ICANN

Moderator: Gisella Gruber-White

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4:00 am CT

Leon Sanchez: Welcome back everyone. Thank you for showing up at 11:00 sharp.

Woman: (Unintelligible).

Leon Sanchez: And the next item of the agenda is the presentation of (unintelligence) and introductions of visions regarding the outcome of our group. And several of you have volunteered.

We would like to kindly ask you and urge you to keep strict timeline to five minutes at the most so we can have questions from other participants and comments. And first in line is Steve DelBianco.

Steve DelBianco: Thanks to the chairs. In keeping to a pitch - as I said before - I'm not a lawyer. I was a business man and did a lot of sales. But it would be a mistake to make this too much of a sales pitch. It's really what I thought was a visualization exercise.

So the stress test and scenarios we've been discussing today are explicitly done to look ahead at plausible potential things that could happen and that avoids looking into the past to find something that happened because then we all disagree about what happened in the past.

And then instead of focusing, right, instead of focusing on this scenario you focus on well that's not how it happened. But at the risk of stepping into that, I would like to do a pitch based on the very recent past and something that's fresh in everyone's mind.

As you know we spent years coming up with policy for the new gTLD program. One of the key was confusingly similar strings. And we thought we'd done our work when we said that "similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated." We thought that made eminent sense.

But in the several hundred page guide book, you never really know until you use it if it makes sense because two years ago, some of the independent expert panels that ICANN outsourced these decisions to interpreted the guide book policy on string similarity in a really surprising way. They decided that a few were visually similar - UNICOM and UNICORN, (HOTISE) and (HOTELS) because they looked similar with the lower case I and the L.

But these experts had no issue at all with 24 pairs of singular and plural forms of the same string. And with deference to Sebastien, if - in any language, singular and plurals could be confusing. But these in particular were English language singulars and plurals - things like car and cars, career and careers, photo and photos, loan and loans, pet and pets, web and webs.

Now the new gTLN guide book had objection processes available for applicants on either side of those. They had objection processes for defective community, and four of those were communities. But there were no standing and no objection process for the largest part of the ICANN community - registrants and users - no standing.

And the board was surprised that there were no objections from the community, but we had no way to do one. So for instance, a registrants of electric.car would have to compete with that other registrant who got electric.cars.

So that's a registrant issue and a user confusion issue because I just heard a commercial for electric.cars. And when I went to my computer or brought up my mobile, I don't remember - was it car or cars? I forgot and I do a search for electric.car.

The search engine's going to bring up both of them. There's confusion on the user side, frustration and confusion and expense on the registrant's side. And registrants we scarcely ever hear from. Got it - two minute warning.

Health.kids, Frankfurt.hotel, Frankfurt.hotels - so here's the pitch. If we had a permanent cross-community working group composed of members, which we brought up earlier - it's in Work Area 2's inventory on Page 1 - the community of registrants and users could in fact generate community reaction. We could convene. We can discuss reviewing and challenging any of the board's decisions.

For instance, the board may have made a decision to accept the independent expert panel's recommendations, and we would have challenged it. Or the board may have made a decision on somebody's reconsideration requests if

any had been filed. We could have challenged that - challenged it and sent it to an independent review.

And if there was no board decision, it brings me to a second element of the pitch. We probably need to change the independent review standing so that an aggrieved party for an independent review could include, well, registrants and users and not just the applicants themselves.

So the majority vote by this member panel - and again, that would have someone from ALAC, commercial stakeholders group, ccNSO, ASO, the governments and the GAC - all of these members come together, maybe virtually or in person, and they do a majority vote to refer this to an independent review panel.

They would be chosen from a dozen experts, people that have experience with ICANN and who care about precedent, so the decisions they make for the future - very important element of improvement. So ICANN management - pursuant to the independent review - might select a brand new expert panel to redo, do a do-over on the review, do it quickly, in other words, instead of waiting for contracts to be signed and TLDs to be delegated, at which point do-overs get very expensive as far as lawsuits and risks.

And that ends up putting the board in conflict with what the community wanted. So we need to move quickly. So if ICANN were let's say to ignore the community - if you note, one of the other elements on here is a super-majority vote by the members to spill all or some of the board members if in fact that's what's causing the problem.

So to conclude, this is to help you imagine how mechanisms for ICANN community holding ICANN the corporation accountable for its decisions. And

the presence and the mechanisms and the Work Area 2 inventory could impact the decisions, and practice will do more. So that's the pitch. Is anybody buying? Thank you.

Man: Okay now we would like to open the floor for questions on clarification on what Steve just said. So I see (Chris)'s (ping).

(Chris): Thank you. Steve, just a question before you - do you think what you've just run through would fit into the bucket of must-do before transition? And if so, why?

Steve DelBianco: Thank you (Chris). Steve DelBianco. The answer is yes. And the reason why is if you wait till after the transition, where would the leverage be to force ICANN to accept those kind of accountability mechanisms by which the community could hold the board accountable? So the idea is to get them in now.

It may well be that this board would agree to all of what I just described and if so, that's fantastic. We'd love to have an indication of that, but it's in number 1 - Work Stream I of Work Area 2 - because we believe it requires the leverage of the IANA transition to get the board to accept it. Thank you.

(Chris): Can I just ask you - sorry - one more clarification question? I understand that and thank you for being so straightforward about that. Who's "we"?

Steve DelBianco: "We" would be the members of this cross-community working group who are trying to come up with Work Area II inventory and categorize it into Work Stream 1 or 2. So in the sense that the community - in the transition we believe it's the community who is supposed to come up with accountability mechanisms to let the ICANN community hold the board acceptable.

So I think "we" is the people in this room, subject to the public comment period that we get on all of the recommendations afterwards.

Man: Thank you. We have James Bladel on queue and then Bruce Tonkin.

James Bladel: Thanks Leon Sanchez. Thanks Steve. Just a couple of quick thoughts. I like this idea personally. I'm in favor of some kind of a structure like this, and I think it was part of the ATRT I discussion and report as well, so I would recommend that we go back and take a look at that where I think it's fleshed out a little more in depth.

                 But I think just a couple of quick thoughts. The membership eligibility or establishment of who is and who is not a member we need to be very careful about that. I think at the GNSO level, for example, constituencies can realign and reorganize themselves, and we don't want to create a situation where new constituencies pop up and then demand new seats on this membership council or whatever we're calling it.

                 And then secondly, would you envision that this mechanism could also be used - we always talk about having it review and/or reverse board decisions - but what about decisions that the board refuses to take that enjoy overwhelming support by the community that are either being - I'm thinking like a pocket veto where they're just kind of just sitting there on a to-do list and not taking any action?

                 Would you envision that this membership would be able to compel the board to take a decision? Is that even possible?

Steve DelBianco: Yeah, the way it's written right now it requires a board decision because you don't want to let these members come in and tweak and change things. I don't think it makes sense for the members - for instance in my scenario - to go through and decide which of the strings would have been singular and plural contention sets.

It's really a matter of sending it back to the community. So it seems inappropriate that this member group could come together and decide to hold the board accountable for something it wasn't doing.

Instead, a bottom up, multi-stakeholder process that comes up with a recommendation that the board then ignores creates the decision the members could challenge. I don't think it makes sense for the members to initiate action but instead react to board's decision when the community has spoken.

Leon Sanchez: Thanks. Next on the queue is Bruce Tonkin and then we'll go with Malcolm Hutty. I would please ask you to keep it to clarifications.

Bruce Tonkin: A little confused with the particular example you've used, but I gather what you're saying is that you've got a group that you don't always have standing, and by creating this group, it has standing. And then if there's some sort of dispute mechanism I assume we want the outcome of that to be binding.

What's actually the test? Because the current tests at the moment - the dispute mechanisms like reconsideration for example - is whether the board or staff have breached a policy. The policy that you're referring to in that particular case, it was a policy from the GNSO which was complied with. I think what you're talking about is an interpretation.

Yeah, and then that interpretation - I would think that what should happen there is the policy development body then develops an interpretation because otherwise who's - are you just saying the board which didn't interpret it anyway - that was an independent panel. An independent panel is interpreted, a particular text if you like.

Normally in a legal sense when you get different interpretations it becomes precedent or the policy development body comes up with a new policy. So I'm just not quite sure how what you've described actually helps the accountability because the tests would be the same, wouldn't it?

How do you breach the policy? I'm not seeing that the policy has been breached necessarily. It was an interpretation of that, that's different. But that's a policy development process to create interpretation, wouldn't you say? I don't understand - we're just having panels interpret policy.

Steve DelBianco: Thank you. Steve DelBianco. Bruce there are three or four board decisions that could have occurred that would have been challengeable by the community. First decision would be to accept the independent panel if the board took an active step to accept it.

Another would be a reconsideration request that was filed with the board denied. And the board may have denied it because you strictly looked at whether the rules were followed, but interpretation is the same as implementation.

We will always - as long as we work together - have problems when we do new things in that the policy that the community developed would encounter challenges in the interpretation and implementation. Same problem, and you know we struggle with that frequently. So when it happens...

Bruce Tonkin: Just typically, that should (unintelligible) that policy body to do that interpretation.

Steve DelBianco: If in fact -- it says here - I would have loved that the board could have had the opportunity to say, "You know what? Let's do it over. Let's pick a new panel. Let's pick a new panel because it was clear at that point that the interpretation this panel used didn't meet with the community's expectations."

                  So a do-over would be much faster than a start-over in that case. It's really just a matter of hey, the community spoke. It says confusingly similar in the minds of a user. We think that these panels can't read instructions and we get a new panel.

Leon Sanchez: Thanks. Next on the queue is Malcolm Hutty.

Malcolm Hutty: Thank you, Chair. And thank you Steve. What you're fundamentally aiming for here - a means to ensure that the board is really truly answerable to the community. It's, you know, something that I thoroughly support. But I am a little concerned that just setting up a cross-community working group that had the power to overturn board decisions -- maybe even force new board decisions in following up another question -- that group would start to look just like the board, would have the same issues.

                  How would - so I'd like to explore with you how would this group differ from the board? Would it be - for example - a group of people that its appointing constituencies could more easily recall the members, and if so why create a new body rather than put those sorts of rules in for board members?

Is it a difference in some sort of what it can do? I can see, for example, a case could be made for something that would give pause to what the board said or was it said that the board was acting outside its scope or something like that?

But if you give it a general ability to review anything the board has done for any reason including its preference and indeed require new things to be done just because that's the community's policy, it strikes thought to look to me like this is just actually another board that then would have the same problems with it.

So if your idea of a new body that could act as the community's guardian of the board is to work for me, I would need to see how is that going to be different and how is it going to add something to what is there already. Thank you.

Leon Sanchez: Thanks Malcolm. We're going to have the second part of this session to widely and broadly discuss all topics. I would like to ask if you would be okay if we discussed this further later.

Malcolm Hutty: Absolutely.

Leon Sanchez: Thank you. Finally in the - we have one final question from Thomas Schneider.

Thomas Schneider: Thank you. Actually it's two short comments. I'm Thomas Schneider. I'm the chair of the GAC currently. With regard to the singular and plural, governments who are supposed to also represent consumer interests and business interests, we have made several - issued several advices on this and then asked ICANN to reconsider that decision just for your information.

And then the second point is when you say we need to use the leverage that we have now to have pressure on ICANN for improving areas where accountability mechanisms should be improved, of course this is true.

However, I think we should be very cautious and really think twice on where we've put issues -- whether on Work Stream 1 or 2 -- because if you want to achieve something with regard to the IANA to envision we need to be very cautious and not overload Work Stream 1. This is just a note of caution.

That doesn't go for your proposal in particular but as a general note I think. And that doesn't mean that we cannot keep some kind of pressure up on Work Stream 2. I think there will be lots of opportunities to step in when work would stop in case work would stop after the transition. But I'm not really afraid that that will be the case. Thanks.

Leon Sanchez: Thank you very much.

Steve DelBianco: Thank you Thomas. Steve DelBianco. Couldn't agree more. And you may know that I've been part of the conversation, but early on in the CCWG, one idea was the Work Stream 1 need only have elements in it that empower the community if there is consensus and it's within the by-laws. Empower the community to implement this stuff that's on Work Stream 2.

So once the power is there for the community, there doesn't need to be a very long list of what's in Work Stream 1.

Leon Sanchez: Thanks Steve. Thank you very much for your kind participation. So our next guest is Roelof Meijer.

Roelof Meijer: Okay thank you very much. Maybe first as an introduction, my name is Roelof Meijer. I'm a member of the working group. On behalf of the ccNSO in my normal life, I'm the CEO of (FIBN) which is the registry for the Netherlands ccTLD.

As a start maybe I should state that I think it's a very bad idea that somehow these two subjects got separated early. And by the two subjects I mean the stewardship transition and the accountability track because I think that in fact the stewardship transition is a transition of an accountability mechanism.

So what the working group who's dealing with this stewardship transition in fact is doing is searching for an alternative accountability mechanism. And we are trying to improve ICANN's accountability and we have already separated the two subjects between that part of the accountability that has to be improved before the transition and the bit that can be improved afterwards.

It's my opinion that we shouldn't even deal with the second bit because if the accountability is well-arranged at the moment of the transition, the improvement of the accountability that has not to be done before the transition will be done afterwards by the new structure or through the new mechanism.

That said, what I'm going to show you is a sketch I made during the ICANN meeting in Senegal in March last year - no, last year. And the funny thing is at that time I thought it was something I myself thought up. And I posted part of it on the mailing list, this working group, after that Steve referred us to an article. I think it was written by (Daniel Gastro) somewhere in 2009 I think - a long time ago at least.

What I did when I was making this drawing in my room was reflecting on what the role of the (USG) or the NTIA really was. And I think the most

important bit is not approving changes in the root zone. The fact that the U.S. can do that gives it a stick to control ICANN, to threaten with.

So my idea was how can we find another structure that we can give that stick? And what you see now is that sketch, and it's a sketch, and you should take that literally because I was free thinking. As you can see already from the second line in the top box where it says, "Chair, secretary UN appointee," which I think is not something I really want to say out loud in this room.

My idea was that if the IANA oversight would be transitioned, it should be transitioned through a structure that also oversees the rest of ICANN as equals in a member group. It could be that, but I would prefer to change ICANN's by-laws and make it some kind of a - and it's a term I use - supervisory board with very limited - well very little detail in the power it has, but a lot of power.

And that power would be to call for an independent review. That's the lightest version of what it can do to us for redo, do this process. Again, something went wrong, and we will tell you which way it would have to go. I think that we would call it a redress. I couldn't come up with that word at that time.

The third - and that's probably the heftiest thing it would ever do is dismiss the board or part of it. And the ultimate - and I think (Chris) calls it the nuclear option - would be to abandon the organization completely, so take out the IANA function, the (VeriSign) route contract but also the policy processes that ICANN runs concerning the DNS.

And those things are really the stick that the NTIA has now. It can take the IANA function away from ICANN, but if it does that, it will also take the policy bit away from ICANN. So for instance, the second round of new

gTLDs would be done by another structure, and it would never have to be used because the idea with this going to happen would get the correct information within the organization.

I think we've seen that. I'm not sure, but my theory is when we had the bid for the IANA function this was the NTIA waggling the stick. Something went wrong, and it had to be corrected. There's a lot to be worked out in the details and probably some bits of this will never work. But this is just a sketch. And I think that the big advantage of it would be that it on a high level assures proper accountability.

You'll see that my suggestion would be that this supervisory board would consist of the chairs of the SOs, the (ACs), organizations like the ITF, ISOC, Internet Architecture Board, etcetera. Those people are all elected by their constituency. So if they're not doing well, they'll be replaced by somebody else. So it has in it the accountability to the stakeholders.

What else? Yeah, I think it's not necessary, but what you see in the second box is that I put some big crosses. There are two parts of the present ICANN board, and that is because I feel that this would also make it possible to make the ICANN board more independent from the constituencies.

It's not a necessity to do it, but since now the stakeholders are in the supervisory board in this structure, it's no longer necessary to have them in the executive board. And the executive board could then consist of only appointed board members that are selected for their personal capacity and not from the organizational background. That's the rough line of it.

Leon Sanchez: Thank you. Thank you very much (Roloff). We'll now open it for clarification questions. Anybody? I'll put you in the queue, James Bladel please.

James Bladel: Thank you. James speaking. Thank you (Roloff). So would you believe that under this model existing policy management functions and approval functions and contracting functions would reside with the board at the second level? Is that correct?

Roelof Meijer: Yes, I don't think anything would have to change there, yes.

James Bladel: Okay.

Leon Sanchez: Thank you James. Now Thomas, did you want to ask a question?

Thomas Schneider: Just with respect to the composition of the groups, any further thinking on that?

Roelof Meijer: The composition - which group do you mean?

Thomas Schneider: Of the two levels.

Roelof Meijer: You mean the supervisory board and the executive board? The composition of the group, what kind of - well, it's in the sketch. So the supervisory board would have the chairs of the (SOs), the (ACs), the IATF, the (AIB), and the (NRO) that we (unintelligible) and I've forgotten a few, but the stakeholders of ICANN.

Man: (Unintelligible).

Roelof Meijer: Yes, also the GAC. So they will have to sort out all their chairs, who of their chairs would be - yes.

Man: One individual...

Roelof Meijer   And one vote per - you know, those are the details. I never thought about that. That's for somebody else to figure out. Thanks.

Leon Sanchez: Thanks Thomas. Next on the queue is Izumi Okutani.

Izumi Okutani: Thank you, Chair. I hope you can all hear me. So regarding the idea of a super-advisory board, I do have one question related to the point that was mentioned, which I think the role, one of its possible roles was mentioned take out IANA contract and policy process, referred to as nuclear option.

                 I just want to confirm that there may be some part that is related to the contract that is already covered in the proposal from some of the operational communities - for example, in terms of the number of resources.

                 So for such cases, could we still get this idea of super advisory board will not touch on the areas that is already covered in the proposal that is just submitted from the operational communities? I just want to understand the idea behind this and clarification in the overlap. Thank you.

Roelof Meijer: I'm not sure if I understand the question to be honest.

Izumi Okutani: Yes, in this - one of the roles that we have explained as a part of super-advisory body, I read in the text that one of its laws could be take out IANA contract and policy process. That's what I read in the text is one of the possible roles that super advisory board could take.

                 So first is my understanding correct that this is considered as a possible option of its role?

And then if my understanding is correct I do have a question related to this?

Man: Okay. No I got that first. That's correct yes.

Izumi Okutani: Yes okay. So I think regarding this area I think there is some part that is already addressed to strengthen accountability in this area of operational communities that is being requested to submit a proposal to the ICG.

So I feel there is some overlap related to this. So in case there are overlaps could we see that what is being proposed from the operational community to the ICG will be respected or how do we actually cover this overlap related to the IANA handling of the IANA contract?

I may be going a little bit into details. But basically I want to make sure that in case of overlap how do we address this with the proposal that is to be submitted from the ICG?

Man: Okay no, that would have to be taken into account. But I would also suggested that there is possibly common ground so yes.

Izumi Okutani: Okay. So maybe it's better to discuss in details when more details become clear about this?

Leon Sanchez: Yes we will continue to discuss this on the second part of the session Izumi. Thank you very much.

We have two more persons in the queue and I would like to close the queue so we can allow for the next participants - I have three persons in the queue and we'll close that.

Next on the queue is Lars Erik.

Lars Erik Forsberg: Okay thank you very much. My name is Erik Forsberg. I am the guest representative of from the European Commission.

I'm just a little bit interested in terms of I mean many of us are keen on having an independent appeals mechanism in this of course.

And I'm just curious to know how that mechanism would interact or respond to this supervisory board and what would be the different roles and who would - what kind of relationship they might have? Thank you.

Man: Yes. I think you can see on the sketch the independent review is the first action out of four that a supervisory board could take or order.

So my idea is that if for instance if there is - I describe it as if there is a lot of noise in the community about a certain action or a decision or the not taking of a certain decision or action the supervisory board can arrange for an independent review.

And how that will be done that might be something for this group to - I think we will work that out anyway even if we don't go into this direction.

So I didn't really contemplate on that very long but it's one of the things that the supervisory board can call for. And they will be the group in charge.

It will not be the executive board of ICANN. It will be the supervisory board then. And of course the executive board can also called for independent reviews but this also is specific instrument for this supervisory board.

Man: Yes. Could you allow me the floor?

Man: Sorry?

Man: Could you allow me the floor just to answer - to ask a follow-on question? Because they - I mean my point is that this of course would not be external to the structure. This would be something which will be internal in the structure.

                  And I would - I mean we would advocate for having something which is external to it. Of course you said that one of the independent (roles) going to be to commission such an independent review.

                  But if I as an individual stakeholder would like to appeal to an independent appeals panel would I then have to go through this supervisory board or what would I have to do? Because that's my really question.

                  I mean I see still even though the, you know, supervisory board could be discussed I still see a need for having something which is completely external from the structure, something which actually anyone, any individual stakeholder can go and get an appeal to the decisions of the board. Thank you.

Man: Okay. So my excuse is that this drawing is now a year old. So I've done some thinking. I've done a lot of listening in the meantime.

                  And yes if you call it a supervisory board that suggests that it's part of the overall structure.

                  I'm not a legal expert. I don't know anything about that US law but I know that under certain jurisdictions for instance in the Netherlands it is possible to

enter a structure like this to put it in your bylaws and it can still be external structure.

I don't know if it would improve things but it's not automatically an internal structure.

Leon Sanchez: Thank you very much. We're short on time so I would like to ask for briefness on questions.

Next on the queue is Samantha Eisner. Great. Thank you for passing. Next online we have Sebastian Bachollet.

Sebastian Bachollet: Thank you. ICANN is a very complex organization. Why to add complexity and not try to solve where we are unhappy with the current structure to help the structure to work better? I really think that it would be a better way to go. Thank you.

Man: I think the organization is not that complex. It's the community and all the SOs and the ACs that make it complex. And I think you could argue that the construction of the board is complex.

So what I sought to do here is make the board less complex and just add one structure. I know that on all the structures that we have I don't think this - adding just one would really make a big difference.

And I think I did better compared to what the other working group came up with. I think they wanted to add four so...

((Crosstalk))

Leon Sanchez: Thank you very much. Finally we go with Wolfgang Kleinwachter.

Wolfgang Kleinwachter: Thank you very much. And were the council of the supporting organizations are in this scheme and would you expect that some decision-making power would go from the board to the councils of the supporting organizations?

Roelof Meijer: Decision-making - the councils well I mean they are still there. They're still in the environment and their chairs are in the supervisory board.

Wolfgang Kleinwachter: Wolfgang asking. Are the votes on that supervisory board directed votes? So in other words if you're a chair of an SO do you first need to get approval to vote in a particular way on that supervisory board or is that - are those members acting independently?

Roelof Meijer: Yes.

Wolfgang Kleinwachter: Because it's quite...

Roelof Meijer: But not independent. That's why it's a representative structure.

Wolfgang Kleinwachter: Yes exactly yes.

Roelof Meijer: And so it would be in good faith. And so I don't think it would be very practical to go back to your community or a constituency and ask for the approval for any time you want to take a decision or voice something, voice an opinion.

But it's kind of the self-regulation in there because if you don't do your job well your membership will either get you out or not reelect you next time. I think that's one of the good things about it.

Leon Sanchez: Thank you very much for your contribution (Roloff). I'd like to now call for (Athena Fraguli).

Athina Fragkouli Thank you very much. My name is (Athena Fraguli). And I am representing the ASO here, the members community.

Of course numbering community has a big interest in this group and the outcome of this group.

ICANN is the IANA operator for a number of services. And recently we also sent our proposal to the ICG where we suggested ICANN should remain the IANA operator for numbering services. And also ICANN rectifies the global policies in guarding numbers.

So ICANN is an important organization in the Internet governance arena and it attracts the spotlight.

It has been subject of criticism and mistrust. And this mistrust reflects the whole multi-stakeholder model.

So having ICANN accountable is important for the trust as in - to this model. It's important for the maintenance of a multi-stakeholder Internet governance model.

So what we expect from this group is to have an accountability mechanism that would reestablish this trust, a mechanism whereby the community has authority and ICANN respects communities decisions.

We should also be pragmatic and realistic. This discussion is more of a now of course with a transition. But it should not delay the transition.

So our priority should be the replacement of what would be missing after the NTIA leaves the stewardship.

Because when we present our proposal to the NTIA for the IANA transition we should be confident and show that this proposal is the only complete proposal respecting the multi-stakeholder Internet governance model. Thank you. I was very brief.

Leon Sanchez: Thank you. So any questions for clarification on (Athena)'s speech? Okay Thomas?

Thomas Schneider: (Athena) do you have any concrete suggestions on how trust can be reestablished, i.e., what would be the mechanism that would adequately force ICANN to respect community decisions?

I mean we've heard two decisions go - two pitches going into that direction. Is there any model that you would favor or do you have an alternative idea?

Athina Fragkouli I think any proposed model should be reviewed by its own merits when we have more details on the model and when we discuss on how this model would look like. Then we can bring back to our community this information and we will ask the community to share any concerns they have.

Also timelines should be taken into account. So if a proposal - if we do not have the time to implement a certain proposal it's also something we should keep in mind. Thank you.

Leon Sanchez: Thank you very much (Athena). Any other questions? No? Well thank you (Athena). And now I would like to call Jordan Carter.

Jordan Carter: Thank you. And this hopefully will be quite quick. My name is Jordan Carter. I'm from .nz ccTLD manager.

And I just wanted to - these are all interestingly different presentations. The point I wanted to make as a ccTLD is our primary interest is in ICANN not doing very much and not screwing anything up. Those are the two critical things we need it to do.

To leave us, you know, all of our ccTLDs have primary relationships with our local Internet communities. We exist to serve those communities.

We want the lightest possible touch at the global level. And importantly we want the fewest possible resources being consumed at the global level by organizations like ICANN because if we have dollars to spend we do make a voluntary contribution as a ccTLD.

Others in this room make much more substantial mandatory contributions.

But the less money that's flowing around in the ICANN system the better there's less temptation that causes and the better use we can all put that money to ourselves.

The second point I wanted to make is that accountability is part of the broader constitution of ICANN if you like. You can't just look at accountability in isolation. You have to look at the big picture.

And that applies for us in the linkage with the stewardship transition.

I think I agree with what (Roloff) said that the most important aspect of that is not that the clerical role of NTIA. It's the ability to reassign the contract. It's the leverage that that creates in keeping ICANN under control.

And whether the CWG that's dealing with the transition ends up recommending distributed stewardship with an external body controlling the assets of the IANA functions whether an in-house, one improving ICANN accountability is absolutely essential regardless.

You know, stay away from those arguments that I'm a member of this working group not the other one.

But in terms of what success would look like from our role I want to echo what's already been said a bit that membership is critical.

At the moment we have a corporation that isn't truly constitutionally accountable to anyone. It just has a community influence selection process for its directors which in the long run if a well-organized faction chose to use it could either lead ICANN to being captured or to people who go down the wrong direction being held to account. And without a membership structure that can't be resolved.

So my personal view -- and this doesn't represent the ccTLDs as a group and it's an idea presented to get your thinking -- is that a membership solution is a

critical part and not a complicated one, not one where we need to develop quotas or have individual memberships are anything but something that to my mind would look quite like the role of supervisory boards but leaving a proper board governing ICANN as is currently the case but that board being subject to recall to an annual meeting that passed the budget and so on.

The other point I just wanted to mention briefly is that to build trust in the organization which is why this accountability discussion has been spirit at least in part ICANN has to show every day a culture of service to the communities that it's there to serve.

And it does not need to go off on adventures into scope creep like trying to create a NetMundial initiative for example.

It does not need to raise hundreds of millions of dollars through a new gTLD program and then create problems about where to spend the money.

You know, and so a critical part of accountability is being - us all being assured that this organization with it's very limited mission, very limited focus can be held and stuck to that focus.

And that the event, you know, the inevitable reality of the desire of people's lost of resources to seek freedom, to increase their own autonomy, to expand their own role which is a universal human constant -- it's not ICANN's fault -- this is any organization's fault -- needs to be rebutted and controlled by clever structures that prevent that happening.

And so that's what I wanted to say kind of endorse the idea that without membership as a controlling force I think you're spinning your wheels in increasingly complicated other solutions that aren't actually solutions.

And that the more we see ICANN staff community members exhibiting the kind of culture of service that we need, the better. But that's all I had to say.

Man: (Unintelligible) five minutes.

Leon Sanchez: Thank you very much Jordan. I apologize to Kavouss Arasteh which I missed to see his hand raised. So would you like to add something Kavouss Arasteh?

Kavouss Arasteh: Maybe we don't and track this one (unintelligible). But previous session, the previous question (unintelligible) of this one, so you can continue this while people concentrating on the gentlemen description. I comment later at the end thank you.

Leon Sanchez: Thank you very much Kavouss Arasteh. And I apologize for missing your raised hand.

Well thank you very much Jordan. Is there any - are there any questions with regards to clarification on what Jordan has just said? Alan Greenberg?

Alan Greenberg: Yes not really a question just pointing out that - and you say you do not see membership as any other alternative to membership to affect the kind of change you're looking at.

And I'm just wondering prior to us getting any legal opinions of what's possible within California structure or not, I would prefer not to see that kind of decision made until we know whether there are other alternatives that might affect the same outcome without that particular structure, just a thought.

And I'm very reluctant to decide on details before we understand the constraints we're under. I don't disagree with the intent at all.

Jordan Carter: I agree with you. And if anyone thinks that my vision statement should be the basis for our decisions I (highly) encourage you otherwise. It's just to get us thinking.

But I honestly don't see any other options than a membership structure. I look forward to legal advice that shows there are other ones.

Leon Sanchez: Thanks Alan. Thanks Jordan. Next on the queue is Avri Doria.

Avri Doria: Thank you, Avri speaking. I guess every time that the membership solution has come up I've been baffled as to who are the members and how that gets done and how not only the initial set of members is dealt with but are there more members in the future?

And really the whole notion of membership sounds like a clean package. But every time I think about it I really don't understand it at all.

So I'm curious how do we figure out who the members are and how we have? Is it just reproducing what we have in the ACs SOs and saying they are the members somehow or I really need guidance because I don't understand it. Thanks.

Jordan Carter: In my opinion based on my vision for this it's a very simple structure where you would just use the SOs and ACs. Because what you're trying to do is to relocate final authority in the organization away from the board.

Yes you say the board governs the organization but it doesn't own it in other words. And so given that ICANN exists to serve the Internet community and the very narrow range of technical functions and given those parts of the community organized through its existing structure is - I'm relaxed without having done the whole examination that's suggesting if we were to move in a membership way having a membership structure where there was one member pressed on AC along with similar lines to what (Roloff) was proposing for his supervisory board is a workable model.

Now I haven't done due diligence on it all to work out all of the detail. And I see it's causing you to raise your hand further.

So I think I agree with you that it's not a - none of these are simple solution so I don't know what the right answer is on that.

Avri Doria: Can I - to follow-up the SOs and the ACs I mean in a naïve sense to me they - sure. But they don't exist except by virtue of being part of ICANN.

So would they need to find some sort of concrete existence in order to become the members? And I guess that's where I start getting hung up is that they are part of ICANN. They exist by virtue of ICANN. And yet somehow them becoming members causes an inversion that confuses me. Thanks.

Leon Sanchez: Thank you Avri. We have (Chris)'s ping on the queue.

(Chris):   Thank you. I'm not against the membership idea. I'm the CEO of a membership organization that has advantages and disadvantages.

But I just wanted to raise a couple of points. I think you're right that you would have - if you were going to do it you would have to base it around the

SOs and ACs. But I think that is incredibly challenging for a couple of reasons.

Avri has raised one which is that they don't exist as entities. And my recollection is that way back in the beginning of all this when we - I think this was sort of ICANN Version 2.01 when the SOs and ACs were sort of reinvented there was a very specific reason why they weren't in any way incorporated or in any form of entity. And that was to deal with the ability to see them and legal action being taken against them. So there may be challenges from that score.

But I can see other challenges not least of which would be the fact that there are so few of them which means how would you decide a member's vote?

You could I could conceive the situation where you can have four of the SOs and ACs out voting the rest on an issue that actually mattered most to one of them.

So I think there is a challenge there that's a different challenge to the one to (Roloff)'s idea of having a supervisory board which is a different issue.

So I can see some major issues with the membership idea if you're going to go down a sort of small membership base of SOs and ACs.

But I'm not dismissing it out of hand Jordan. I think it has merit. But I think there's a huge amount of work to be done even assuming that it's legally feasible which I suspect it probably is. Thanks.

Jordan Carter: Can I just respond...

Leon Sanchez: Yes of course Jordan please.

Jordan Carter: ...briefly to that? The situation that you raise (Chris) are ones of implementation rather than of principle which is reassuring. And I think those are things that have to be tackled.

But anyone only has standing in an organization as a member once they join us. So these things I am confident can be resolved if we choose to do so.

Leon Sanchez: Thank you very much Jordan. Next in the queue we have two more persons in the queue. We have Sebastian Bachollet and then Alan Greenberg and that we close the queue and we'll go to the next pitch. So please Sebastian?

Sebastian Bachollet: Thank you. Why you are so upset with the board? Thank you.

Jordan Carter: I'm not upset with the board. I am saying that if we're going to lose the single external accountability constraint that ICANN has with the passing of the NTIA contracting ability that we have to create a solution that is internally coherent and robust in ICANN. And a board that isn't controlled by membership in my view isn't that.

And it has absolutely nothing to do with the current board or any prospective future board that I know about. It's about reliable institution building.

Leon Sanchez: Thanks. Alan Greenberg?

Alan Greenberg: Thank you. I want to follow-on on the things that Avri and (Chris) said. One of the problems - I support a membership organization like you're talking about. But as I have been thinking about it you end up with some really interesting problems.

We've heard discussions earlier today on how well the gTLD community understands ccTLDs and the same could be said in the reverse order.

Some groups in ICANN have explicitly said I will not comment on that because it's not my domain.

So now taking all these people who to a large extent have orthogonal responsibilities certainly among the SOs within ICANN and now saying they now have a vote on how something goes in one particular side because in many cases any given decision will be focusing on one of the domains, not multiple ones.

You end up with almost saying you're going to have five extensions out of the seven or eight people.

And, you know, I see some problems because people explicitly do not want to get involved in the dirty laundry of the other ones. So it's just going to be an interesting challenge even though I support the concept.

Jordan Carter: I think that's why you have to segment in your mind the idea that there would still be a ICANN board still doing that kind of collective deliberation in the interest of the whole corporation.

It's about a set of decisions being subject to member ratification, changes to the bylaws during subject member ratification and so on.

So I'm not suggesting that the members should swoop in and try and micromanage what the organization does.

I'm the CEO of an organization with 400 or so members that it all works fine.

So there's no conceptual difference say that isn't the case here. It would just be of about getting institutional framework within which those members operated right.

Leon Sanchez: Thanks. So our next speech will be presented by Paul Rosenzweig. And may I remind you to just stick to clarification questions.

We're going to have a discussion about all of the pictures on the second part of the session so we'll keep this going.

So please Paul could you make your pitch?

Paul Rosenzweig: Good morning and - or from Costa Rica. Thank you all for letting me participate virtually. It's 5:00 AM here and I'm pleased to be able to join you.

In some ways I almost feel like I should pass because I wanted to begin by associating myself with Jordan's brilliant remarks.

The critical question for me here is not about creating a mechanism for review of the technical decisions that are made with respect to particular constituencies but rather creating an architecture of accountability that will guide the institution and make it accountable for the larger scale decisions that affect not just individual constituencies but in some ways in the end everybody who is a participant in this market.

And I think that that is actually the critical way to think about ICANN is as a monopoly that owns a scarce resource or controls a scarce resource, namely the IANA function.

And as such we are well aware that monopolists will in the end tend for good or for ill to exercise their monopoly powers.

And the critical steps you need to take are checking the exercise of the monopoly power. So in my mind, the supervene - the exact membership in the supervene structure is very much dependent upon what's legally possible. Its powers are what are essential and critical to that - I would think - is control of the budget or approval of the budget in the end. And as Jordan already mentioned, we've seen in recent years large scale upticks in the ICANN budget part income that have created a surplus - a surplus that is - ICANN now needs to think of how it's going to redistribute - I would think - I mean - subsequent to whatever the best way would be to give it back to the people who paid it - to the extent it's not necessary - but that type of decision is exactly the type of one that will be incumbent upon this supervisory board or supervisory organization of some form.

And then the second thing that I would suggest - respectfully submit is - is absolutely critical is the existence of some independent judicial or arbitral review in some form that is outside of ICANN altogether. Because just as we worry about the board being captured by special interests or its own self-interest, we might also worry about the supervisory organization being subject to capture. So in one form or another, there needs to be an external review mechanism that judges the quality of the actions of the - either the ICANN board - or even the ICAAN supervisory organization, however we might constitute it in the end.

I'm really pretty agnostic as to whether or not that independent judicial function is exclusively in California or whether we tend to prefer some international arbitral entity or a London or New York where they have such

bodies that operate in commercial sphere all the time - but its existence is critical and that in turn really raises what I would submit is the single most important piece of the accountability piece - one that I don't think I heard Jordan or (Ralph) say - which is that in the middle of this process we need to narrowly scope out exactly what it is that ICANN is permitted to do by bylaw and limit it to that.

Limit it to the functions that are critical to the management of the scarce resource. I, you know, personally am skeptical whenever words like public interest get imported into such documents asserting power because they become free for interpretation. So my last part of my pitch would be the need for a close review of the ICANN bylaws and articles and incorporation to one narrowly focus its function on that which it is essential for ICANN to do namely the management of the IANA functions and to toss off as much as is possible as a further way of avoiding the tyranny of a well-meaning monopolist and I'll end there - I think I'm under five minutes.

Leon Sanchez: Thank you very much Paul. I have Kavouss Arasteh with us sans (Chris) so please Kavouss Arasteh.

Kavouss Arasteh: Yes, my comment goes to the previous statement that it was mentioned ICANN respects the community decisions. This is a very, very broad statement. First of all, does community make decisions or community make proposal or comments - which are the circumstances in which community make decisions and on what? And then we say community are we talking about a specific category of community, for instance, operation community on a specific subject relevant to the activity of that community or are we talking to the lowest case or lowest category for the individual in a particular case and saying that ICANN - what do we mean by ICANN - as ICANN Incorporation or do we mean ICANN board? Then we have respect - what does it need

respect mean to implement? Sometimes might be cases that a comment is not unpreventable. I have difficulty of the implementation so we should be very, very careful about this, thank you.

Leon Sanchez: Thank you Kavouss Arasteh. Next on the queue is (Becky Burr).

(Becky Burr):   (Becky Burr), I just wanted to ask Paul, he talked about a - an external to ICANN review mechanism and I've heard a lot of people use that phrase in connection with a review mechanism, and I wonder whether what we actually want is an independent review mechanism that could for example, be part of ICANN - which would have the advantage of having, you know, for example, a panel of arbitrators who are familiar with ICANN and who are regularly involved in making decisions and who are appointed for, you know, a time certain and can only be removed under very limited circumstances involving bad behavior. Things that would essentially be designed to make it independent but not necessarily external, and I just want to push on that a little bit because I think one of the problems that we have seen in the Nutra TLD round is the sort of external review mechanism have been very random feeling for everybody.

Paul Rosenzweig: Thanks for the questions, first yes, I suppose I should clarify that most of what I mean by review, I probably should have used the word redress because I see this as a - as some kind of external binding way of resolving a dispute. As to whether or not that redress mechanism should be an internal one to ICANN or an external one, it's a tradeoff. When you have a body of jurists with an expertise in a particular area, they are of course, more familiar and they tend to be less random in their decision making, but they also tend - at least in the American experience - to get a sense of group thing that tends to drive them always in the same direction and kind of coordinated with each other.

I'll give you an example, about 40 years ago the United States started an experiment by creating a separate judicial body with exclusive jurisdiction over determining patents because patents were considered technical topics and the decisions of the general courts had thought to be random and not sufficiently informed by technical expertise. We are very slowly coming, I think, to the conclusion that was probably a mistake that general - that patent exclusive judiciary has come to be routinely over turned by the U.S. Supreme Court which remains a general juris body and has been accused of kind of too much inward focus. In an ideal world, I'd like - I'd prefer an external generalist body as opposed to an internal specialist body but I'd certainly wouldn't object in theory to the internal one if we really thought it was too technical to be covered by generalists from outside.

Leon Sanchez: Thanks Paul. Is there any other questions for Paul? No, well I'd like to especially thank Paul because it's 5:00 am in the morning for him, so we really appreciate your collaboration and now I would like to go to Alan Greenberg.

Alan Greenberg: Thank you. One of the benefits of speaking later in the list is almost everything I was going to say has already been said by someone and probably rebutted by someone else. Most of what I'm saying I can is a position of the ALAC, I'm not - I haven't vetted every word I'm saying so some of it might be mine. The ALAC approach to this whole problem of the IANA transition believing that stability of the DNS was our number one focus, it's hard to put anything else above that. And to do that, we believe that making as few changes as possible was likely the way to go. And therefore, we believed from the beginning of an - what has now come to be known as an internal to ICANN solution.

The problem with that clearly is what has been referred to - perhaps glibly - is a problem of trust. How do we make sure that the current ICANN or future ICANN does the job properly if there's no way to yank the contract away so to speak? And as Steve identified at the beginning - I think it was Steve - there's plenty of examples where the ICANN board has done things which at least some of us believe should have been differently - and I'll come back to that in the end - so the real question is how do you get trust and I believe Larry Strickling in one of the question and answer periods on what will be the NTIA do in terms of the stress test - they would look at things like how do you - what happens if the organization goes out of control?

Some of us use the term a rogue board but - and that may be a bit extreme - but nevertheless, what if things are going really bad, how do you fix it? And the conclusion that we came to - and I think other people have - is somehow the multi-stake - we have to start living the multi-stakeholder experience - not just preaching it to other people. And that means putting the multi-stakeholders more directly in control when there are things that we believe are going wrong. Exactly the mechanism we use - we've talked about a bunch of the ones that have been discussed here and a few that haven't - and I don't think we have a strong opinion on which of them is the best one or the right one, but we feel really that ultimately the organization in the largest sense of the term, must control the direction of ICANN and be on - the details of whether that says we direct the board, we can override the board, that's going to need a lot of discussion.

My personal point of view - although I can see the expediency of having a group of members like was discussed a few minutes ago, you know, a small group of - an agile group to make a decision - when it comes down to a really onerous decision, you know, remove the board, reverse a direction that the board has overwhelmingly taken, I honest don't think it should come down to

that group of people, but I think it has to - that group of people may do a restraining order - so to speak - and then it goes back to the ACs and SOs or whoever the members are to actually vote on making that decision. I think if we're going to make an onerous decision of changing the - a significant decision the board has made - that's really got to be done by the people who are in control, the multi-stakeholders and not a small group of delegates.

All of that being said, it's not clear that there's a wisdom in numbers. The word group think has been used here, and we've seen that on occasion - in spades - and moreover, the new GTLD program is a marvelous set of examples and one of the ways it's a marvelous set of examples is there are all sorts of things that some of us now believe we did wrong where either nobody thought of them at all in the early stages, or they were brought up and it was the clear consensus that we X to go where now some of us think Y would have been a wiser way.

So there's no guarantee we come up with the right decisions no matter how much control we have at any given level, but I think we have to do something a little bit differently than we are today, thank you.

Leon Sanchez: Thank you very much Alan, any question for clarification? Okay, I don't see anyone else's hand raised so I'd like to hand it now to Thomas to do a small recap of what we've been discussing. Thomas.

Thomas Schneider: Thanks very much Leon Sanchez and thanks to all of you - oh, your five minutes are over here.

((Crosstalk))

Leon Sanchez: No, no, that's your five minutes.

((Crosstalk))

Leon Sanchez: Thank you Thomas, that was short.

((Crosstalk))

Thomas Schneider: Goodness. When listening to the various pitches that were heard and when we started a discussion on these, I was wondering whether we had gotten our high level statements correct, because I think the biggest fear was that if we heard the pitches - if people would not reflect our preliminary high level statements in their pitches and I think that having heard what all of you said, clearly indicates that the high level statements grasped what people had in mind when we agreed on the high level statements. I think that's a good thing, I think that there are some main themes that the pitches were revolving around.

One of which was that we need to strengthen the view of the community, that the community decisions need to be respected, that we need to build trust or that a concept that we come up with be so far as to trust in ICANN and its community, also we need to think about redress and review so I think there was nobody speaking against having a mechanism that would be able to turnover board decisions, but I guess that apart form that, there's a lot of uncertainty as to where things should be placed and what the mandate of the group should be and what the composition and the legal status of such group should be. But I think that nonetheless, there might be some - and maybe it's a little provocative to state that - but I think that what I've heard is that we're using the word internal versus external, but I think we're not using it consistently.

I think there are those who say that external must be something outside of ICANN or its community - completely independent if not neutral - and then there are others who say that external means more independent, but it can be very well within the ICANN ecosystem and then I thought that if we're looking at the concern behind it, concern is that we need the community view respected and that we need to have a mechanism - a stick - to if need be reversed board decisions. But I think that we can do that without going fully external, so I think that external might be good enough to be other than the ICANN board of directors. Just looking at itself and confirming that what they've done was great, right?

So if - and I would like to see a show of hands if you think that what I'm recapping is completely misrepresented of the group's view - but I think we might be brave enough to say external doesn't necessarily have to be outside the ecosystem. So if we sort of stay within it, then we have to two concepts, one of which with the membership based thing, one of which would be the supervisory board thing, which I think is partially congruent, right? I think we need community representation there, Steve's concept of having a membership phase or I think was also mentioned by Jordan or Paul, to have SOs and ACs be the members of that. We heard some legal issues potentially around that, so I would add another concern which has been alluded to and that would be that we might face the same accountability issues if we have a representation or a mirror of the community at the next level. So wouldn't you agree that we need to break the symmetry of the community and the body looking at or controlling the board? And if that were true, then I would - I think we would be a little closer to Roland's idea which has, you know, ISTAR organizations in there.

So that's certainly not definitive, but I think we need to bring in other expertise and other sectors maybe with representatives other than only the

SOs and ACs because looking at our definition of accountability that we're going to talk about later, there might be more groups that we need to be accountable to than just the SOs and ACs that we currently have. And if that were true, then I think we could maybe have an agreement on the need of a body, however that legally looks like, whether it's a formal supervisory board or just, you know, another type or generalist organization that would have representatives of SOs and ACs, that would need to be independent, not with biding votes, I think that was one of - oh my Goodness - so I'm not fully in control of this technical device - sorry.

((Crosstalk))

Man: An external review.

((Crosstalk))

Thomas Schneider: And if that were true then we would need to talk more about the composition of that group, right? To be independent, to be representative, and then put that into scoping document for asking legal advice to take a look at how that can be operationalized. And also I think one of the topics that came up was ICANN's mandate and making sure that we don't have a group of people talking about things that they have no experience in. So how do we balance what this new body is going to deal with and what the respective SOs and ACs or other groups come up with? Respect for decisions made in the individual groups, I think is a key factor. And I think when it comes to that, it might be worthwhile contemplating keeping the mandate of this big group sort of a last resort thing, keep it very narrow and maybe keep it to, you know, dismissing board members, altering ICANN's mandate in order to avoid mission creed, and the possibility to reverse board decisions like we mentioned in the high level statement.

And if we did that, we could actually empower other mechanisms to take place before we come to that last resort. And I think that would also help us focus on work stream one because I think if we incorporated that to find a way to reflect that, than there might not be the need to burden work stream one with many more things. Because then we would have actually that stick, that roll of tried and capsulated in this chart. (Becky), I see your hand is raised and I hope that I've set the seed for some further discussion on that. (Becky), please.

(Becky Burr): I want to make a point here, that, you know, the supervisory board or whatever it is that sort of has one kind of role in terms of redress and review and redress - there still - it's probably necessary but not sufficient, there are parties who have legal and contractual rights, registries, registrars, and as both a CC operator and an G operator, I would be very uncomfortable having a legal dispute - a dispute about legal issues go to a sort of community board as opposed to independent legal experts - and I suspect that my colleagues in this position feel the same - so I think, you know, there is still the need for, I mean, for something that is better - that works better than the independent review process that we have right now and I just wanted to say, I would agree we don't need to burden work stream one with very much but I think we have to - we have to take care of two sorts of problems.

Leon Sanchez: Thank you very much (Becky), we have three people so far in the queue, this is the part where we spark discussion as promised on the second part of our session. So I'd like to open the floor and next on the queue is Alan Greenberg.

Alan Greenberg: Thank you very much. Someone a minute or two ago talked about the similarity between the supervisory board or the members and the current board because they are all so - to some extent - representative, but there's a

really big difference. To pick on the board member physically closest to me -
Bruce was selected by part of the GNSO, presumably based on a belief that
his mindset was similar to theirs. But his allegiance changes once he's put
there and he's not representing them, whereas the members are a supervisory
board or something like that - is very much there to represent that particular
body and that may or may not be the same as the position Bruce might take in
any given question at any given time. So there's a really substantive
difference between the two of them and I think we need to remember that.
Other than that I, you know, I think we're going in a good direction, the
question is the details and as someone pointed out, there's a lot of different
details, there's a lot of options, and where we get this wisdom to pick the right
choices is going to be fun.

Leon Sanchez: Thanks Alan, the devil is in the details. So next on the queue is Keith Drazek.

Keith Drazek: Okay, thank you (Lan), Keith Drazek, so Thomas, just going back to your - I
                  think your initial statements and the questions of maybe terminology, it seems
                  that there's a general acceptance that independent is important. But there's
                  still a question as to whether that is internal or external. So maybe as we move
                  forward I think the term independent is key and then the discussion probably
                  needs to continue to take place about whether internal or external is the right
                  way to go or if there is a combination possibly there. But certainly
                  independent is key, thanks.

Leon Sanchez: Fadi, you want to react to that?

Fadi Chehade: Yes, just a place holder for discussion we have this afternoon regarding the
                  definition document which has a section regarding independents, we haven't
                  touched on this discussion yet, and we agree with you Keith that it is
                  absolutely a foundation for our work and we need to find some form of

agreement about what we mean by independent in this context of accountability. So this is really a place holder for discussion we will have this afternoon on that.

Leon Sanchez: Thank you, next on the queue is Samantha Eisner.

Samantha Eisner: Thank you, Samantha Eisner from ICANN, Thomas, one of the things that you said was if, you know, if we have this very limited mandate for the group, whatever the group looks like and how it's developed, that then one of the other focuses would need to be on having other escalation items under it. And, you know, one of the things as I'm listening to the conversation, watching the conversation and talking with ICANN, one of the senses that we have is that there's a lot of focus on board decision and board action, and that's been so much of the focus because it's how the redress mechanisms that exist today are designed, right? The reconsideration goes to the board, the independent review process is only about actions of the board, and I think one of the conversations that we benefit through in this group going to some other levels escalation underneath an ultimate supervisory board is how can we make more meaningful redress mechanisms of management decisions instead of forcing - forcing the processes like you were describing earlier this morning Steve, when, you know, if we had a reconsideration decision then we could go to an IRP, what if we could put in something that was more meaningful about the management layer of decisions so it wasn't always about trying to make something a board action or a board inaction, but getting at it earlier without forcing a bunch of process? And how we could get some multi-stakeholder involvement in a process at that level too. I'd really like to see us go that way, I know with conversations that I've had internally with ICANN, it is a weakness of this system and I think we might all benefit from thinking about.

Leon Sanchez: Thanks (Sam), next on the queue is Kavouss Arasteh.

Kavouss Arasteh: Yes, first it's (suspect) to some term maybe it's understood. I don't think that with for supervisory we could use the term board because it may be confused with the board of ICANN. Any other term rather than board such as committee, council, group, entity and so on so forth could be used to avoid that, this is one.

Second, I tend to agree with the summary made by Thomas that the issue, the key issue is independence and independence it is not external, internal. As long as we are sure of the separation of responsibility and separation of power, which goes to independent and independency the issue is covered.

External, internal is below that and I think we shouldn't put too much emphasis on external as such or internal as such. We put on the independency or independent of the issue that the one who is responsible to do something would not be the same who examined the performance of what has been done, it should be two separate, that's all thank you.

Leon Sanchez: Thank you Kavouss Arasteh, next on the queue is Sebastien Bachollet.

Sebastien Bachollet: Thank you, I don't know if there is an English expression to say ((Foreign Language Spoken 0:01:39)). But what I want to say is that we try to do something on the - to put something up on the disease to cover the disease.

And I don't think that's the right way to go. We are I guess we can the list of where we are on that piece is how is ICANN global structure is working where we can have improvement at each level and if we do that I am sure that we will go in the right direction.

And I am almost sure that we don't need an additional group or organization or we have already some tools to act. But and then once again as I say earlier if we want to do something and to complicate the organization we are very good at that, we know how to do that.

We spend our time on that and please try to take the idea that we want to simplify to how to decrease the tensions to decrease the need of supervising our - you take the word you want. We can decrease the complexity and decreasing the complexity we can I am sure go once again in the right direction.

If you remember before (2002) so called ICANN 2.0 and I think it is important to remind that the board was supposed to be with nine elected and user representatives. It stopped for obvious reasons the election for five board members was not going, was not the right result for a lot of people within ICANN.

And it was replaced by the nominating committee. We can discuss about how the nominating committee is working but it was supposed to replace the nine users who were directly elected. It was never the case that as they do that they do the selection in that idea.

And my thinking that we need to also discuss how each community elect or select whatever the word you want to use, people to the board and that it's not because today the board we have the legal advice to say you are not bound to who elects you but you are bound to the corporation.

Frankly I don't like the word corporation I am a non-profit organization and I don't like the way it's (unintelligible) to us and maybe we can change that and not to say okay we will add a body and this body will not have this way of thinking and way of working, thank you.

Leon Sanchez: Thank you Sebastien, we still have six people to go on queue. We're closing the queue now with Steve DelBianco and next on the queue is James Bladel.

James Bladel: Thank you, I'll be as brief as possible. So I'm going to go back to something that (Becky) was saying about this potential supervisory entity and its involvement in commercial agreements particularly commercial agreement that already exist between ICANN and its contracted parties and perhaps outside service providers.

We don't want to I think create a scenario where this group would be resolving disputes outside of what's already contained in those agreements. I believe that would be very dangerous and having a chilling effect on future contracted parties willingness to sign agreements with any degree of certainty with ICANN the organization.

So I think that's something that needs to be considered. And then I want to go to something quickly that Alan said about at least I believe it is Alan I'm giving you credit for this Alan, that the best solutions are often those that do the least or require the least amount of change.

And I think a good starting point for a number of these issues if we're looking at a separate organization is to give it the ability to compel or require ICANN to accept decisions for example that are independent from either the review teams or independent review panels that are currently I believe ICANN has some discretion on whether or not it accepts the decisions or the recommendations from those bodies.

And then perhaps the first step would be that this group could check to verify that those are being adopted and implemented as per the recommendations of the original intending parties, thank you.

Leon Sanchez: Thanks James, next on the queue is Thomas Schneider.

Thomas Schneider: Thank you I just have a brief comment on Keith and then Kavouss Arasteh and others comments about external (unintelligible) of such an independent mechanism. I think for the time being at least for me and for us it's too early to take a decision on whether this should be internal or external.

I think we all agree on the independence and maybe we continue with two scenarios and try to see more clearly in a second or third step of refining and then maybe it becomes clear which is the best, whether something is internal or external or a hybrid form. But I would advise to continue on two tracks and then following on this, thank you.

Leon Sanchez: I'm sorry, next on the queue is Avri.

Avri Doria: Thank you, Avri speaking. I wanted to comment on a few of the things. One of the notion of independence and internal and I wonder when we're talking about that are we talking about something similar to the ombudsman model where he is allegedly independent but of course is internal because his contract is renewed by the board.

And so there is a certain - there's certain strings that are always attached when you're employment content depends on the board you're giving advice to. Now of course his decisions are not binding.

One of the things we've talked about a fair number of times and in the what are the minimal things that can be changed, you know, is this notion of an appeals mechanisms an independent appeals mechanism and how indeed we do make it somewhat binding.

You know, other ideas that have come up that are fairly simple and normal were the removal of board members, the removal of the chair. Perhaps even the removal of an entire board but that concerns me because then you don't have a board and you have a certain time without anything so that has its own problematic.

In the supervisory board I'm concerned because I think we just recreate many of the same issues that we have now. The accountability of this new thing and it just really compounds it and seems to actually create a complexity to me that is even more difficult to manage than what we have now.

There are things that we're not talking about. For example, you know, within whether it was the ATRT or the (ACEP) that came between ATRT1 and 2, there were recommendations on how to improve the reconsideration process.

At the moment the reconsideration process is pretty much limited to just those things where there is a process error. But there were recommendations that it be extended to deal with the challenge of inaccurate or misleading statements. There were recommendations that it include the notion of harm and redress for harm in decisions made. So those are things we should be looking at and looking at fixing some of the mechanisms that we've got.

When we look at the IRP at the moment we're looking at something that uses notions of can you pony up enough money to show that it's not frivolous as opposed to the other mechanism.

So I think there's also something to be looked at in terms of a minimal creation of new things but how much can we achieve by actually fixing what we've got, thank you.

Leon Sanchez: Thank you very much Avri, those are very interesting points. Next on the queue we have Alan Greenberg.

Alan Greenberg: Sorry for going in twice I did forget to say a couple of the things I planned to. The first is, we talk about internal and external and I've heard a couple of comments today on whether the AC's and SO's are external or internal to ICANN and to be members they might well have to be external.

And the reality right now is they're sort of half and half. They are - they exist based on references in the ICANN by-laws. There is some budget control over the money they have access to based on ICANN staff decisions.

On the other hand ICANN does not control exactly what we say or what we do short of perhaps disbanding us if they didn't like us enough. So we're really a creature living halfway in and halfway out right now and I don't know the legal aspects of that but it makes it very confusing.

I tend to agree with what people have said about if a supervisory board is simply replicating another board on top of a board it's probably not going to fix the problems.

The last thing is that we have spent many years in ICANN being told that board members should not participate in discussions because they will have to pass judgment on the results afterwards and that would be a conflict.

I find it exceedingly encouraging that we have board members sitting here talking with us. And if there's a single argument to say the world has changed and maybe we're ready for major change, it's that.

Yes there's an argument that there is perhaps a certain self-interest why they're participating in this discussion and not others but nevertheless I think it's an indication that we are ready for change and let's go with it.

Leon Sanchez: Thank you very much Alan. Next on queue we have Matthew.

Matthew Harris: Thank you Leon Sanchez. I wanted to first of all say that I'm very comfortable with what I'm hearing about two of the key aspects we need to act on, which is the feeling that the community should have some form of authority of the board and that there needs to be an efficient redress mechanism in place.

But my intervention would be more to add a couple of other items I think that we need to integrate into our terms of reference for work stream one. Not and not really focused on accountability mechanisms but rather the way to look at them.

The first one is it has to be something simple, we need to come up with something that is easily explainable to someone outside this group whatever it is. It has to be a one-pager and if not it's not going to be understood, it's not going to enhance ICANN's accountability.

I think we need to be very, very aware of this and I'm very confident we can achieve that because I think we have (dealt) us a good sense that we need to focus our work. It has to be simple and readable but it also has to be something perceived as significant change within ICANN.

That's also something I think we need to be aware of unless we find proposals that actually are easily understood as a significant change how can we change the perception of ICANN's accountability.

We could not. So we need to balance of course not putting everything - throwing the baby with the bath water, thank you. But we need to bring significant change whether we like it or not as early, as soon as we speak about accountability and trust.

If we're not doing a big change somewhere simple it's not going to have any impact on addressed within ICANN and that's our main goal. And finally three things that I think we should apply to the accountability mechanisms we design.

Of course there is independence, it's going to be extremely important to demonstrate. There's also accessibility to the wider range of stakeholders even outside the ICANN community, the (regulars) from the ICANN community.

So accessibility to these mechanisms is going to be absolutely essential to demonstrate. And finally efficiency is also going to be one of the aspects we will be challenged on if what we come up with is felt to be too complex or too costly or going through too many layers at one point.

So I think those are items and I'm not contradicting anyone here, that I would really add in our vision statement at this point.

Leon Sanchez: Thank you very much Matthew. Finally we close our queue with Steve DelBianco, so next we have Steven then lunch.

Steve DelBianco: Great so I'll make this brief. As repertoire for work area two one of my tasks was collecting ideas from others. And the ideas from (David Johnson) that came in four weeks ago I tried to encourage (David) to get on the phone and do a pitch for that because he suggested that the key problem was limiting scope.

Limiting the scope of ICANN so it was elements necessary, actions necessary to protect the operation, the DNS. And (David) if he were here would pitch a contract to do that.

So I talked to (David) on the phone about it and he is just as happy with some sort of a golden by-laws or golden article of incorporation that would also limit the scope such that ICANN would be focused on or the operation of the DNS, protecting the operation of the DNS.

So it wouldn't have to be a separate contract it just needs to be something that would be sacrosanct. And then finally I'm going to add that I agree with the chair assessment of the well pretty pleasing degree of consensus we achieved at least through the pitches.

This notion of community being able to hold the board accountable and I would observe the consensus might be even somewhat greater than you represented since (Roloff)'s notion of a supervisory board would end up if it created fiduciary due to the corporation (Roloff) would probably agree that that wouldn't accomplish his objective.

If the duty is to the community yes, so if the duty is to the community our degree of consensus is stronger even than that. And I would add that there was also a lot of consensus of enumerating and limiting the powers of this member group.

And finally to (Mateo)'s question about explaining and let's use metaphors wherever possible or analogies to things that everyone understands. And those of us who run trade associations understand members, we're accountable to our members.

And anyone who is a shareholder of a corporation or works at a corporation understands its shareholders act very much like members. So we have some metaphors to draw upon and great progress so far.

Leon Sanchez: Thank you very much for that Steve. I didn't see that Fiona Asonga had her hand up so I would like to close the queue with her and so please Fiona go ahead.

Fiona Asonga: Thank you very much, mine is just a quick (rejoin) to something that maybe we need to think about as we move along. When we say we want to make a significant change I think we need to be careful that we have had a lot of discussion and yes there has bene some vision that have talked about retaining what there is and building up on it.

Whether that becomes a significant change or not it's I think we should wait and first get the results before we push ourselves to make sure that there has to be a significant change because in term of perception, perception is created best on how we communicate.

So if we then will commit ourselves to communicate appropriately to the rest of the community, to (unintelligible) in this room then it will be left for them to see the change that has been made and we may find that there may not be a significant change but a change - but we expect a change anyways.

So I'd just like to ask a few questions about insisting that there has to be significant change.

Leon Sanchez: Thank you very much Fiona. Since we still have three minutes to spare before lunch I see that (Roloff) raised his hand so please (Roloff).

Roelof Meijer: Thank you Mr. Chair, Roelof Meijer. Just to react to what Steve said, yes I agree that supervisory board or the review would call it - they would have no fiduciary duty to the corporation.

In fact that's why I said a representative they are elected chairs from their constituencies so they have a responsibility to those constituencies.

Leon Sanchez: Thank you very much (Roloff). I think you want to introduce, yes?

Matthew Harris: Okay, two minutes to recap and then we break for lunch right on time. I think we've had an extremely useful exchange of views and it was very valuable that it was open ended but also everyone took it with a very open mind in a very constructive manner.

This is going to provide extremely valuable when we get tomorrow morning into the discussions regarding what we would work, will be working on in the work stream one. And we've also touched on some topics that I think we will need to make very clear in the discussions this afternoon regarding definitions.

Independence is one thing, what's the various discussions regarding the purpose of accountability could be put in relation with what kind of, what mechanisms actually can be triggered upon which basis and which effects, the discussion about the reconsideration process is typically one of these.

And so this is just to highlight how we are going to proceed with that is focus on the definitions this afternoon and just think it through. Also by tonight and tomorrow morning we'll be focusing the work stream one out, expected outcomes.

And based on this discussion, based on the work that's been done so far by Steve in work area two. I see that Thomas his flag raised and I have (Chris) in the back, do you want to chatter?

Leon Sanchez: Yes I mean also (Chris) has an announcement right so we'll go with Thomas.

Thomas Schneider: Thank you, actually I would like to say a few words about this whole process on behalf of the GAC but I don't know whether now or at the end of this session. So just asking to be given the floor at the end of this session before the lunch break.

Leon Sanchez: Excellent, so that was (Kit).

Matthew Harris: We have three...

Leon Sanchez: (Chris), (Chris) okay.

(Chris): I just have a question (unintelligible) on logistics. You're talking this afternoon are we going to be talking about definitions and so on. Are we going to be talking about what we mean by the community because I've heard a lot of discussions this morning about the community...

Matthew Harris: Absolutely.

(Chris): ...and its control? Are we going to talk about that this afternoon?

Matthew Harris: Yes there's a whole section about stakeholders, which I think is the one about communities.

(Chris): Thank you.

Leon Sanchez: So now it's the end of the session Thomas.

Thomas Schneider: Thank you, I'll try and be brief. Just for your information. Among the members of the GAC that are active in these processes there are some consideration in thinking about the fact that some people are worried or concerned about inactivity or not enough visibility or locality of the GAC in these processes.

So we thought it might be useful to say a few words about how we work and how we plan to deal with this in this context. So first of all this is not just for us, probably for everybody. The timelines of these processes and the complexity of these processes and the number of these processes is of course a challenge to governmental representatives.

And normally and I think this goes actually quite well to the accountability debate. We are not supposed to speak as individuals we are accountable to individuals and companies that pay us, that pay our taxes to defend their interests and normally used to having consultations on national level than on international level about the issues before we speak.

So this is one of the reasons why you might probably never have so many GAC representatives at the forefront of discussions because we are supposed to consolidate positions before we explain them.

And then in this environment of course we cannot fully consult so we have to find another way of working, which is more on a step-by-step basis, on a case-by-case basis and this is also dependent on let's say co-chairs from different regions of the world in different countries.

Not everybody is familiar to speak more freely or without consultation and participating under such conditions. So this is just something that many GAC members felt that they wanted to communicate that despite these challenges or the GAC at least the ones that have been active have had the chance to be active so far appreciate the work that is done here, are aware of the complexity and the amount of work that is done by everybody.

And that everybody is willing to contribute to the debates and is trying to follow, trying to be vocal and that one of the elements that is remarkable for many people in the GAC is the openness of this whole IANA and accountability process because it's completely open to everybody, which is something that is very unusual for government representatives in work in such an environment but that this is really an amazing experience also for GAC representatives to work in this environment.

Another point that is important to many GAC members is that the key of this process is to come up with a good solution, a solution that is shared, that is built on consensus and of course we are all committed to come up with this good solution as quickly as possible but in the end a good solution will need to take the time that it has to take.

And also if this is supposed to be real inclusive and participants, participants already that will need the time to consult with as many people as possible. So this is one of the messages that I've been asked to convey to you by several members of the GAC.

Knowing that this, even this is not a consolidated GAC position because we didn't have the time to consolidate it, thank you very much.

Leon Sanchez: Thank you very much Thomas. Now (Grace) you have an announcement right?

(Grace): It's about lunch, are we ready for that?

Leon Sanchez: Yes go ahead.

(Grace): All right everyone, so lunch will be in the restaurant, the hotel restaurant. There's an area in the back that's been cordoned off for our group so there's a buffet and then the seating is in the back of that restaurant.

You can leave your things here there will always be someone in the room, that's up to you if you want to leave your things here or not but you're welcome to do that and we will reconvene at 1400 sharp.

Leon Sanchez: Well thank you very much everyone.

END