number every line. Maybe we should, but we didn't, and maybe I'll put a line-numbered version up. If the only practical way you have to identify your comments is to do comments on a Word document or a PDF, both of which are possible, and you want to submit them that way, then we put in the public announcement that you should submit them to staff, or perhaps Ariel directly, I don't remember which, and they'll make sure they're considered.

In retrospect, I will put up a document that line-numbered so people can refer to line number such-and-such, and that may make it easier to comment on the Wiki. I hadn't thought of that but it's a good idea and I'll do it right after this meeting is over.

OLIVIER CRÉPIN-LEBLOND: That would be helpful. Thank you for this Alan. I notice that Seun is adding more text on the chat – questions that would probably help our

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position. Seun, please send those questions in. That would be great. Let's move onto the next part of our call and that's the recent meeting that took place yesterday, our RFP3. There is a link on the Agenda with the document we studied, which was the structural arrangements of the MRT. That document is now a Google Doc and the request has been for people to not amend the text but put their comments on the side of the text. This is a very new document so you won't see many comments so far.

What Greg told us yesterday was that he was trying to answer some of the questions and with a proposed response. This document is very open right now and it's for us to provide our response to it, as such. What I suggest is that we briefly go through it and identify the points that we have a specific point to make about, on the MRT. I know our own position is that there shouldn't be an MRT, but if we have the IRO then it will have to be multistakeholder, so there will be some aspects to this that we could actually take from the current proposal here. Thanks for putting this on the AC.

The discussion on the RFP call was that we didn't go very far down the page. There was a big discussion about the [unclear 01:09:33] status of the MRT. It will be a Working Group and it will not be a legal entity. This is where there was a question with regards to legal liability. Relationship to ICANN will be purely independent of ICANN, similar to the ICG. I wasn't quite sure what the legal status of the ICG was. It will be an independence level of the ICG, with regards to ICANN. I was under the impression that this had been convened by ICANN. Then there is an organizational document, Charter, etcetera, that says this whole thing will work with a Charter.

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With regards to transparency the MRT will function in a fully transparent manner. I think everyone agreed with that. With regards to accountability it's interesting, because it appears to be linking the accountability of Members to their SO/AC or community that appointed them; the recall process from the community itself. There's also annual public comment review by the global multistakeholder community, etcetera – all of the things we've been accustomed to in ICANN. It does say the MRT budget will be subject to an equivalent review.

The question is none of these reviews are shown as being organized by anyone, and a big question as to who will be performing these reviews on the MRT and all the work on that. Composition wise, the MRT will be primarily made up of Members representing groups and organization within the names community. We'll be looking at a table of proposals for the composition after this, so let's not look into the composition yet. Then with regards to the stakeholder organizations, ACs and other named community groups represented by the Members, we've got a list of the stakeholder groups of the gNSO, plus the GAC, the SSAC, the RSSAC and the ALAC.

You will notice that the ASO, the Address Supporting Organization, will not be inside of this Committee. I'll open the floor. I saw Jean-Jacques a bit earlier, maybe?

JEAN-JACQUES SUBRENAT: Yes. You just put the question about a possible parallel between the MRT and the ICG, and you asked what was the type of relationship between the ICG and ICANN. Just to avoid any misunderstanding, the

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ICG was convened by ICANN but not only [unclear 01:12:35]. ICANN was acting on instructions from the NTIA. That's the first point. The second point is that the Membership was designated or chosen in a very unequal way. In both instances, for instance in the case of ALAC, the nominations were very clearly documented and followed a very clear set of rules. But some other Members of the ICG were designated in a method that was not as well documented.

My third point is that the misfit on the great chasm between so-called independence on the one hand, and funding on the other. In the case of the ICG it's clear that even if and when we have an independent secretariat – and this should be very soon now, this week I have – the total expenditure for that independent secretariat will come entirely from the ICANN budget. Coming now to MRT I'll say that it's the same dilemma. On the one hand the structural analysis of the MRT [unclear 01:14:10] the MRT will be accountable to, I quote, "The SOs and ACs in the community."

But on the other hand nothing is said of the funding. There again I suppose ICANN will be called upon to fund any expenditure by the MRT. I hope that helps a bit.

OLIVIER CRÉPIN-LEBLOND: Thank you Jean-Jacques. Next we have Fatima.

FATIMA CAMBRONERO: Thank you Olivier. I was not able to read the document in detail, however I have a question I've already posted, and it has to do with the

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composition of this Multistakeholder Review Team. In the proposal it reads it will be composed of Members representing the organizations and groups within the naming community. My question is what happens to those people that do not participate in the naming community? Yesterday I said something similar. I was asking about the Internet users, or RALOs, because there are people who can participate and have similar rights to individual users.

How will this group be composed? How will users be represented here? That is my concern and my doubt in this regard. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you Fatima. We will be looking at a detailed listing of proposals for the composition of the MRT in the next five minutes or so. First I'm looking at answers for this document, or any questions or comments on the current document we have. Then we'll go into the composition. There have been all sorts of solutions that have been proposed so far. First is Seun.

SEUN OJEDEJI: Thank you Olivier. My first question is [unclear 01:16:50] the scope or role of the Multistakeholder Review Team? Thank you.

OLIVIER CRÉPIN-LEBLOND: If I got your question correctly Seun, it was does this document say what the scope of the Multistakeholder Review Team is?

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SEUN OJEDEJI: Yes.

OLIVIER CRÉPIN-LEBLOND: As I understand it, this just looks at the structure itself. The scope itself I think was described in another document in the main proposal, and I don't know whether there are any plans to expand on the scope and give it exact details but I'd imagine there probably is such a case. This document here just looks at the structure. We're looking at bylaws, etcetera, and to some extent composition, which we'll come to in a second. Alan?

ALAN GREENBERG: Thank you. There is significant discussion going on right now within the CWG and what the composition should be. There are very significant differences in opinion. The registries are saying since they're going to be largely consulted or involved, they have to have a significant say in it. The proposals that have been made to-date by outside of the registries have said, for instance, the gNSO will have a certain representation and the ccNSO, which has ignored the non-affiliated ccTLDs, and says the ccTLDs may get four or five Members, as has been proposed in at least one model, whereas the gTLDs will only get one, as one of the stakeholder groups on the gNSO.

The ALAC or GAC might get two, four or five, depending on the various models. This is very much in the state of flux, and I think it's going to be come a highly political discussion before we finish. The answer of how we'll decide is not at all clear. Certainly within the CWG, despite the

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relative uniformity of belief in the overall model, there is no uniformity at this point, as far as I can tell, on MRT composition.

OLIVIER CRÉPIN-LEBLOND: Thank you for this Alan. We will look into this document in a moment. Any comments on the current structural analysis document that's being worked on? I realize everyone hasn't read this much yet. The link is in the Agenda so if you have comments then please comment on the Google Doc itself. Quite a few other people have started commenting on it. That's the structural analysis document. Now if we look at the other document, that's the composition of the different teams. That's one document that's a little bit, I would say, seat allocation of MRT, is what it's called. This is where you have many different straw men proposals that are given here.

One was actually derived apparently from a suggestion of mine. I have no idea how that was derived. We'll look at it. On this page we have the different straw men. One's derived from Milton Mueller. One is derived from registry suggestion. One from the GAC suggestion. One from a CSG suggestion... We've got several proposals here. There's the RSG, which is the Registrar Stakeholder Group, Contract Stakeholder Group, Non-Contracted Stakeholder Group that have one, GAC with two, SSAC two, RSSAC two and ALAC two. That's one suggestion.

Another suggestion would have the registries to have one, Commercial Stakeholder Group have one, NCSG one and the others having two as well. That looks very similar to the first one, although for some reason this one adds up to 21 and the other one adds up to 17. Interesting.

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Here we go. That's because we've dropped down one. ccNSO would have five in both of these cases. The difference between straw man one and straw man two is the registries in straw man one would have one, the registry stakeholder group in straw man two would have five.

Straw man three, slightly different. Again, we've got ccNSO with five, but you also have GAC with five in order to have geographical diversity in the GAC. Straw man four is again a similar process, but here you'd have five in the ccNSO. I don't know where all of the others are. I'm trying to find the difference between the two. They've underestimated the numbers here. We'd have a total of 20 people. Straw man five, five ccNSO, five registries, one Registrar Stakeholder Group and then BC, IPC, ISPCP, NPOC, you'd have five within the gNSO, plus the registrars, and then you'd have the GAC on five, the SSAC on two, RSSAC on two and ALAC on two. Etcetera.

I'm not quite sure where to go from here. Are there any comments or questions about these, since you've all been discussing the composition? I can't see anyone with his or her hands up at the moment.

SEUN OJEDEJI:

I have seen what Fatimata is putting on the chat right now. My concern is [unclear 01:25:04] assigned to ALAC. I have two things I need to clarify. Is the voting going to be by [unclear]? Is it going to be [unclear 01:25:20]? Or is it going to be [evaluated] [unclear]? Because that will also determine whether ALAC needs to fight for [unclear] or the... I think it's too small for ALAC, especially if this group is going to be the deciding group for [unclear 01:25:42] to renew a contract or not. I'm thinking this

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would be an opportunity for ALAC to actually have some [recommendations 01:25:52] in the [Agenda team] of ICANN, since we are not represented in the [unclear 01:26:02]. [unclear] for ALAC, and [unclear] for ccNSO and the [gTLDs].

OLIVIER CRÉPIN-LEBLOND: Thank you for this Seun. You were saying five for ALAC, five for ccNSO, and five for the gTLDs, was that correct?

SEUN OJEDEJI: Yes, that's correct.

OLIVIER CRÉPIN-LEBLOND: Thank you. Would you then say one per stakeholder group and the gNSO in addition to this, or how would you fit this one? Because we've also got the choice in having one per constituency or one per stakeholder group?

SEUN OJEDEJI: I think for the gNSO it's just a matter of finding the number. It's just [about different names 01:27:33]? So it's not actually an MRT that includes the entire IANA. It's not the entire... It doesn't include the other operational communities. At the end of the day, the people who are most involved, for instance the ALAC, we are the end users. [unclear 01:27:57], right? The gTLDs [unclear] operators, and the ccTLDs [unclear 01:28:12]. This is what I think.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you for this Seun. Next is Alan.

ALAN GREENBERG: Thank you. I think you're starting to all get a feeling for how this is going to be difficult. I guess we need to remember a few things. First of all this group, among other things, will be deciding whether policy is being followed. It is key that the multistakeholder breakdown has to be somewhat close to the multistakeholder breakdown of the group that sets the policy, or related to it. Remember, you can have policy that's not agreed to by all bodies and still is policy. You have to make sure that the group, judging by the policy followed, has a similar makeup, because otherwise, if it's predominated by a group, such as registries, that did not agree to the policy, they can essentially systematically make sure that the policy isn't enforced.

So you don't want to have too much of a predominance of one group, especially a group that's being controlled by or directly impacted by IANA. That's one reason to keep those numbers low. The other issue is how are decisions going to be made. I think Seun asked how are we going to vote, if there's going to be a vote. It's not clear. It's not clear if any single person has a vote, or you vote by group. Think of the situation where ICANN is no longer running IANA. Could we have a situation where we artificially increase the number of constituencies in the gNSO so there's another 30 people that have to be on this Committee, if we've established that a principle that each constituency gets a person?

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That's the kind of thing that can end up very confusing. On the representation of the ALAC, I think we need to do our homework and describe why we need people there. At some level I could make a very glib statement. It's very simple to make; that all users care about is the DNS working. The details of what IANA does it not particularly important, and therefore why do the users have to be involved in this, comparative to the other groups that also care about the DNS working? What is unique to users that we have to contribute to this process?

I think we have to look at that question, because simply saying that we need regional balance so each of our regions can represent their own opinion, when we cannot give concrete examples of how those opinions may differ, we have to be credible in making our demands. So I think we need to put some focus on thinking about those kinds of things. Since the whole model of the CWG is to allow to ICANN not being related to IANA, what are the implications of the MRT being structured so closely to ICANN, if we're no longer running IANA?

Just things to think about. It's very political, as I said, but also we need to look at – and the stress tests come into this – how this group will react to certain external pressure. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you. Recognizing we are reaching the end of this call I still have Fatimata in the queue. Then we'll close the queue. Fatima?

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FATIMA CAMBRONERO: I was reviewing the document and paying attention to the number of seats assigned to each community. I think that Milton's comment is contrary to what we are saying – that is the Multistakeholder Review Team would not be a policy body, so it wouldn't be necessary for that group to have the same structure or composition as policy bodies. Personally I don't agree with this, because I do think that ALAC should have five seats in order to respect regional diversity. If we all agree that we want these five seats, I volunteer to draft a position paper with you and circulate it, and move speedily forward and achieve this as soon as possible, because time is of the essence. I volunteer my time and contribution to draft this.

OLIVIER CRÉPIN-LEBLOND: Yes. Thank you for this Fatima. That's probably one of the things we now need to work on. Definitely looking at this composition of the MRT, if we can follow this on the mailing list, and I'll forward the email with the details of the Google Docs onto that, so you can all look at this. These are the issues we need to look at very quickly, since the RFP 3 is making decisions on these. On the rest of it of course we have to follow up on our ALAC proposal.

Now, if we look at the Agenda we still have one more Item – just to find out if there are any feedback or comments on the discussion that took place a couple of hours ago on the CCWG on Accountability. Any comments about that? I don't see anyone. The last thing we need to check is when we want to meet next. Looking at the calendar, next week is the last week before the holiday period. Would you be okay with a call on the 22<sup>nd</sup> or 23<sup>rd</sup>? We could send a Doodle out again. I see

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green ticks. Send a Doodle to find out next call, on Monday or Tuesday. Will we want to have calls over the holiday period? Not a question. A call on the week after the Christmas week, so we're looking at the 29<sup>th</sup> or 30<sup>th</sup>.

ALAN GREENBERG: Do we know if there are going to be any CCWG, CWG calls during that period? Normally ICANN shuts down completely.

OLIVIER CRÉPIN-LEBLOND: Indeed, ICANN shuts down completely between Christmas and New Year. It's unclear at the moment. It looks like some would like to continue working around that time. What I'd suggest then is we don't make a decision yet on whether we would have a call between Christmas and New Year. I understand there could be a problem with regards to staff. If that is the case then there would also be a problem for the CWG's call as well, in which case there's no need for us to have a call.

ALAN GREENBERG: Olivier, I thought Grace distributed all the meetings through January at one point, or at least for stewardship if not for accountability. I don't have it in front of me but I think she sent that out.

CHERYL LANGDON-ORR: Yes, in the last 24 hours or so.

OLIVIER CRÉPIN-LEBLOND: That means I have to look for it. Does anyone have a link to it by any chance? Work plan summary, here we go. So per the CWG Meeting today it says there will be a call on Thursday 18<sup>th</sup> December. Then a call on the 23<sup>rd</sup> December. Then another on the 30<sup>th</sup> December. It says here, "Note the results of the public consultation will be presented and discussed. This meeting will be extremely important for everyone." That's going to be interesting. In which case I'd certainly suggest that we would need a call as well on that week. I don't see any feedback from anyone. I'll put in the chat the note that...

Oh dear, it hasn't come out too well. These are the next calls that will be coming on the CWG. Okay, let's have a Doodle for next week and we'll decide next week on whether we can meet between Christmas and New Year. I'd have to ask staff if that's also possible, with regards to staff resources, because as Alan said, ICANN does shut down between Christmas and New Year. Strange.

HEIDI ULLRICH: Olivier, we are all away from At-Large, so we'd need to work with you on how that would happen, if you would choose to have one during the week we're on holiday.

ALAN GREENBERG: Apparently the CWG has managed to arrange it.

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CHERYL LANGDON-ORR: Perhaps that's Grace, in her naïve wisdom, thinking it will be okay.

OLIVIER CRÉPIN-LEBLOND: All right, well, with this I'd like to thank our interpreters who've been on for the length of the call. Thank you Sabrina and Veronica, and thank you all for being on the call. It's been very helpful. Please check your emails. This is a crucial time for the Internet. With this, this call is now adjourned.

[END OF TRANSCRIPTION]