ICANN

Moderator: Gisella Gruber-White
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Coordinator: Thank you for standing by. At this time, all participants are on open lines. This conference is being recorded. Should you have any objections, you may disconnect. You may now begin. Thank you.

(Greg):   Good morning, all. Good afternoon. Good evening. Welcome to the call of the RFP3 subgroup of the IANA Stewardship Transition CWG for the 22nd of December 2014. (Grace), why don't we begin with roll call?

(Grace):   Thank you, (Greg). Today, we're going to do our roll call as usual with counting people through the Adobe Connect Room. If you're on the audio line and not in the Adobe Connect Room, would you speak now? It sounds like everyone is in the Adobe Connect Room. Thank you. Off to you, (Greg).

(Greg):   Great. Thank you very much.

                 We will pick up where we left off, if we could, with the MRT functional analysis. If we could put that up on the screen? We were up to the point of looking at some of the particular questions. Some of these were inspired by questions that came in on the webinars or on earlier calls or through emails.

We wanted to highlight these and try to work through these on top of the review that we just completed on the functional analysis.

As we discussed on the first call, issuing instructions to Contract, Co. is, to some extent, a technical question or at least what was initially under the heading of "Issue Instructions to Contract, Co."

And, in large part, really included work that would be done within the MRT and only when the work was completed in terms of decision-making would instructions be issued essentially through Contract, Co. to the IANA functions operator or for any formal purposes where the Contract, Co. needed to speak as the holder of the contract, as the party to the contract, as opposed to the MRT speaking as a delegee of Contract, Co.

Nonetheless, the first question goes to the actual issue of who instructs Contract, Co. and how does this happen?

I'll open the floor to see if there is anyone who has any additional questions on this point or has a thought about how to deal with this particular point which I think is more technical, but in any case, the floor is open.

Seeing no hands, I will just supply the following thought on my own part which is that the instructions should come from the chair or whatever the leader of the MRT is going to be on behalf of the MRT and only after all of the appropriate decision-making processes are fully taken care of and embedded.

It probably should include a summary of both the action taken and of the method by which the decision was arrived at so that there is a complete

transparency as to what is taking place and how it got there. That decision-making could include depending upon what the constructions are, of course, community involvement, public comment, or the like.

I think it is a good idea and I've seen this in some of the ALAC public comments to have a summary of how the decision was arrived at -- the process and the timing and all of that sort of thing.

Alan Greenberg, I see your hand is up?

Alan Greenberg: Yes. Thank you, (Greg). You've started covering some of what I was going to say but I was going to make a more generic thing.

Since the instructions from the MRT to Contract, Co. are essentially all of the decision-process or recording all of the decision-process by which some critical decisions are made, I think, number one, criteria, not criteria, but whatever is that the MRT has to document what their criteria is, they have to do it in advance, and they have to make sure they follow it and document that they've follow it. That is generally the prescription for not being sued if you're aboard.

That is, document what you do, show you followed the policy, tell people in advance what their roles are going to be. To the extent that any of that is vague, you are just asking yourself to be in trouble. There is a whole set of things that the MRT cannot be informal about and these questions, I think, are all centering on that and, of course, that implies paper documentation not emails that disappear or are changeable. Thank you.

(Greg): Absolutely. Thank you, Alan. I agree. Good governance is the term that is often applied to that in U.S. (unintelligible) and definitely the MRT should be

a model of good governance especially when it comes to anything relating to exercising contractual function. Maybe less so when they are exercising the administrative functions but, certainly, as the contractual functions go should be best practice.

The next question, unless there is anything further on this one, I'll move to the next one? Who decides the criteria to begin the termination for breach process? I'll open the floor for this one as well. Alan Greenberg?

Alan Greenberg: I actually thought I already answered that. The MRT is the only group around. They've got to do the decisions. They've got to document what their criteria is. I was addressing the whole larger bullet and termination for breach, I guess, is probably one of the more inflammatory things they can do. That has got to be squeaky clean on everything I was talking about.

(Greg): Absolutely. Milton Mueller?

Milton Mueller: Hello. Good morning. Could everyone hear me?

(Greg): Yes. You're a little close to the mic but we can hear you.

Milton Mueller: I'm just questioning when you say decides the criteria, are you talking about the sign criteria or deciding that the criteria had been met? I would think that the answer to this question would be different but it's not clear what you mean by this question.

For example, defining the criteria, I think, should be probably something that we do as part of the transition for our us and as close and correctly as we can. And then deciding to initiate a termination for breach process, obviously, is something that the MRT should do but we probably need, as Alan said, it is

fairly important process so we need to understand better the conditions under which they can do that.

(Greg):   Thanks, Milton. Actually, you took some of the words out of my mouth.

I think that in terms of defining the criteria as opposed to making a decision according to those criteria, I don't think it is the MRT that should define those criteria at least in the first place.

I think it should be the CWG and that should be documented as best as possible beforehand. At least some of that should appear in the contract, typically. The contract may just say something like "material breach of the representations and warranty" but then it may go on to define specific items of breach in more specific terms based on failure to meet particular criteria in the contract, failure to deliver certain deliverables, etcetera, etcetera.

I would expect that the contract itself would have at least particular categories of breach. Defining those criteria in more detail is, to some extent, a question. Infomercial contract is not typically heavily documented in writing how those criteria would be interpreted beyond those in the agreement, but it may make sense in this context, again, for transparency and accountability purposes to have those more defined beforehand and on top of that for deliberations, again, to be transparent.

Then, the decision-making process of applying the contract to the facts at hand on whether a breach has occurred is entirely, I think, in the hands of the MRP by whatever process is defined in their charter and in the contract.

Alan Greenberg, your hand is up again?

Alan Greenberg: Thank you. It's fine for the CWG to do its best effort but the whole process is defined such that the MRT may be changing the contract as time goes on based on public comment, based on its own whims, whatever. Therefore, the criteria may well be changing along the way.

So I will stand by what I said that it is the MRT. We can provide the MRT guidance on the first iteration but that is as far as we can go. Thank you.

(Greg):   Thanks, Alan. I would just respond to that that I doubt that the MRT would be changing the contract based on their own whim.

In any case, the contract cannot be changed typically unilaterally although ICANN has tried and others have tried many times over the years, it probably is not a good idea for this contract to be changed unilaterally although, clearly, there needs to be issues defined there so that ICANN or the IANA functions operator at the time cannot be obstructionists but that is a balance.

I think, by and large, things like termination for breach may be amended over time, but contract amendment is a structured process in any case, so I think, by and large, the definitions that are made before the contract is entered into are going to be critically important and would tend to stand up.

Alan Greenberg: Yes. Sorry for being flippant in my comment. I was trying to introduce a bit of levity not address a legal point. We are allowing the contract to be changed through due process as time goes on and, therefore, the conditions of breach may well change as time goes on is all I was trying to say. Thank you.

(Greg):   And that I will agree with. Sorry. Is there another hand up?

(Malcolm):   Yes. Sorry. This is (Malcolm) (unintelligible). I'm afraid I'm not on the Adobe
               Connect.

               I think now is the time to come in on an issue of how this relates to the work
               from CGW's accountability and the integration from there as well.

               If they want to put terms in the contract that relates to ICANN that just
               happens at the moment there were some changes that relate to their work that
               are in the existing contract, then there would be a question about how they are
               enforced.

               It is quite possible that CWG will think we want to continue put terms that
               relate to ICANN into this contract just as they are at the moment and, having
               seen the creation of the MRT, to use the MRT to enforce those as well so
               there will be a need for that integration around that point at some point in the
               future.

               Unless this group intends that the MRT is only usable for the things that relate
               to this group and CWG accountability wants to have their own mechanisms,
               then they must remark completely separate and independent mechanisms.
               If so, that will need to be communicated clearly because I expect that CWG
               accountability may want to make use of this mechanism as well.

(Greg):   Thank you, (Malcolm). Those are some interesting points and, clearly, I think
               coordination on that point is critical.

               One of the points that we've been making through the course of time, at least
               since Frankfort if not before, was that we wanted the MRT, by and large, to be
               borne and that it's only specific times that it would be not borne would be
               where there was a breach or the contract was coming to an end.

The idea of using it as a general purpose accountability body, I, for one, without dismissing it out of hand, think that would be a radical change and growth in the scope of the group and would distort our concepts of how it should be handled.

Frankly, depending upon the charter of Contract, Co., if there were terms in the contract that related to general ICANN accountability and I'm not necessarily saying that is a good idea either, there could be a different committee or group charged with and delegated certain obligations with regard to instructing Contract, Co. on those.

So I don't think it necessarily follows that, if the contract contains elements that go beyond IANA terms, the MRT would be charged with instructing Contract, Co. on how to deal with those terms. Clearly, that opens up a whole kind of nesting set of Pandora's boxes if we go down that road and we may need to, but it, certainly, creates a lot of questions to be answered.

Alan Greenberg?

(Malcolm):   This is (Malcolm) (unintelligible) again. If I may quickly buffer on that? I wasn't suggesting that MRT would become a general and opened ended form of accountability. I would imagine that CGW's accountability will be one thing to achieve most of that will account for its internal pressures as much as possible. But, if they decide that in a last resort, some contractual mechanism is needed, then they may want to make use of that.

Now, that then raises the possibility. You just raised something that had never occurred to me. From what we had said before, while we basically want to

keep the MRT focused, we can keep it reasonably focused and still have a limited and relatively late stage involvement in the accountability side.

Or, there is another approach that you just raised that had never occurred to me which is that Contract, Co. would be answerable to two masters -- to the MRT and, also, to something else.

Now, that has never occurred to me before because of the very critically narrow nature of Contract, Co. as we've described it which we want to be really just a shell for carrying out of one thing. That is a possibility but I think that is something that we, as CWG, need to think about. If there is going to be need to be some slight broadening, first, to be able to bring in or to integrate with the work from CWG's accountability, where is the appropriate touch point? Is it worth it for them to broaden it by asking MRT to implement those functions, or is it better to broaden it by asking Contract, Co. to look to the compliances and then potentially make judgments between them?

(Greg):   Good question. I think we'll have to part that a bit but it certainly opens up another avenue of discussion. Alan Greenberg?

Alan Greenberg: Thank you. We use the term "scope creep" sometimes and I think I coined the term "scope loping" a while ago for a scope that is running as fast as it can away from its original scope. If we start talking about putting accountability things for ICANN proper in MRT's domain, that also means when we later award the contract to the intergalactic IANA corporation, we start governing how they work internally also and that has to be redone when the contract is awarded. That sounds like so far from what we designed the MRT to be doing that I can't even come up with the right words. Thank you.

(Greg): I don't disagree. Maybe we'll need a provision to avoid creeping or loping, maybe an antelope provision.

The next question which I think probably could consume a call in itself and probably is better to be dealt with in detail on the list would be what are the criteria?

As I indicated earlier, typically, in a contract, you see termination for breach of representations and warranties and then you see specifics as to what the specific things that will be breached further on. Will they be in a document? I think the answer is clearly yes. They would be in the contract.

The question is whether there needs to be some other sort of scoping document beyond that that would at least informally guide the MRT overhead, formally guide them as in the charter? I'll open the floor to this. I don't want to entirely cut off conversation, but deciding what constitutes a breach of a contract that we don't entirely have in hand yet I think might be premature.

Alan, is that a new hand? Sorry. No, that was an old one. Okay.

Any further consideration at this point of what the criteria would be for deciding when ICANN or the IANA functions operator had breached the agreement? Milton Mueller?

Milton Mueller: Yes. I don't know if our NCSG comments have been filed yet but we had identified something that might relate to what (Malcolm) was talking about which is that a consistent pattern of not properly implementing policy either through incompetence or deliberate would be something that we would see as justifying some kind of a breach. In other words, it's not just pure technical

performance, but also, a pattern of either implementing policies that weren't properly agreed or not implementing policies that were agreed.

(Greg):   Milton, when you refer to policy, what sort of polices are you thinking of -- you IANA specific policy or general ICANN policy or what?

Milton Mueller: No. Just definitely IANA specific policy. Absolutely nothing else.

For example, if some controversy in the top-level domain was proposed and it wasn't approved, but for some reason, there was political pressure on ICANN let's say to not implement it, I think that would be something that we would want to not happen and to prevent from happening. Do you understand what I'm...?

(Greg):   Absolutely not. Yes. Any follow-on comments on Milton's point there?

I think that is helpful. We tend to use the term policy to mean a lot of different things so, whenever we hear the word policy, I think we should always try to refine it a bit unless it is completely obvious that we're talking about consensus policy versus another kind of policy. In our previous call, some of the things that were being referred to as policy weren't really policy at all so that is the reason for digging in among other things.

Alan Greenberg?

Alan Greenberg: Something that happens prior to the process of giving IANA instructions within ICANN, I believe is completely out of our scope. Certainly, again, once we transfer to the intergalactic IANA corporation, how IANA handles the next AUDIX XX or whatever the domain is, is its business and we have no

purview over that at all so I don't see why we would because ICANN happens to be the current operator.

(Greg):   You mean to say how ICANN handles the next AUDIX XX?

Alan Greenberg: Yes. Sorry. How ICANN handles the next AUDIX XX. When they are no longer the IANA operator is completely out of our purview and I don' see why it is within our purview if they happen to be the operator.

(Greg):   I think how IANA handles the next .xxx should be within the purview.

Alan Greenberg: Of course. Anything IANA does is within the purview. How ICANN does something prior to IANA being involved is not.

(Greg):   Milton, I see your hand is up again?

Milton Mueller: Yes. I am having trouble understanding the point Alan is trying to make.

That is exactly the problem with vertical integration of the IANA and ICANN functions is that controversy of policies is still over from policy into implementation so the people who don't like the policy that was passed, even though it is passed, might try to interfere with its implementation and it's not inconceivable that ICANN itself would be divided and would try to not implement or undermine a policy that is, in fact, the chief consensus. It is also conceivable that they would somehow implement a policy or implement an IANA change that was not properly made through the consensus policy process.

Of course, Martin, that could happen without vertical, but Alan said why would we ever talk about what ICANN does in this context? I think that is

when IANA and ICANN are mixed, the same corporation, we do have to look at that relationship. That's all I'm saying.

(Greg):   I guess I will throw a slot in here and maybe a point for further clarification. As I understand the gTLD delegation/redelegation process under the current IANA functions contract, the contract calls for a report and the report has to include a self-certification that the delegation has been approved consistent with the policies of the operator.

My understand of that -- and maybe it is critical whether my understand is correct or not -- is that that's not merely referring to IANA policy, but it is referring to the policies of ICANN relating to everything that kind of takes place up to the delegation instruction. If that's the case, then that at least points to a point at which the current contract goes beyond technical and operational performance and into being a check on whether ICANN is following policy.

Again, if that's the case and we decide that that's not going to be part of the new IANA contract, then that is a change from current process, a change from what the NTIA currently does. That is something I would at least like to put a pin in as to whether the policies at least on the gTLD side. And I think there is a reference to policies on the cc side as well and I think those are not IANA policies but are the policies of the ccTLD operator or at least relating to the delegation/redelegation process by which CCs take place which, obviously, vary quite a bit.

I'd like to at least kind of put a note there for clarification that may be something we come back to because, among other things, we haven't established how and whether the authorization function would continue and that report is produced as part of the authorization workflow. That's another question as well.

If there are no further comments on this point, I will move onto the second major bullet which is MRT will meet annually to review the overall IANA functions operator performance. I noted during the last call there was a request for clarification on how this review takes place and how the budget review takes place, but the prior call didn't develop those questions into an actual question that could be posed to ICANN or to NTIA perhaps as well.

If we want to get priority beyond our own attempt to better our understandings of these currently take place, we will need to, in the course of this call or on the list -- develop a, kind of, answerable question or opposable question, at least or staff or otherwise - to hand up to ICANN and/or NTIA.

So the questions that are here, who prepares the review, what does it include, what is the process, what are the standards, what are the mechanics - if they're below standards.

Starting with the first question, "Who prepares for the review?" I'll open the floor for that.

Especially if there's anyone who has any current knowledge, obviously we can rewrite the contract as we see fit - subject to the approval of the community and all that.

I'm seeing no hands on this. I'll just pause on this briefly. I would think that the review. But first of all, we'd probably follow prior criteria's. And we'll need to figure out what those are.

But that the review would be, you know, carried out by the MRT. Would ask for and review a number of reports - many of which we have already come in or would be part of the annual report performance.

And go through the process of determining whether the IANA functions operator have performed up to spec, essentially.

I think that kind of - and then there - probably be submitted to IANA for comment. And then ultimately, issued by the MRT or MRT would cause a contract code issue if that was how it was specified.

And the mechanics, if the IANA functions operator's performance is below standards, I guess gets to the question of communication with IANA or the operator and also whether there's a breech.

Below standards may not be a breech. And if it's not a breech, you know, clearly there needs to be communication of the below standards performance issues by the MRT to the operator.

And if it is a breech, then I think we go back to the earlier discussion we had on breech. I see a comment from (Mathew Hears). "There should be a process that allows and is based upon the CSC to contribute to the review."

I would tend to agree with that. They will be on the front line to a much greater extent than the MRT and clearly would be important for them to inform the process.

Any comment on that - seeing nothing further on any of these. If there's anything further on this major bullet, I'll open the floor; hold the floor open for a moment.

Otherwise we'll move on to the annual budget review question. Under annual IANA budget review, question, "Will a sub team of the MRT conduct this review. And what are the mechanics if there is a disagreement with ICANN on the budget?"

As to whether a sub-team conductor to review that, you know, entirely up to us to decide. Typically, budget committees are subcommittees of larger committees.

They may in turn call on expertise that's beyond the scope of the committee. I would think that, you know, given the variety of folks that may be on this committee. There should be some budget - reasonable amount of budget expertise.

But in terms of budget review, those that are more metrically inclined and numerically inclined may want to be accessed, in some fashion so that the budget review is fully informed.

And clearly, goes back to the point that representatives are sitting on this MRT - not free agents.

So they should be able to draw on and draw in members of their communities who tend to follow the budget issues more closely.

I know that in my constituency there're certain people who are budget watchers. And there's certain ones who aren't. That shouldn't be the only criteria for sitting on this committee. So we would want to have the ability to access those.

The mechanics, if there's a disagreement with ICANN on the budget, this follows on a discussion we had at the end of the last call - which was kind of write of review and discussion and then consultation versus some sort of write of budget approval.

It certainly could be a budget approval process if we wanted to write one in. There might be considerable push back from ICANN - if there's an issue of approval of the ICANN - of the IANA budget.

But I think that's, you know, at least a point to be raised - Bertrand.

Bertrand de la Chappelle: Yes, sorry, (Greg). I had to raise my hand. And first of all, apologies, I joined later - about 15 minutes ago.

But I raised my hand, actually, on your previous topic regarding the review of a great (unintelligible). And I don't want to - the flow.

My only question is that (unintelligible) is another - so we'd be clear on the (unintelligible) issues of the annual review that is ended at the moment.

And the distribution of reviews between the, sort of, monthly review that would probably mostly go the CSC or an equivalent and then we'll review and a general review that could take place, in fact.

My concern is that - I'm wondering whether we're not overloading the MRT with a lot of work that will overwhelm the (unintelligible) being created.

So it was just a matter of the MPC of the review itself. But I don't want to break the flow if you want to continue on the budget review.

(Greg):   Thank you Bertrand. No I think it's a worthwhile point. And the flow is not as important as the result. My personal view is that annual reviews are intended to be the preview of the MRT, at least to coordinate and organize.

Clearly the CSC would have input on that, as we discussed. I think this is not merely the review of reports from the operator. But this is a review by the MRT.

So it may involve their own kind of questioning and decision making process to arrive at a review of the performance beyond just, you know, a responding to the IANA's operations - own operations - a view of their own performance or their statistical and metrical reports.

So I think that, you know, in terms of overloading, part of this is a question of whether this is a coordination function, in part.

And maybe even coordinating impute from the CSC, as well, or as a, kind of, a wholly owned process of the MRT.

I would think it tends to be a mix and certainly not intended to duplicate the CSC's own function.

Bertrand de la Chappelle: If I may, don't you feel that it will produce the same kind of workload than - I mean to a lighter extent - but a significant workload - when you compare with the work that the ATRT groups are conducting - which are pretty heavy.

So I would have a preference for putting more responsibility regarding annual review on the CSC of whatever structure would actually be doing the ongoing money for it.

But that's a question of balance. I'm a little bit worried about overloading a MRT which as we will discuss afterwards, is lucky to be a relatively large circle.

(Greg): I hope that it won't be too large of process Bertrand. I think the ATRT is, you know, reviewing ICANN which is a mini headed hydra.

And the IANA function itself, you know, appropriately defined in scope - without scope (unintelligible) - shouldn't produce the kind of workload that the ATRT does - that would be my view.

If it does, maybe the MRT is - or reviewing too much.

Bertrand de la Chappelle: Yes, okay.

(Greg): Let's see. Anything further on that point directly? Anything further on the...

((Crosstalk))

(Greg): ...budget review? Next point, then I'll move to is to address any - just to call out. I see (Mathew Sheers) comment in the chat. "The CSC should provide much of the input in the MRT reviews more holistically."

And I certainly think that points to some, you know, element of balance. And clearly the CSC being on the frontlines should, you know, provide all of the input that they can in that regard.

Moving on to addressing any escalation issues raised by the CSC - one of the important functions of the MRT - first question was, "How are these delivered to the MRT?"

It seems to me this needs to be formal enough. I don't know that an email is insufficient. But it should generally also be documented. It should go on a Wiki.

There may be some issues of confidentiality that need to be dealt with. But assuming we're not dealing with confidential information. Probably should be posted as well as directed to the MRT.

But need to consider too whether this is kind of - stuff should be widely disseminated or just available. But I would think it would be delivered by the CSC coordinator or chair in an email.

Which would then be posted and would be preserved beyond the evanescent functions of emails and sent to the MRT - any thoughts/questions on this point?

Next question - somewhat related - "How does the MRT decide if and when to meet" - and there are two sub questions here. "Is there a member, such as, the chair or a subgroup in charge of this? Or is this a secretariat function?"

And secondly, "How much discretion does MRT have regarding meeting after an escalation issue is raised?"

It seems to me that, you know this under addressing escalation issues. That once the escalation comes to the MRT that it will be circulated among the MRT.

And a meeting would be called in response to that. Whether it's the secretariat, you know, should be working kind of under instruction from the chair, I would think and would call a meeting there.

Maybe a sub issue on this is whether something is time critical. And therefore, a meeting should be called more quickly. Or if it's not so critical then a meeting can be called a little bit more in due course - that is with more notice.

Maybe it's being considered. But I think that there could be a reasonable amount of flexibility on this in the charter of the MRT. But without so much flexibility that escalation issues get buried.

And on the second point, in terms of discretion, regarding meeting after an escalation issue is raised. It would be my opinion that there should be no discretion.

If it's being escalated, then the MRT needs to meet to consider it. Any comments on this point and I see some other questions raised in the chat. But I'll stick to the escalation questions, for the moment.

And comments on these? These are just my observations. So, I don't want to dominate the observing - Bertrand. Bertrand, you may be on mute.

Bertrand de la Chappelle: Sorry, I was on mute, indeed. Yes, what is the balance expected between physical, online meetings and the ease at which a bunch of 20 or 27 people can actually be called to meet on a relatively short notice.

I remember that in the draft proposal that was circulated for comments. Until today, there is a pretty shy delay in cases of relative urgency and so on.

And I'm wondering whether relatively large body can aggregate rapidly. And what would be quorum issues, for instance.

(Greg): I think that raises a side question. Or, you know, gets us to a question we'll be going to later. Which is, "How big is the MRT?"

Twenty-seven, you know, one of the straw men takes it as large as 27 under the - everyone gets what they ask for, theory - of stuffing the MRT.

I don't know how much support there is for that side - or maybe even as small as 11 or so - depending upon a different set of seating. And there's, you know, that's, you know, still an open question.

And it maybe, frankly, that the nimbleness of the MRT calls for either a smaller MRT or a subcommittee or a relatively low quorum requirement - especially, if there are multiple representatives of a particular stakeholder group.

But it seems to me that if there is a critical point, it needs to be addressed in a timeframe by which it's worth the review. But it's clear that they have to be in the workflow.

And that would need to be criteria for both - considering the size of the MRT and also for selecting members of the MRT.

Somebody who can't respond on less than two weeks' notice - too many call for a meeting - would seem to me to be, you know, more or less inappropriate for the MRT in that case.

So I think that it does need to be nimble. And whether that's accomplished through subcommittees or smaller group or smaller quorum requirements - if the group is larger - are all potential answers to that - Bertrand, any thoughts on that?

Bertrand de la Chappelle: Yes if I may. You're right in saying that one of the proposals goes down to 11. But the general average is more around 17 to 20 plus.

I'm really having underlining concerns regarding the distribution of roles between the MRT and the CSC.

Given precisely the difficulty of having a nimble 20 plus group of people - unless they are dedicated entirely to that which would become a relatively cumbersome structure.

I think this - like what I was saying before regarding the review. There is a line of issues that probably should be addressed which is the exact distribution of responsibilities between the CSC - whatever it is - and the MRT.

To handle the things that are on relatively short notice, relatively short urgency or short (unintelligible) - easy remediation and things like that or ongoing reviews versus long reviews and is in the preview of the MRT which should be of a timescale that is a little bit.

So basically, this boils down in those phases to the repartition of the responsibilities between the MRC and CSC. Which I think in the current proposal is a little bit too tweaked in the direction of the MRT.

And I think we are potentially going in the direction of too complex of body with subcommittees and our whole structure and our whole secretariat, and so on.

So I just wanted to highlight this issue of respective responsibilities of the (unintelligible).

(Malcolm): Hand up.

(Greg): Is that you (Malcolm)?

(Malcolm): Yes it is. On the question of nimbleness versus everybody gets what they want - in terms of representation there. I suspect what's appropriate will depend - will vary, according to the kind of issue being considered.

If there is, for example, a complaint that some process wasn't followed properly, there will be a need for the MRC to be able to give a relatively authority to statements.

We've looked at this. And, yes, this hasn't been followed properly. Go back and do it again. In those sorts of circumstances nimbleness is probably going to be more valued - more highly.

On the other hand, at the other extreme, when it comes to contracting - particularly if we ever got to the nuclear option of saying we're going to - put this out to a tender - to somebody other than ICANN or the Web (unintelligible) other than ICANN would likely to bid.

Or ICANN's excluded from bidding. Any decision of that nature, I don't think nimbleness will be a priority. Making sure that everybody has been very carefully - has been very carefully considered.

And that the entire community has been involved in that decision - will be the priority in that case. So I would tend to think - even if it adds a little bit of organizational complexity.

To think the capability of having a broader group with everyone well represented. And then having the ability to have maybe subgroups to consider specific issues - maybe beneficial - may preferred in that case.

I'm going to just put in a procedure. That (Greg) I know you've been familiar with than I am - which is the notion of on bank hearings - the idea that you can have a decision made by a small group - which is actually really acting on behalf of the broad group.

But in certain circumstances, either that group could decide not to take the decision or it could of, "No we want this to be reviewed by the whole group. That's the sort of procedure I think should at least be on the table as a possibility.

(Greg):   Thank you (Malcolm). Bertrand is that a new hand?

Bertrand de la Chappelle: Yes and it's actually - and just a quick answer to (Malcolm). I think he's right in making the distinction. And the reason why I was asking is that I think that for the first category of issues that he's dealing with.

This is where exactly I would like to see the frontier between the MRT and the CSC moved a bit. So that more of those relatively lower and issues or - and in those cases by the CSC.

The key problem we have at the moment is that the way the CSC is being composed is likely to be felt not as wholly represented or diverse as the MRT.

And I think there probably are possibilities to make sure that the CSC is more recognized or trusted by the entire community for dealing with ongoing reviews, simple recourse and things like that.

So that the MRT is mostly tossed with higher escalation issues and, of course, the larger issue of contract renewal and potential reallocation.

So this is exactly the core. And (Malcolm) is right in making this distinction. That's exactly what I am facing.

(Greg): Thank you Bertrand. Just to visit that issue for another moment. I think one of the things that I've seen in some of the early comments and also some of the other discussion around the CSC about - which I think there is a lack of clarity or at least a lack of perception.

Is what the CSC does when it sees an issue - whether it merely refers that issue and escalates every issue up to the MRT or whether it takes some action.

To my idea, I don't think it's - and I have to go back to the proposal to see if somehow we weren't clear on this.

To my mind, the CSC was always intended - or as I thought - intended to be a first responder and not merely a pass through - that the CSC in essence was the - if you will - the help desk for the first level of response.

And that if an issue arose, that the CSC would have the mandate of trying to resolve that issue. You know an issue of underperformance or, you know, problematic performance by the IANA of its functions.

And only if the problem was persistent or unresolved or if the discussions between the CSC and the IANA operator to resolve that were unsuccessful, would it be referred up to the MRT.

You know, escalation is not the first stop but a last stop of sorts - if the CSC is unable to resolve the question. So the idea - I don't know if that helps in some regard with the question of divisional labor between the CSC and the MRT and the like.

But it seems to me that the CSC should be putting out the majority of fires on its own and only looking to the MR - to escalate things to the MRT, if the fires aren't going out any thoughts on that point - any disagreement with that idea of the role of the CSC?

Man: I personally, am fine with that.

(Malcolm):   (Greg) (unintelligible).

(Greg):   Yes.

(Malcolm): Broadly speaking, I'm in agreement. But the CSC's really the customer committee. So it's only - I don't know that it's going to be, you know, incredible as a truly multi stakeholder group.

So it's likely to be able to deal with those things in which matter to - and which are causing concern with those who are, you know, directly engaged to the customers.

If there are - when issues arise that - on which there is a much broader range of concern. Then I suspect probably passing it up is going to be what we can expect.

And, indeed, if CSC were to hang on to something - which is a much broader range of concern - then it may not be so much passed up but grabbed up.

And it could be that our team may wish to engage with something of that nature. Now hopefully, the vast majority of issues will indeed be things that can be worked out between the functions operator. And that directly affects customers.

But, you know, for there I think that distinction there, you know, lies in whether or not the customers themselves are likely to be able to deal with the question themselves or whether there needs to be much more engagement.

And if so, we can expect it to be faster on our team.

(Greg): (Malcolm) let me follow with that - for a point. Is there - can you give an example of something you think that would fall in front of the CSC but which would be an issue beyond what the CSC should deal with in the first instance?

(Malcolm):   I mean, I don't know. It may be that things come up in the CSC without necessarily falling in the CSC - the future returning.

But the sort of thing that meets the situation I've just described. I don't think does really fall within the CSC.

But that doesn't mean that may not be where it was first noticed, where it (unintelligible) grows, where it's first discussed - where it first (unintelligible) grows, where it's first discussed.

(Greg):   I think somebody may not be on mute (unintelligible) - may not be on mute (unintelligible).

Back up - back up. No we're still there. Anyway, I think that's something to be considered or there needs to be a sort of check on that point.

One thing I could think of just playing - maybe devil's advocate is there - if there is a breech if you will or a performance issue - not necessarily poor performance but performance that's not as specified that might actually be pleasing to the customers.

And that therefore it should be escalated because it is a breech. It's not what was bargained for by the global multi stakeholder community but that the customers are - aren't unhappy about it.

Now maybe that's an edge case butt hat's one where I'd think perhaps there's an issue with having the customers on the line and goes to, you know, partly to the question of what the composition of the CSC is going to be if it's wholly customers or if there's some other stakeholder representation there to make sure that that's...

Man: Great, it was actually that latter point that I was more engaged with rather than the former. It was the idea that we could put some others to help beyond the customers on the CSC so that they can do a broader range of things. And if that were then to result in there being pressure for more things to be resolved through the CSC that actually it was not appropriate to deal with through the CSC.

And it - that could be justified on the basis that the CSC has a range of - from - of others engaged but it wasn't necessarily felt to be wholly satisfactory and the appropriate place to deal with that particular kind of issue was the MRT.

So I wouldn't want to overload the CSC by asking it to do things that was inappropriate for it. And I wouldn't want to seek to attempt to mitigate that in a somewhat unsatisfactory manner by just adding a sprinkling but incomplete broader multi stakeholder representation on the CSC.

(Greg):   Right, well, I think we may be getting down to a level of detail at the moment that's - we can explore further on the list but I think we do need to keep in mind that the IANA functions themselves, you know, will be the subject matter here and their performance.

And that the CSC will be receiving reports and perhaps monitoring performance - number of days it takes to delegate or make a Whois change or the like. I'm expecting and hoping that those sort of things, you know, if they're not happening up to snuff, you know, would not raise eyebrows for CSC to deal with entirely on its own.

Man: Agreed.

(Greg):   and I see (Kirk)'s making a comment here that they'll deal with most breeches
                     and escalations will have to do with not meeting SLAs, time to perform a root
                     zone management change, for example. Those should be self reporting as
                     IANA has to report these statistics.

                     There should be clear criteria for escalation (unintelligible) so many
                     departures from the SLAs or an average turnaround time greater than the
                     standard. Yes, it's essentially if there's a persistent problem that the CSC -
                     that the dialog between the CSC and the IANA operator hasn't solved that
                     should go up to the MRT. So I think that's kind of where things will go here.

                     Looking at the rest of these - I see Alan Greenberg with a hand up.

Alan Greenberg: Thank you, (Greg). The edge case you noticed is the - is one of the issues I've
                     - hello?

(Greg):   I hear you.

Alan Greenberg: Okay, the edge case you mentioned is one of the issues I raised the other day
                     and you put a pin in.

                     So presumably you will be coming back to it and that's specifically issues
                     where IANA may not be following established process or procedure and the
                     CSC for whatever reason doesn't notice or doesn't care or likes the outcome is
                     one of those issues that's - it's an edge case until it happens, at which point it
                     becomes - it might become absolutely critical. So presumably we will come
                     back to that one.

(Greg):   If I can respond to that briefly I think that part of that also goes to how the
                     CSC is chartered and what sort of discretion the CSC itself has. To my mind,

the CSC's charter and operations need to be clear that it is bound to respond to a failure of performance or a - you know, failure to meet SLAs that are taking place regardless of whether the customers are up in arms or couldn't care. IANA is supposed to function according to a set of specifications.

And if it fails to do so it's the CSC's job to take on that issue. And if they fail to take on that issue that's going to raise issues with the legitimacy of the CSC, which I hope the CSC would not want raised. I'd hope they'd have better reasons to perform their functions than avoiding oversight issues.

But in any case I would think that that would be - in part a question - a way to deal with that as, you know, appropriate level of kind of obligation to deal with issues that, you know, fall into its mandate.

Bertrand?

Bertrand de la Chappelle: Yes, very quickly, the point that you made regarding the responsibility de facto of the CSC to do something on its own in case of a failure, points to a larger issue that I think we haven't discussed (unintelligible) position of the CSC.

But I personally view this group however it's formed as performing or trust (unintelligible) function for the IANA operations. And I'm not sure that it should be composed extremely by the registries or the customers per say even if they have a strong capacity or strong role in the designation of the people on the CSC.

But I will submit probably by the deadline tonight on the comments forum and share on the list some folks regarding this. And I don't want to belabor here.

(Greg):   Thank you, Bertrand, all important points. I think that we have covered kind of the course of this discussion all of the sub bullets under this bullet. Notice in timing - we've discussed at least the need to be nimble when an issue is operational performance but also to be deliberate when the nuclear option is being considered. What is the process if there is an issue? I think that may go to the issue.

Beyond notice and timing of what is the MRT to do, when an issue has been escalated to it, maybe that's one we haven't touched on fully or even not fully.

It seems to me that the - at that point a dialog is opened with the IANA functions operator regarding the performance issue and that meetings or discussions take place to try to resolve that issue to create a timeline to resolve the issue, criteria need to be discussed so - to make the issue go away.

The key contract provisions contemplate an escalation process that may take place, both kind of within ICANN IANA starting with - dealing with the IANA operation specifically and then escalating from there within the ICANN hierarchy with the MRT, you know, engaging in that dialog at each step in order to resolve the issue before a breech is actually formally called and termination is exercised.

Or if a breech is called - there should in any case, I think, be an opportunity to cure that breech. Typically that's what takes place unless there is in essence an incurable breech.

But it seems to me that - you know, this needs to be - it will be - I think these details need to be filled in but it's hardly a - the idea of, you know, escalating

a performance issue is hardly unknown to those who are dealing with technology transactions types of contracts, outsourcing contracts, and the like.

So I don't think this is an undiscovered country. I see (Donna Austin) commenting in the chat. There will need to be a relationship manager between the IANA department and the CSC/MRT. (Donna), are you thinking of a - on each side? Or are you just saying on the IANA side? Or - or on the CSC/MRT side? (Donna)'s response, each side. I think that makes sense. And those typically are identified in the first instance in the contract.

They can be changed through a process in the contract. And that would be - at least my suggestion on how that would be dealt with. So any further comments on this point or on anything else on this page before we move on from this document?

I'll just make one final comment just looking at some of the stuff going on in the chat regarding budget review that the current IANA functions contract has a budget review process where the NTIA engages and review and discussion of the budget for IANA with the IANA functions operator.

And I would - would be my suggestion that that continue and that the MRT not be relegated to just another public comment or - since the budget issues, you know, should be - sufficient budget should be an issue that's dealt within the contract and therefore budget review as well.

But that's my thought and comment on that point. Seeing another further on this point, we should move on to the next item in the agenda, which is going back to the structural analysis document and picking up in that document where we left off. We left off somewhat after the size or the organization's components were discussed.

And let's see here - looking at these questions after this point, I think these first two questions which are showing on the screen are really part of that discussion.

I'd like to have that discussion holistically, especially given Milton Mueller's email in the last couple of days regarding, you know, perhaps, you know, upsetting the apple cart and looking at a number of different actors or stakeholder representatives outside of the typical ICANN group, that is something we need to discuss but I think it's all part of the same discussion.

I think the next question after those two is one we can deal with at this point, we can't avoid questions of structure entirely in a structure analysis. Will there be participants in addition to members?

And by participants I'm thinking of what we have in this group or what was called observers in some earlier groups, and, you know, also participants in the DCWG where you can have a cast of, you know, potentially 90 or 100 people also participating to greater or lesser extent beyond the member representatives.

And this - and the straw man response to that is no, there won't be participants, just members. And the broader community participation, the MRT will happen through group representation via a bottom-up multi stakeholder processes.

In other words, the stakeholder groups will communicate to their representative and the representative will represent them on the MRT. And as this next statement says, MRT members will be expected - maybe expected is too weak a word, to properly represent their groups' views.

At the same time, of course, there needs to be latitude to actually do work and not to just have a puppet function or if you're uninstructed to sit without comment. Any thoughts on this point of participants having a larger kind of standing group beyond the members who may not be representative? (Unintelligible)?

Bertrand de la Chappelle: I think it boils down to the type of work and the type of functioning that the MRT will have. I'm (unintelligible) members a little bit like the (ICG). The key question is are we beginning to build something that has a full autonomy and is basically a sort of alternate board like structure that takes decisions among itself?

Or is it basically a steering group that facilitates discussions, for instance, on the large issues regarding reconstructing or conducting periodic reviews of the large scale of the functioning of the operation.

I am cautious about creating something that sort of functions on its own and the fact that there are members and new participants is okay with me as long as it is agreed that the (unintelligible) that the MRT does are not board-like decision unless it's really needed but mostly facilitator of the necessary consultations within the community of various topics when needed.

The - sorry, that was another point I wanted to raise and I forgot. But basically is it a sort of super board or is it mainly a steering group that facilitates discussion on key issues.

(Greg):   Thank you, Bertrand. I'll respond briefly to that and then turn to Alan Greenberg unless you have a direct response. I think to my mind it is more a facilitator than a - it certainly is not a group that's autonomous. Its actions

should be answerable to the community and representative to the community in both the members that are serving a representative capacity.

I think that with regard to an escalation from the CSC the group should be able to, you know, turn to the IANA functions operator and initiate a process to try to resolve a persistent issue without, you know, engaging in a public comment or consultation.

On the other hand, when it comes to issues such as RFP selecting a new operator, perhaps, the issue of formally calling a breech and initiating the kind of nuclear option of - that could end in termination of the agreement that it should at that point be more open to comment and consultation and, you know, the public process.

But certainly (unintelligible) point should it be considered autonomous or unreviewable or, you know, kind of let loose once they've been appointed.

Bertrand de la Chappelle: Just a quick feedback, I agree on the distinction. I'm just always weary of any formulation that says represent the group's views because it grows into a model that is more representative (unintelligible) model than participatory (unintelligible) type of model. Neither the GNSO council nor the board theoretically should be (unintelligible) democracy (unintelligible).

There are supposed to be validators of the work that have been done below. And for large issues, I really think the distinction should be made, but for large issues I do not consider that the MRT should be a representative body except for the final validation for a more general discussion. And I think it will alleviate a certain number of the issues regarding the composition and the number of people that are in there.

Because the more we go in the direction of the representative body that has some form of autonomy I would say, the more we call for people asking to have a certain number of representatives in there (unintelligible) group and validation group. It can be more small and nimble. So just weary about the representative democracy model that kicks in.

(Greg):   Thank you, Bertrand. Alan Greenberg?

Alan Greenberg: Thank you, two points. First of all, I call attention to the comments in the chat on - if there are no participants then there must be visibility, it must have - they can't be operating in camera in either their emails or their actual meetings. It's got to be done in full view of public, aside from times, of course, when they may be evaluating RFPs or something like that.

But with regard to the current discussion, I don't see how it can be anything other than a decision making body. Each of the people - whether there's one per stakeholder group or multiple as some people are advocating, and they may be representing - formally representing their groups or may be independent agents depending on what their group wants, all of that - that's fine.

But ultimately presuming everyone doesn't agree on everything and public comments do not come uniformly in one direction, it will be making decisions. I don't see how we can do anything else, there's no other body, you know.

We're not saying there's going to be a body over this one who's going to oversee it and do - make it - decisions for it. This is the decision making body that's being structured. So if we don't like the idea of it making decisions in controversial situations or situations where there's not unanimity who does?

(Greg):   Thank you, Alan. I think those are good points. Milton Mueller?

Milton Mueller: Yes, I just wanted to say that I actually agree with Alan for once that - yes, we're talking about a decision making body here. I'm not sure that that necessarily means we are creating some kind of global parliamentary representation system on the other hand.

I think that the decisions have to be meeting certain support criteria that do in some ways reflect registries to have a big voice or a major level of influence since they are the customers of the people directly affected by the IANA functions. But we also need these people in there for other reasons.

I just want to elaborate on some of the points I made in email regarding, you know, going - not reproducing the GNSO in effect to the ICANN policymaking apparatus in the composition of the MRT.

But let's put it this way, suppose there's some pathological aspect about the ICANN environment in which, you know, IANA is really becoming dysfunctional in some way. And again, it's not so much the operational problems, which are relatively easy to monitor and presumably easy to fix although, again, there you do need seperatability, you do need the ultimately pulling of the trigger.

But suppose it's the worse - suppose it - the IANA implementation process is being corrupted by the policy process in some way. So that means the problem is within the ICANN environment itself and now we're sort of completely mirroring that policymaking environment in the oversight mechanism.

And this concerns me; this is why I'm proposing to break out of the mold of the ICANN representational entities in so far as we can create an oversight mechanism in the MRT that is different in certain aspects from that - which is reproducing the ICANN process.

I understand the points Chuck Gomes made about how difficult that can be to do but I do think we need to give it a real try to creating an oversight body that is not simply a reproduction of ICANN because if ICANN in its ownership of IANA is creating problems that need to be overseen how reliable will the ICANN system itself be at correcting those problems?

(Greg):   Thanks, Milton. I would encourage anybody on this call who hasn't seen Milton's email and the composition of the multi stakeholder of the MRT thread in the emails to go and take a look.

And I encourage Milton and others who have thoughts about what an MRT should look like to put those into straw man matrix of the MRT compositions that's currently - there's currently a link that's been posted to that.

And I'll repost it or ask staff to repost that after this call so go in there because I think it's nothing like comparing compositions side by side to help us look at that point. But anything - further on this issue of - kind of is this a representational body? Is it a decision making body? How much autonomy does it have before we move to the next point?

I guess I'll just comment briefly that I think that it - you know, does need to be a decision making body and I don't think that that necessarily means that it has autonomy in the sense that it's - you know, its decisions aren't reviewable or that its decisions aren't being made in some sort of unaccountable way.

I think it needs to - those decisions need to be made, you know, with at least an eye on the communities that the stakeholder - that the representatives represent. And I think that any representative put there that's kind of going rouge, you know, would be a significant issue for that stakeholder community. And you know, we've discussed elsewhere the issue of recall and removal but that is a point that, you know, we'll get to in due course.

(Olivier): (Greg), it's (Olivier). Can I jump in? I'm sorry, I'm not on the Adobe Connect.

(Greg): Yes, (Olivier), please do.

(Olivier): Thanks very much, (Greg), and (unintelligible) speaking - just a question on the decisions of the MRT. Can this be appealed using the appeal mechanism as well?

(Greg): I think that's a good question and, you know, a - it's an open question as in essence all questions here are open. My personal view is that there should be some level of appeal, perhaps to the - independent appeal panel in that case.

And I guess the question we need to look at is - as I see some folks discussing in the chat is whether this is going to be a place to kind of renegotiate policy and the like. So we need to give consideration to that as well. Alan Greenberg?

Alan Greenberg: Thank you. (Olivier) asked the second half of my question, but I'll ask the first half - or not, (unintelligible) say. You said this should be reviewable, that scares the something's out of me. By who? Now certainly anything is reviewable in individual and they can have a blog post on it. You can't stop

that. It's going to happen, but when you say the word reviewable that sounds like a formal process and someone oversees the decisions and reviews them.

(Greg):   I'm thinking...

Alan Greenberg: I hope that isn't what you meant.

(Greg):   Yes, not what I - I meant was something like the appeals panel, which does not have any ability to initiate an action on its own. It's an arbitral body so somebody would have to bring a complaint to it that the MRT, you know, failed to act in accordance with its processes or, you know, for instance but not that there would be a general, you know, another body above it reviewing it or that would, you know, take action if they didn't like what they saw and be able to act as both kind of prosecutor and judge. Not at all.

Alan Greenberg: If we plan to have this group reviewable or appeal-able to the IAP we're going to have to put that that in writing and be very careful about it. Remember, this is a group that's an entity that doesn't have any legal status. I'm not sure how you take action against a group that isn't, you know…

(Greg):   I don't know that you take action against the group. I think that...

Alan Greenberg: I don't mean take action - forgive me. I'm not a lawyer and I don't use words as precisely as you do. If we are going to say that the decisions that the MRT can be and, again, in precise terms second guessed can be reversed by a binding appeal process then I think we're going to have to be very careful on how we say that because at that point it's potentially no longer the multi-stakeholder group that we said it was. Thank you.

(Greg):   I agree and I think that is an important point in terms of balance of what a multi-stakeholder group should do versus how that could possibly be appealed and by whom and to whom and under what criteria. I know that the criteria for reviewing a board decision are quite narrow. It has to do with failure to follow the boards own processes and not the substance of the board's decision per say, but just whether they fail - if the - the result can't be questioned unless the way they got to it is questionable.

The way I think I see that - that may be an issue - a point for appeal is to make it as narrow as that, but I agree whatever we do in that regard - kind of gotten a little bit off the grid here, you know, has to be, you know, pursuant to very clear and I would say limited criteria and processes.

So that there isn't necessarily some non-multi-stakeholder body that is coming to a different decision in spite of the will of the multi-stakeholder community. Any other points on this point? I see a bunch of discussion in the chat, which I won't read out, but I think it does inform, you know, this issue of avoiding, you know, capture and getting away from the multi-stakeholder model. And who can appeal and what they can appeal is entirely, you know, is a question for discussion.

Getting back to where we actually were on the chart here the next question was will there be alternate members. And the straw man answer to that is that there would be no permanent alternate members, but members will need to provide a proxy or perhaps an alternate at least for purposes of consensus calls if they will miss a meeting.

This goes back to the question of quorum that was discussed earlier and also touches on issues of removal or recall for failure to participate, but I think the general idea is is that the members are the members.

It's not, you know, for their term they should be, you know, primarily directly engaged because you can't just have kind of tag teams of people running in and out to make the discussion.

The discussions get very inefficient if new people are kind of constantly joining them and then leaving, but clearly if members are not showing up when needed they're not fulfilling their duties and there should be a process I would think for removal that would need to be - removal by the MRT perhaps and as well for recall by the stakeholder group as well.

Removal by the MRT is - can be dangerous because removing somebody who is unpopular or the like shouldn't be in anyway an option. The removal becomes a problem - really for lack of participation only I would think, but any thoughts on this issue of alternate members generally or on proxies or the like for this point?

(Malcolm):   Hand up.

(Greg):   Yes, (Malcolm)?

(Malcolm):   It's not on proxies, but it's on removal. I would have thought that if the MRT representatives are to command the support of their constituencies that have appointed them they need to be removed by their constituencies at will.

(Greg):   I would tend to agree with that. I mean clearly board members are not removable at will under the current model at ICANN, but board...

(Malcolm):   That's part of the problem.

(Greg): Yes, I think many would agree with you on that point and I think, you know, furthermore boards are kind of a special case and the MRT is not a board. So therefore not a special case in that regard. So I would think that you know, removal at will to my mind is perfectly appropriate and probably necessary in that regard. Any other comments on that? Alan Greenberg.

Alan Greenberg: Just for the record then ICANN board members are removable by the board. The board has full discretion to remove anyone with the exception of the (GACC) liaison.

(Greg): Sorry, at that point I was using words imprecisely. I was referring to recall by their community or by their (unintelligible).

Alan Greenberg: There is currently no recall.

(Greg): Yes, right, removal and recall...

Alan Greenberg: Some of us would like to see that changed.

(Greg): Yes, I'm aware of that. I express no opinion by saying those words.

Alan Greenberg: I did put up my hand however for the previous issue on a proxy or a replacement.

(Greg): Yes.

Alan Greenberg: To some extent the answer is different depending on what the composition is. If the registry stakeholder group has 49 people on the MRT I don't much care if one isn't there because they're sick. On the other hand, if there's only one

for any given group you cannot disenfranchise them because reality - real things happen in life and people can't always attend every meeting.

(Greg):   Yes, and I would agree. I think there needs to be, you know, the ability to have a proxy.

Alan Greenberg: I would say more than a proxy. A proxy can - it depends how you're defining these words of course.

(Greg):   That's true. An alternate...

Alan Greenberg: (Unintelligible) does voting as opposed to not being able to present the case.

(Greg):   Yes. So I would think that - we're talking about alternates. At least have somebody else to sit in the seat, you know, should be an available process, but one that is used in a limited fashion and that if the member is not - is absent as often as present and represented by alternates as often as they are there themselves then that's a problem that should be, you know, rise to level of removal or, but and removal may not be the first step.

Perhaps there needs to be, you know, I would think that discretion of the Chair or have a chat with the stakeholder group that put that person there that this is not appropriate and ask them to take - to consider action on their part as opposed to just, you know, an off with their heads type of removal, but ultimately it needs to be a balance and as you say it depends to some extent on the composition of the group. Cheryl Langdon-Orr.

Cheryl Langdon-Orr: Hi, thanks. Share off the record. Alternate says something that I'm very comfortable with particularly if you have a smaller leaner group that you're operating with. However, and this picks up at a point that you had made

earlier (Greg) on probably not leaning specifically towards with people coming and going from debates and discussions.

Alternates should be contingent upon them to be up to date so an alternate can step in, but it's an alternate that is already acting under the expectations that they are up to date and have the knowledge and the empanada that's required to function properly. Thank you.

(Greg):   So then would you suggest that there be formal alternates in that case or that there just be an obligation to have some people who are shadowing the conversation and who could step in and be up to speed?

Cheryl Langdon-Orr: Again, it's Cheryl, for the record. It does depend slightly on the model that gets bashed out of this at the end. There's an argument both ways. I am comfortable, however, with named alternates. I think particularly if you're ever going to need to convene quickly it makes that ability quite useful and easy to uphold.

(Greg):   Thanks Cheryl. Alan Greenberg?

Alan Greenberg: Thank you. I would not want to see named alternates per person, but named alternates for the group. Again, if there are five people maybe there's two alternates. You know, they step in if and when necessary. So I think we have to be quite flexible on that because you're now setting rules on the sending group on how they manage their business and that's something you want to be very careful on. You were talking to some extent about disciplining or removing people because of various criteria.

Having spent, along with Cheryl and a few other people, the last 8 years trying to impose after the fact rules on a group for performance reasons which

weren't there to begin with and seeing the resistance you get you better make these rules clear ahead of time. Thank you.

(Greg):   Thank you. Cheryl, did I hear you?

Cheryl Langdon-Orr: Thanks for picking that up. Yes, just when Alan was talking about alternates per person. Look, if you've got a 47 member committee or 27 member committee alternates per person is, you know, godsmackingly ridiculous. Alternates per an inverted condescending entity makes greater sense and I wasn't very clear on that, but I'm finding myself agreeing here and it saves me typing it. Thanks.

(Greg):   Thanks Cheryl. And just the points of alternates per person kind of gets to the issue too of who are the representatives. Are they - if they're representatives by region from a particular stakeholder group then one might argue that there should be an alternate from that region step in as opposed to some other, you know, a group where there's not so much differentiation between the seats, but that's - I think we can kind of put a pin in that and come back to that when we discuss composition, which will take place on a marathon 48 hour call with no sleep. I believe that's appropriate for that point.

In any case should CCTLD registry representatives be allocated by region I think we should put a pin in that point because that's all part of that composition question. Should there be any other balance considerations aside from balance among stakeholder groups or within the organization?

Geography, which I think gets to regional questions, gender, disability - anything else that there should be the view in the straw man is that each individual community should feel free to select members based on that community's individual criteria. That may be subject to whether they're

formal regional seats for any group. There should be no balance requirements set for the MRT as a whole. Any thoughts on that point? Alan Greenberg.

Alan Greenberg: Thank you. I was actually talking about the regional rules and, again, this is an area you've got to be really careful on the words. The (ALAC) has five people on this group, five members, driven by regions, but they were not allocated per region.

So, for instance, I showed up in Frankfort because an Asia-Pacific member could not be there and the (ALAC) made the decision to not focus on region for that replacement. If the - on the other hand group is told you get one person per region that's not the flexibility they have. So words matter here in great detail. You mentioned something at the end and I'm trying to remember what it was now. What were you talking about right at the end?

(Greg):   Well I think I mentioned other things such a gender or even...

Alan Greenberg: Oh okay, balance. I'm sorry. As seen in the ICG you cannot say you have full discretion to appoint who you have, who you want on the committee as we did with the ICG and then complain about balance. It's either there's a group overseeing it and attempting to pick people based on balancing the overall composition or you let people select who they are and you live with it. You can't satisfy both.

(Greg):   I would tend to agree with that although I see a comment about regional diversity in the chat from (Fatinkma) or (Fatima Timbernaro).

Alan Greenberg: As I suggest you can do one or the other. You can't do - you can't give people complete freedom and then have regional diversity.

(Greg):   Right.

Alan Greenberg: You can't guarantee regional diversity.

(Greg):   Yes, I note that for instance in the CCWG accountability all the GNSO
                   representatives are from the North America region, which is not true of this
                   committee but happens to be in that one. If they were thought to be the best
                   representatives of their individual stakeholder groups and that's just the way
                   the cookie crumbled. I see from Steve Crocker a comment in the chat. What
                   about a requirement that the representatives actually understand the (IANA)
                   function?

                   I don't know if that's a question of balance, but although that would imply
                   maybe there should be some people on there who don't understand it, but I
                   don't' think that was the intent of the question. I think it is incumbent on the
                   representatives to understand and to the extent that they don't understand
                   every aspect of it.

                   I'm not sure everybody understands - anybody understands every aspect of it.
                   To become educated and there may even be a need for a - somewhat of an
                   educational component or kind of a review process to make sure that everyone
                   is up to speed on things, but you know, this is not a policy body as we've said.
                   It's an operational review body and so there should be a real understanding of
                   what is being supervised.

                   It's not a have gun, we'll travel like and supervise anything type of attitude,
                   but rather that there need to be a strong understanding of what's going on and
                   that's not limited to people who are customers. Clearly there are others that
                   can and do understand what's going on and I think it - rather than being used
                   as a method for exclusion I think it is a call for an important, you know, kind

of making sure that those who don't necessarily come to it as naturally can be brought up to speed as well as that they must have a full commitment to being up to speed. Milton Mueller.

Milton Mueller: Yes, I think we've really burrowed our way pretty far down into a rat hole. We're talking about alternate members and details representation when regionalism and so on when I still don't think we have reached agreement on the fundamental purpose or functions or processes of the MRT.

And - so I'm just finding these discussions about things like alternate members and regions to be - they're just not computing. They're short circuiting in my brain because we just haven't settled the question what the MRT is and I think Steve's echoing the question about the representatives actually understanding (IANA) function is a good example of that.

Some of us are viewing this conversation as being about representation, others are talking about it being about expertise and knowledge. So maybe we should back off from this a bit and I think we're running out of time anyway and if I'm lucky I'll just filibuster for the next six minutes and we'll stop, but no I wouldn't really do that.

(Greg): Well I hear our point Milton. I think that on the one hand these are things that have to be decided about the body, whatever it is, but they may be rather different depending upon what the body is. We are at six minutes before the hour in any case. So it would be a micro-filibuster if it was one at all. Just take a look quickly between the next questions here are not all about these - are driven by that point.

So how - let's go to the question of how would it meet phone-web face to face with remote participation? And the straw man on this is the meetings would

be conducted primarily by phone and web with face-to-face meeting I think contemplated only happening around ICANN meetings. Although even that may be driven, but if nobody on this group is a member of ICANN that may be an irrelevant, but I find that a little hard to imagine, but the idea is primarily phone and web. This is not a junket group.

In other words not the - one should not be looking to this group as a way to get to a bunch of meetings for free, putting aside the issue of economic issues of being able to actually attend or not that's a somewhat separate issue. We have members - the questions are recall on removal we've touched on already to a point. Term lengths and limits, MRT members should be appointed for limited terms of a length appropriate given the contract renewal cycle and the suggestion further that member should be limited to two terms.

Another suggestion that was made in the CSC document is that terms should be staggered. At least if there are multiple representatives from a given stakeholder group so that the group doesn't all exit at one time. Any thoughts on term length and limits? I'll take it that there are no real thoughts on that at moment. I see Milton Mueller agrees on term limits. Bertrand.

Bertrand de la Chappelle: Hi, just briefly. I wouldn't mind seeing the term limits not staggered, but organized around the period of the contract or the contracts so that basically there is a team that functions for that period of the contract.

(Greg):   Thank you Bertrand. I think given that we have - let's see - some comments here. Milton Mueller agrees on syncing the terms of the RFP cycles, Brenden states that term limits should not exceed the total contractual period, which I think is, you know, somewhat related. (Mary Anewma) thinks a single term would be good to create opportunities. I think in part that depends on the length of the terms, but there's always the question of expertise. You know,

clearly the community can decide to vote somebody out or to have somebody else participate.

(Malcolm):   Hand up.

(Greg):   Yes?

(Malcolm):   (Malcolm) (unintelligible) here - quick points. (Greg) previously you had spoken about how the aim was to have the MRT be a (unintelligible) light small body that's not too complex.

It doesn't have too much in terms of its own structure and procedures and so forth. In line with that while people may well have views on what term limit lengths should be, how they should be staggered, rules for repeat engagement and so forth I'd suggest an alternative position would be that these matters are within the purview of the constituencies appointing the person rather than within the purview of the MRT.

(Greg):   Well I think that term, you know, it may be term limits and requiring somebody to fulfill a term are kind of two different things and it may be that if somebody, you know, wants to rotate off or they want to rotate somebody off that that's not necessarily a bad thing. And I think I see Alan Greenberg and then we should probably close the meeting and the queue. Alan?

Alan Greenberg: Thank you. This is perhaps a rare case I agree with Malcolm. I think term limits and rotation stuff is up to the group that appoints people. If they're happy with them then so be it. I used to work - heavily work with a large technology company that moved its managers around very frequently and no manager was ever in a position where they had to deal with the repercussions of decisions they made.

Man: Here.

Alan Greenberg: That's a really dangerous situation.

(Greg): Yes.

Alan Greenberg: And I think we want to control against that. We don't want to legislate that it happens. We may not be able to control it, but you really want to make sure that if you have someone who really understands issues on your behalf that they can keep on doing their job properly and I really object to term limits in this kind of concept. Thank you.

(Greg): One more comment in response to some of the things I'm seeing in the chat in terms of the MRT becoming a standing committee. I think that if there is no reason for the MRT to meet coinciding with the particular ICANN meeting, for instance, that they should not meet. If there's no escalation then there's no annual review and there's no termination and there's no (RFP) then there's no reason for the MRT to meet.

If a few of them want to get together in a bar for a drink, as Alan said, that's another meaning of staggered terms. That's all well and good, but there shouldn't be kind of an agenda item that says that the MRT meets at every ICANN meeting because that's expected. I think that actually should be counter expected.

The MRT should be meeting annually to deal with annual reviews. It should be meeting at the end of terms to deal with terms - with (RFP)s or renewals or whatever they may be and it should meet with (Paul) by escalation other wise it should not meet. That's my thinking on that and I see a checkmark from

Cheryl and seeing someone agrees with me is probably - means I should end the call at this point.

In terms of next steps we do have a little bit left of this document as well as the CSC document, but I do take Milton's point that some of these things relate to the composition.

Some of these are - and some of these we kind of got to already. Going to the end I see funding and capture, which are questions that are not insubstantial. We should put a - put those on our agenda for the next time. In terms of the next time we are not meeting on Friday.

This is part of our reading and review week to deal with the public comment period, which ends today at 23:59 UTC. I encourage everyone to take a look at what the - comments and also there will be a process of digesting the comments for the committee - or the (CWZ) that will be taking place.

Our next meeting is a week from today at this time and one of the things that I will endeavor to do with help is to update this - the MRT structural and functional analysis and put those back up on Google Docs or update them in Google Docs for all to see.

Though I encourage you all to continue to give consideration to these issues on the email list, follow up on what's going on in the chat, which is quite lively important, to deal with the public comments, but also to enjoy this holiday time and enjoy family for at least a few minutes in between CWG obligations and happy holiday to all and with that I will call this meeting to a close and wish everybody a happy and healthy holiday. Operator you can stop the recording.

Coordinator: Thank you. This concludes today's conference. At this time all participants may disconnect. Thank you.

Woman: Thanks.

END