

ICANN

**Moderator: Gisella Gruber-White
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9:00 am CT**

Leon Sanchez: Well thank you everyone for coming back. We're back on track. Okay so our next agenda item is to finalize the rest of the scope and definition document independent. I would like to begin by analyzing and putting on the screen alternative definition for accountability, which will be on the screen in three, two, one.

So far in our definitions we have a definition for accountability that's based on the NETmundial definition right, Mathieu?

Mathieu Weill: That's correct.

Leon Sanchez: Okay. So we will compare that to what we're about to have on the screen.

Mathieu Weill: Do you want me to read the NETmundial definition?

Leon Sanchez: Yes. Okay, so...

Mathieu Weill: No, go ahead.

Leon Sanchez: What we have on the screen now is an alternative to the accountability definition that's actually put in place in the document right now. And it reads: "Accountability provides the ability for an independent entity to impose binding consequences to ensure the IANA operator meets its formally documented and accepted agreements and expectations."

I would really much appreciate (Jan)'s thoughts on this definition.

Mathieu Weill: I think (Camille) wanted to add something to the definition or comment that she was proposing. Can I suggest that?

Leon Sanchez: Okay. (Camille).

(Camille): Thank you, Mathieu. We just had a conversation during the break and Mathieu mentioned that perhaps the scope of this definition was limited for a purpose of this exercise, something to which I fully agree. And I propose that in the current definition of NETmundial, which we are using in this working group, that we simply add a footnote. And that was as a matter of cross reference, we mention that the Cross Community Working Group and IANA did make reference to this definition just to answer cross virtualization between both work streams. Thank you.

Leon Sanchez: Thank you very much, (Camille). So then we will turn back to our definition in the document, which reads: "Accountability in this context is defined according to the NETmundial multi-stakeholder statement, the existence of mechanisms for independent checks and balances as well as for review and redress." And here's where the fun begins.

So review and redress. We had a very fruitful discussion on these, at least then on our calls with regards to review and redress. I would like to open the floor

for thoughts on what we should be defining as review and redress. So far the understanding of some of the members and participants of the group is that review refers to the ability of going through the decisions that are made by the board in order to change how they impact ICANN and IANA of course functions, while redress refers to turning over those decisions maybe by some kind of mechanism or independent organization.

So I would like - I remember Kavouss Arasteh had some interesting thoughts with regards to review and redress. Would you like to share them with us Kavouss?

Kavouss Arasteh: Thank you very much. From the very beginning, I understood -- maybe my understanding was not right -- that people are thinking of review mechanism and the redress mechanism as an alternative to each other, which I thought is not correct. They are complementary to each other. The first one, I call always the first one review, is a prerequisite to do something for redress. You review the situations, you examine the result of the review. If there is a need to redress something, you redress that. If there is no need to redress, you don't redress that.

So that is my understanding of the situation. They are complementary to each other. The first one is optional in the sense of taking into account the results but not optional in applying that. It should be applied according to rules and procedure periodically (unintelligible) decided later. However based on the outcome of the review, it might be necessary to take appropriate action to remedy or to redress the situation, and that action once done is binding and is mandatory and should be implemented by the implementer. That is my understanding. Thank you.

Leon Sanchez: Thank you very much, Kavouss. Thomas, do you want to reply to that?

Thomas Rickert: Yes. I think that this is a very important and a good discussion that we're having. Having followed up the discussion on the mailing list, I get the impression that we're coming from different legal and cultural backgrounds and there might be a different use of terminology. My understanding is -- and I've checked with the co-chairs in preparation for this meeting and we share the view, and I hope you will do so too -- that review would be a scenario where the board or the decision-making body would take a look at the decision it has made and if it so chooses, it can reverse it.

And that can be triggered by different mechanisms. But basically what's decisive or important for review is that the decision-making body itself looks at its decision and either sticks to it or reverses it or rectifies, if you wish. While redress would be a scenario where the decision-making body is forced by third party to reverse or rectify a decision.

So I guess the trigger point is different. While review is something that the body itself would conduct and then implement, the implementation is forced upon the decision-making body when it comes to redress. And what redress is then taken, that's yet another decision. Whether that's, you know, just ordering the decision, whether that is a financial remedy or other things, but that's not part of this discussion.

I think we - what I would hope we that we as a group can agreed on a common understanding of this distinction between review and redress. And, Kavouss Arasteh, I think it's pretty much a matter of definition. So we just have to get the definitions right and have the same definitions that we work on. Thank you.

Leon Sanchez: Thank you very much, Thomas, for this clarification. I have on the queue Steve DelBianco.

Steve DelBianco: Thank you. Kavouss, with respect to your question, if I may, the uppercase review is a little different than the lowercase review that's buried under redress. And let me try to explain. Not all redress mechanisms have to begin with a formal or uppercase review. Like reconsideration request is a redress mechanism, but at the beginning of it there's a quick review of what happened and it's part of the reconsideration.

So that level of review is part of the redress mechanism. It isn't a formal review the way they've identified it in the definitions that the chairs have in front of us. And that's why under redress it says, quote, "An accountability mechanism in the redress category always starts by reviewing the decision." But it doesn't mean that it's one of those uppercase R reviews that were defined earlier.

Leon Sanchez: Thank you very much, Steve. I have Tijani Ben Jemaa on the queue.

Tijani Ben Jemaa: Thank you, Leon. Tijani speaking. Now we have three definitions: your definition, which is the board itself who make the review, the definition of Kavouss, which is the review is a pre-required step to make the redress, and the Steve one. So it is a matter of definition, and I'm finding with any one that we have do decide on the definition, that's all.

Thomas Rickert: Then let's take mine.

Leon Sanchez: Thank you very much. I have Alan Greenberg on the queue and then we'll go with (Jan) also.

Alan Greenberg: Thank you. I was going to say something similar to what Tijani said. We're trying to take one word, which is both a noun and a verb, and convey meaning in the word alone. We can certainly do what Thomas is saying and that's set a definition, but we may then need other words for the other definitions we would have put on it.

So let's be careful how we're doing it. The word has many meanings, and if we restrict it to one, which we should for clarity, we may well want to consider the other meanings to have new words so that we're covering the concepts that are being mentioned by the other people. Thank you.

Leon Sanchez: Thank you very much, Alan. I'd like to go with (Jan) and then with Thomas Schneider.

(Jan Schultz): Yes. Thanks. (Jan Schultz). I'm just wondering. I'm sorry, I'm being probably pedantically academic, but you want a definition that is as precise as possible I think, as precise as one can get, it never will be totally. But this is a little bit woolly to me somehow. I mean the - well the first thing it's covering is emphasizing the review and redress, which typically are two of the four dimensions of accountability that would be taken into account.

So transparency and consultation or participation would be other ones. Review and redress are kind of downstream, if you like. That's the part of accountability that comes after you've done the decision and after it's been implemented. But there's also the accountability that happens while you're making the decision, while you're making the policy. And that's what transparency or certainly consultation tends to be about.

But the overall idea on accountability is that an actor, in this case ICANN, is answering to others, in this case it's stakeholders, for the effects on them,

stakeholders, of its, ICANN's, actions and omissions. You answer for what you do to people, to put in - to put it more - and you answer to people for what you do to them through review and redress, yes, but also by consulting them and also by being transparent to them.

People often separate accountability and transparency in some ways, but actually transparency is a precondition, so much a precondition for accountability that in my mind, it's actually part of the process itself. If you're not transparent, you can't be accountable. So it seems to me a dimension of it.

So it's for you to decide your definitions, but I was looking at what came out NETmundial and I'm wondering whether how much that was - how much that came out of a systematic sort of review of accountability literature and theorization and so on. There are times when you don't need academics, but there are also a few times when you do. And this might be one of them.

Leon Sanchez: Thank you, (Jan). So maybe the suggestion would be to expand the definition to include all accountability elements that you mentioned: transparency, consultation, review and redress.

(Jan Schultz): The precise words are mine but the similar words, the kind of fourfold distinction is quite - very common in the literature. So it's not me only.

Leon Sanchez: Yes, (Jan), would you like to help us draft a paragraph on that? Okay. Now I have on the queue Thomas then (Becky Burr) and then Bruce Tonkin. So Thomas Schneider please.

Thomas Schneider: Thank you. Thomas Schneider here. Actually my proposal goes in the same direction as (Jan)'s. But what I'm missing here is before we go into the details, I'm always going to say about checks and balances and the actual

mechanisms I would like to see also for - that everybody knows what you're talking about, some basic explanation of the concept of accountability.

And I've been looking around and some elements -- I'm going to circulate it to you on the list in case that you find that helpful -- is one is the meaning of accountability. One thing that I found is the condition or quality of being accountable, which in turn means responsible, having to give an explanation for one's actions answerable. So this is very much in line with what (Jan) said.

Another one, another element, accountability refers to the implicit or explicit expectation that one may be called on to justify one's actions to others. This is another element. Another element is the notion of a personal or an institutional responsibility for potential negative consequences of one's own behavior and actions onto others.

A lot of elements more that I think we should maybe in a condensed form start with the general notion of what accountability is and then move on a second half of the what is accountability chapter to what that means in the ICANN context, applied on this specific level that we need to apply it. But I would spend one or two paragraphs on explaining what accountability and then the checks and balances, transparency and all these elements or mechanisms that help to get to achieve accountability. Thank you.

Leon Sanchez: Thank you, Thomas. (Becky) please.

(Becky Burr): I find the definition of just being - having to answer to stakeholders a little broad, and I think we need a reference to what it has to respond to stakeholders for, as opposed to anything under the sun. And I would, you know, things that come to mind would be for acting in a manner that's

consistent with the multi-stakeholder manner and complies with the bylaws and articles or incorporation.

Those are things I - I just find that this open ended, there's no accountable for behaving in what way, and it seems to me we need to have a standard against which accountability is measured, a standard in which behavior is measured. So they have to be accountable for its behavior but you also have to have a standard by which that behavior is measured, which would be, you know, complying with the multi-stakeholder model, complying with its bylaws mission statement, faithfully executing, you know, bottom-up policies, et cetera. Just make it - the word accountability concerns me.

Leon Sanchez: Thanks, Becky. Mathieu, you want to add something to that?

Mathieu Weill: Becky, isn't the purpose section, the purpose of accountability is supposed to cover exactly that, which means what - against what standards would ICANN be accountable to, and that is service level agreements, service levels in general, compliance to their process, including the multi-stakeholder model obviously and so on and so forth. Wouldn't that address your concern?

Becky Burr: That is another place to put it. I don't find it there. I mean in the purpose we have the charter that really refers back to the NTIA statement in some ways, but it could go there too.

Leon Sanchez: Thanks, (Becky). We have now on the queue Bruce Tonkin.

Bruce Tonkin: Thank you, Leon. A bit like some others have pointed out, I think there's a bit of blurring of terminology. Let me try and have a crack at simplifying it. I'd much prefer to have a whiteboard so I can draw it. But let me just discuss sort

of four words that get discussed in this context. The four words are review, redress, independence and binding.

Now if you take those four words and then just break them down a bit. So an example of something that is an internal process, so it's not independent, is reconsideration. So the reconsideration process in the bylaws has a review step and the review talk narrowly about staff actions. So the board can review staff action, and then if the board finds that the staff haven't complied with ICANN policy, the board can provide redress to the affected party. So that's an example that is a redress mechanism.

So a complainant can come to the board asking for reconsideration of a staff decision, there is a review step that the board does first, and then there's a redress step where the board actually, if the complainant is successful, provides redress to the complainant. So it's an internal mechanism.

Secondly, you can have an independent mechanism and we have an independent review mechanism, which is the IRT process, or IRP, sorry, Independent Review Panel, currently that only specifies a review mechanism. It could, in addition, the independent panel could also recommend redress, so that would be a recommendation from the independent panel for redress.

And then finally, which is what I hear a lot of people would like to see, they would like that recommendation to be binding. So I think there's three - if I look at the Independent Review Panel example, those four words will come back to review, redress, binding and independence.

So I think what people are looking for is they want an independent panel that does review. So it's reviewing whether we followed the bylaws. That's step one. Secondly, I'm hearing people in the room ask for the independent panel

to recommend some redress. That's the second concept. And then thirdly, I'm hearing that the room wants to have that recommendation become binding in some form. So I just want to get - they're very quite separate concepts: independence, review, redress and whether the independent recommendation is binding.

Leon Sanchez: Thank you very much, Bruce. Do you want to add something, Mathieu?

Mathieu Weill: I think there are two perspectives at play here. One -- and we are obviously confronted with words that can be read in different ways, and that's where we need to have our definitions clear -- one perspective is in the process of a specific mechanism to go through a review phase and then potentially a redress phase and then whether it's binding. And then we'll be dealing with mechanisms and we need to label clearly what we consider a review mechanism against a redress mechanism.

And we tend to be going from one perspective to the other. And I think the definitions that are currently proposed along the lines of what Thomas was referring to are to label the mechanisms and delineate (unintelligible) we call it redress. If it's review with recommendations for the organization to consider, we call it review, just like the review teams for instance. And if we look at the existing mechanism through this lens, it's clear it appears that a number of stakeholders find there is lack of redress mechanisms for both decisions. And so that appears to be an item that we should take on board.

And that does not mean that, I mean, the accountability overlap within a specific mechanism between a review phase - I mean you don't redress a decision before reviewing it, but - and it's just choice of word, going to (Jan)'s comment. And we need to find one which we are comfortable with, so I'm

perfectly happy to change them and call them A and B and anything other than acronyms actually.

But we need to make sure we - I think there's value in providing a delineation between what is binding and nonbinding because that's been such a hot topic within ICANN. And that's why we think it's a value definition here and perfectly accept other views on that matter.

Leon Sanchez: Thank you, Mathieu. We have a queue forming. I just want to check with Bruce. Is that an old hand or is..? Okay. Then we have Kavouss Arastehon the queue.

Kavouss Arasteh: Thank you, Chair. Let me give one example which is not totally identical to the accountability. If you go to the accounting system, we have internal auditor, internal to do something, and we have external auditor. Accountability as far as internal is concerned is being done by ICANN as was mentioned but different way. But what we are dealing in this CWG is external accountability.

That means this accountability consisting of review and redress be done by an independent entity, council, authority and so on and so forth. That would be in addition to the internal accountability that is being done. It's exactly similar like accounting. In many, many organizations, internal auditor does his job; however, external auditors look as an independent authority and will review whether anything's required to be redressed.

So we are dealing in this process to the external accountability. It's being done by an independent authority or entity consisting of two steps: step one, review periodically, and step two, if the result of review requires that something has not been done properly, first it should be redressed and second, there might be

some other consequential actions which (unintelligible) we don't refer to them.

Thank you.

Leon Sanchez: Thank you very much, Kavouss Arasteh. I now have Malcolm Huddy on the queue.

Malcolm Huddy: Thank you. And I was going to follow up on Bruce's very helpful recap. He listed the points that he understood had been agreed, and I was going to add one more that was mentioned earlier that I would very much like to see on it on that bullet list, which I hope he's written down and is going to share with us in writing, because I thought it was very useful. And that is on what basis this redress.

Becky made this point earlier and I would like to highlight it. Sorry to mess with your proposed terminology, Mathieu, but in English law this is known as the basis of review and it means in the redress context it means what are we reviewing it against. If you have an independent assessor having a redress mechanism, on what basis are they going to say go back and do it again. Is it going to be just their preference. If so, you're creating some sort of shadow board, and that's not where we should be going.

If you have it on the basis of the popularity with the community, I wouldn't suggest that that's the best thing to do. Instead the sort of things that (Becky) listed I would suggest are the things that such an assessment or redress should be against. Things like was it out of scope, was it in compliance with procedure and so on and so forth. Maybe (Becky) can give that list as bullets again, but I'd like to see that added to Bruce's recap as one of the key things here because that would give a real point forward. Thank you.

Leon Sanchez: Thank you very much, Malcolm. I have Avri on the queue.

Avri Doria: Thank you. I think I'm going to make a point that's in a similar vein as (Malcolm)'s but slightly different. When Bruce mentioned be it reconsideration, be it review or even redress, he mentioned that it had to be consistent with the bylaws, which I agree with. But the bylaws go beyond procedure and, you know, we, as I mentioned before, we had many recommendations for the fact that reconsideration review and ultimately redress have to go beyond just the procedural view of things.

So I think if there's a fifth aspect that has to be looked at, it is the scope of those things that are consistent with the bylaws. And as I say, the bylaws goes into far more than just ICANN processes. And I think that in doing all of this and in looking back at the ATRTs, the ASEP and ATRT1, we find that the scope of review is not just limited to that, not just limited to the few that Becky mentioned but it really is an expanded scope as defined by the bylaws. Thanks.

Leon Sanchez: Thank you very much Avri. We'd now like to move to the definition of independence and one thing I would like to bring up is that independence doesn't mean having someone telling us something we want to hear. So I would like to welcome thoughts on what we understand as independence.

Mathieu Weill: Can I start with shortly describing the way it's phrased right now in the document and that's not been discussed yet therefore fully for comments, amendments, changes. In the document you will find two different sub items regarding independence. One is are the persons participating in the decision process of the account of (unintelligible) independent and the second one is, is the account (unintelligible) independent from the initial decision makers that who's decision is reviewed or redressed. So those are two different items. Regarding individuals, what is being proposed is based on definitions from

corporate governance code of conduct regarding independent directors. I'd make note right now because I know it can be confusing.

This is not meant to apply only to directors. It can be to anyone, including in this room but the qualification of independent that is proposed by this corporate code of government is that the persons do not have any other material peculiar relationship or transaction with the company. It promotes its management or subsidiaries. That's corporate which in judgment -- there's always a notion of judgment -- may affect independence of judgment of the directors.

So the suggestion we're doing is to use an assessment which will never be black or white. Independence is always some form of subjectivity that the persons involved in making or validating decisions, apart from participating through (unintelligible), do not have any other material relationship, transaction or professional restoration with ICANN because we're dealing with ICANN which may affect their independence of judgment. I'm fully open for improvements to that and other options because that's the only one we've found so far but I think the importance is the notion of independence of judgment during the decision making process and so that's the individual part.

From a mechanism to another one, we have proposed a number of hints of independence or non-independence and here again, it's not going to be perfect. It's never going to be perfect independence anyway but due to persons making decisions and one of the mechanism, they're the same persons who were in one committee and on the other one? That's the first criteria. Are they appointed by the same persons or appointing in circling rounds? Do they have material relationships to other persons from the committee that initially made the decisions? You can say the decision being reviewed involves the company and one person in the panel reviewing the decision is working for this

company or a subsidiary or a significant partner of this company then that would be initiative of independence and whether the persons making decisions have conflicted interests in any of the mechanisms that they take part like trying to improve (unintelligible) one way or another because a decision might have an impact on their own economic conditions for instance.

This is our initial proposal. I'm pretty sure there's a lot of literature on that. We've tried to capture some of them but that is something we need to work on because I think there was going to be a very strong expectation by many significantly interested parties that the mechanisms we come up with rely on very high standards in terms of independence and so we need to make sure we're in agreement with how we define this and we can show that we dedicated significant thoughts to investigating this. That's it.

Leon Sanchez: Thanks (unintelligible). There's a queue forming and the first is Avri please.

Avri Doria: Sorry. That was a hand I didn't take down.

Leon Sanchez: Then we can move to Becky.

Becky Burr: I have posted in the chat some language that is typically associated with an independent judiciary which really talks about being free of improper influence at the highest level and then the things that you have there are ways of assessing it. There are also pretty generally understood requirements to preserve the independence which is fixed terms and the ability to remove somebody only under specified circumstances involving bad behavior, a fixed inadequate compensation, documented qualifications to provide the service and some sort of limited immunity from lawsuits or the like arising out of the decision making process. I don't think that it'll eliminate any of the things that

you have there but it does speak to an understanding of a judiciary system that is pretty widely held around the world.

Leon Sanchez: Thanks Becky. Steve?

Steve DelBianco: Steve DelBianco. I fully appreciate the way you developed the definition from literature and then applied it specifically with respect to people and I personally would agree with the way you've characterized it but I did want to say that I don't think we want to imply that every review and redress mechanism that we end up endorsing in work stream one or two must fit this definition of independent. I hope that wasn't the implication because some things like a reconsideration is determined by persons who are not independent. It's determined by forward members, a lot of advice from staff and it might be that we strengthen or improve the reconsideration accountability mechanisms as part of our recommendations and if we do that, I'd hate to have it fail some bar for independence of all of the individuals involved.

The definition is excellent and it applies very well to things like the independent review panel which starts with the word independent so I get that but there are those who are going to be - let's suppose we did a member organization structure like (Jordan) described and others. The individuals voting on behalf of their ACNSO's, those are individuals who wouldn't meet this independence necessarily. They might have not been able to check all of the boxes on independence and yet they would be constituting a vote because I think we have every reason to believe that internal, non-independent processes like reconsideration will begin to work much better once future boards realize that failure to do reconsideration with rigor and being attentive to the needs of the community will invite independent reviews, spilling of the board. It could invite certain community level discipline on a board. So

mechanisms that are internal to ICANN can begin to work better once external leverage is able to be applied.

Leon Sanchez: Thanks Steve. Kavouss Arasteh?

Kavouss Arasteh: Yes. I have got this text in my view is properly covered issue. I don't think that is required major modification if there is any slight modifications absolutely necessarily to prove do it otherwise. The core issue has been properly addressed and I don't think that there is - at least I have not covered or identified any difficulty with any part of that full implementations properly explained knowing that there are tens of ways to explain the situation (unintelligible) but this issue has been properly covered. Thank you.

Leon Sanchez: Thank you Kavouss. Yes.

Jan Scholte: Jan Scholte. (Unintelligible) was saying at the beginning independence was going to open up all kinds of questions and I think it depends on how far you want to take these things but it sounds like you're talking about independence as being economically disinterested. You're not saying you're ideologically independent, your culture independent, you're politically independent, you're institutionally independent but when you just say independence, it could be read that you're actually implying all of those things and in fact, you're not. I just think if you take the example of the International Monetary Fund, they have an independent evaluation office.

It's called the Independent Evaluation Office and please don't take this - they don't great work and I've supported and been involved in their work for quite some time. They do fantastic work. They've done some very critical searching reviews but everyone who staffs the independent evaluation office are IMS staff. They are independent in the sense as economically disinterested. I guess

their own wage is indirectly so it comes in at some point but with that name of independence, they then come out with that name of independence, they then come out with all of these reports which everyone is then supposed to regard is a political and not subject to challenge because it's independent. I don't know how far you want to take this narrative of independence. Integrity? I'm not sure another word to use but I'm just a little bit worried that you say, okay, you don't have direct (pitunary) interest, therefore everything you say is untouchable in its fairness.

Leon Sanchez: That's interesting because I think that while we might have done a very good job in defining independent, the question whether that's the type of independence that we're actually looking for. So we're now setting the standards for the accountability mechanisms that we're going to work on and I think we - let me just try to simulate a discussion by saying that we shouldn't mix up independence with neutrality.

So it's important for individuals to declare their interest because otherwise we might remove representatives of (RSO's and AC's) from these functions because they wouldn't pass this test and to give it a historic example in the ICANN world, there are many community members who felt that it was bad precedence for the board not to be able to decide on the new (TTL) related matters and have the NGPC because we're part of the board members who with great expertise in the (GTLD) space could not participate in discussions and decisions.

So I think what's required doing this is that we raise the level of independence significantly, be transparent about it but not closed doors for mechanisms or access to a pool of people. That might be very helpful in this process and I think we might, with some minor tweaks in the language, be able to reflect

that. So my question to you is whether you have any suggestions or whether you agree with this notion that I'm portraying. Jonathan?

Jonathan Zuck: Jonathan Zuck for the record. Isn't it more a question of being independent of the body being reviewed than it is being independent from the issue being discussed? Isn't that really the distinction?

Leon Sanchez: Yes. That's one aspect that we've covered in the document already. We might need to highlight that more.

Man: Yes. I see that Kavouss Arasteh hand is raised but he's not fiscally with us. So I think it's an old hand and next in queue, we have Alan Greenberg.

Alan Greenberg: Thank you. There's all sorts of words we can use to create the Litmus Test of goodness for the review. I mean, I noted as we were talking. We talked about independence, neutrality, reasonable, balanced and they all have different connotations and are going to be perceived differently by different perspectives. If we're using internal people in ICANN, the most we could hope for is balanced. We're not likely to have people who have no views themselves and I don't really have a single word that's right but it's going to be some combination of these things which will be acceptable because if what we're aiming for eventually is a level of trust, then whoever's doing the review is going to have to pass this test of we trust the reviewers otherwise the contents of the review has no meaning and I don't think we're going to achieve -- certainly in any internal versions -- things like independence or neutrality and reasonable is clearly a judgment call. So I think we're going to have to be careful what words we assign to it and start looking at the characteristics we're looking for and perhaps get to word (unintelligible).

Leon Sanchez: Thanks Alan. I have Chris Disspain in the queue. I'm sorry.

((Crosstalk))

Leon Sanchez: I'm sorry. That was Tijani Ben Jemaa.

Tijani Ben Jemaa: Thank you (unintelligible). Tijani speaking. (Unintelligible) neutrality and (unintelligible) any other term we can use. All those qualifications are all subjective. We don't have an objective tool to assess the neutrality or the (unintelligible). So my proposal is to make everyone able to make reviews or address assuming that they provide an updated SOI so that people know their interests. Thank you.

Leon Sanchez: Thank you Tijani. Now Chris Disspain. It's your turn.

Chris Disspain: Thank you (unintelligible). I wanted to pick up on something that Steve DelBianco talked about because again, I think it's a question of making sure that we're very clear when we talk about independence and that it's only applicable in certain circumstances. If I go back to Steve's vision that he talked about this morning, one of the examples he used was actually a decision made by an independent panel which he didn't like and he said that the community didn't like and that it should've been redressed and there should've been a way of untying that.

So I think we need to be very, very careful that we have internal mechanisms where it's important that conflicts are disclosed and that people exclude themselves if they are in fact conflicted but that doesn't mean that they have to be independent and if you go to an independent review mechanism that is truly independent, that is something that is outside and is looked at by outside people, then their decision then becomes something that would in effect be binding. Thanks.

Leon Sanchez: Thank you Chris. Now (Thomas Livopleas).

(Thomas Livopleas): Thank you. I think this is a very important debate about what we mean and I think we also - first of all, we should try and not over complicate things. Whatever we agree on -- it's never black and white -- is always up to definitions and interpretations but I think the notion of independence is something that is more or less clear. You have indentified some elements that could be part of a mechanism to make sure that people are as independent as possible but of course we shouldn't forget that if you take fully independent people, they might not know anything about ICANN because as soon as somebody has some experience and knowledge in ICANN, he may know people that may be his friends or his partners and so on and so forth.

So independence is one element and transparency is another one about possible ties and knowing where people come from. Selection criteria, in addition to the criteria that make you independent or not, somebody will have to select people that are on a panel so then we are again in the (unintelligible) discussion. Those who select people might also be subject to some criteria and those who select somebody else are selecting and so on and so forth.

So I think we shouldn't go into too much detail but fix that the broad idea and try to get an agreement on the board ideas and maybe it's also worth to have a look at other institutions because there are thousands of independent institutions who assess and validate things. In my country, we have an independent complaints authority for content on the public broadcast because that shouldn't be done by the government or by the broadcasters. A number of other examples, maybe we find one or two examples that are quite suitable or applicable to our case without too many modifications. Thank you.

Leon Sanchez: Thank you very much Thomas. Mathieu, you had - you (unintelligible).

Mathieu Weill: Yes. I think it's pretty much to try and get a sense of what I'm hearing that (unintelligible) is very valuable and reminding that we're here not the create the perfect accountability system because it does not exist but to enhance ICANN's accountability and we need to find on the independence dimension what can be improved and we want change everything so that it becomes fully independent because it would be obviously very costly and probably not efficient either.

So I think I am very - I can sympathize with the idea that some accountability mechanisms will be relying on people who have some interest and know (unintelligible) substance matter (unintelligible) therefore maybe a little less independent than others and then we need to build in the checks and balances into those mechanisms so the balance actually prevents some of the conflict and the transparency will also be useful at this stage and we also have to create independent mechanisms which will be maybe higher in independence but that will only be last resorts and that's probably one of the balance we'll have to find between efficiency and achievable independence and I think this is one of the values I see in the discussion that we could grasp this balance between the different mechanisms themselves a bit further. I'll leave it at that.

Leon Sanchez: Thank you very much Mathieu. I see Kavouss Arasteh hand is raised. Is that correct?

Kavouss Arasteh: Yes. Just to endorse what the other colleagues mentioned, there is no ways and means and criteria to assess the degree of the accountability and independence and so on and so forth. Therefore, perhaps we can use the term without any qualification, without saying they're fully independence or (unintelligible). Just independent and that's all. If it's something of a moral

obligation of the people, there are some threshold and I think people are sufficient, the talent and as soon as they see some degree that this (unintelligible) is not respectful, they will understand that the (unintelligible) has not been respected. So we don't need to further discuss the issue and it is a totally subjective issue and it is difficult to associate any criteria for its measure. Thank you.

Leon Sanchez: Thank you very much (Kavouss). Thomas, you want to add something to that?

(Thomas Livopelas): Yes. Just to maybe echo what's been said by (unintelligible), I guess we would take what we heard to the debrief and we will try to leave the language more or less as it is but just add something that would give us a little bit more flexibility. So if that's okay with you, we would try to reflect the idea that we should not exclude valuable resources by raising the bar too high in this definition but I think that can easily be done and we'll get back to the group with a suggestion on that. So I think we've taken all of the comments that have been made to heart and we'll get back to you soon.

Leon Sanchez: Thank you Thomas. So this would be the end of this topic. We'll now go to the next topic on our agenda which is the advice engagement update and the provision of independently advice. So Thomas.

(Thomas Livopelas): Yes. It's me again. Actually, we have good news to report. As you know, high caliber experts have been identified by the public experts group. One of which you already met. (Unintelligible). who's previous work has been very helpful in what we're doing. You will remember that Jan has drafted or delivered a speech at the ICANN meeting in London and that's been a very valuable resource for our work in creating the inventory as well as looking at what accountability should take into account.

We have met with some of the advisors for reasons of schedule. We could not talk to them all but we would like to briefly update you on the progress that we've made in liaising with the advisors. On the first slide - actually on the second slide, you find a reminder of what is in our charter with respect to the advisors and to recap that very briefly, we're looking for independent advice. Okay. Here's the word independent again which is interesting. We hope to obtain independent advice research and identify best practice as early as possible in the process and we will give direct consideration to the advice that we get from the advisors and they are expected to contribute to the dialogue similar to other (CCWG) accountability participants or colleagues on this group and they have no decision making powers but certainly this is a general statement of how we would interact with the advisors and we try to operationalize that by discussing with the advisors as to what their time commitment can be and how they would envisage working with us.

So there is a - we can expect the advisors to work with us differently. So they've shared with us their preference on how they would like to engage with our group. One thing that's been made very clear and I think everybody can sympathize with that is that they would like to better not engage in one to one conversations with 150 members of this group which I think would not be - 170. Sorry. So I think certainly that's nothing that we would support anyway but some of them are happy to follow the mailing list.

Others have indicated that they wouldn't be able to follow the mailing list for resource reasons which is perfectly understandable as some would join our cause. Others would work with us on specific items during specific times. So we would provide them with summaries of the discussions on the mailing list and during our meetings. I should note that these summaries prepared by staff, we would share with the whole group. So that might be of interest for you as well, keeping your effective groups updated.

We do know, for example, that the GAC is creating summaries for GAC members. And I think there is little value in different groups having their own summaries. You know, so we're going to share staff summaries with you and then the liaison parties can certainly add their own comments to it, but we don't have to duplicate work and then working on summaries.

So these are made available to the advisors. We have asked them to react to those summaries. So we want to make sure that if the advisors feel that something that we're working on is illegal, let's say, or counterproductive or is far away from being best practice, they should give us heads up at the earliest possible moment so that we can readjust or at least consider their observations in our deliberations.

So that's the first thing -- that we would like them to monitor our work progress. We would like them to provide feedback on interim work results so papers that we produce -- drop papers that we produce. So we have to expect like maybe two-week turnaround times for them to review what we've produced. But that is something that we would like to do.

And we would like to ask them for specific advice on specific questions. Ideally, we would be doing that in writing so that if we have, let's say, initial with covert governor's issue, we would write these questions up, send them to the advisors and the advisors would then come back with a response.

Also, we would liaise with them as co-chairs but we would also seek to find time windows where the whole group can interact with the advisors. So that could be inviting them to a telephone conference every now and then when we feel it to be relevant or to invite them to our face-to-face meeting so that everybody in the group can interact with them.

So if we could move to the next slide. So that is the working methods that we were considering. And I hope that this accurately reflects the wishes of this group. And should we have missed on something or would you like to deal with things differently, please do let us know.

What we're still missing at the moment is expert advice on international law. So we hope that an appointment is going to be made very soon and we will let you know. Certainly, the (PAC) is going to let you know as soon as such decision is made. Also, we will provide the outcome of the Frankfurt meeting to the advisors. And hopefully they will provide feedback to that.

And we would like to hear from you whether you see any areas where you would think that we could immediately ask some questions to the independent advisors. Given the turnaround time that they need, I think it is good for us to give them questions. And I think it will also help us understand the best interaction method with the individuals, right? So there might be some who are very comfortable with giving us written responses. Others might wish to get back to us on the phone.

So I think the earlier we can start the process of getting some feedback from them on substance, the better it will be for our whole process. Any ideas as to what we should be asking them?

Man: Thank you, Chair. I have some little background apart from technical background and have it involving many legal discussions. First of all, we are grateful to the public expert group for the work they have done and are grateful for the advisors, respectful advisors. But, Chairman, the legal area is a complex - quite complex area. Usually the views of legal advisor -- we call them legal view -- are thought when it is requested specifically. And that

specific request fund is made and usually should be agreed by the whole group and the contact point would be cultures -- not individual like me.

The risk of getting too much involved in the legal discussions - in particular, you refer to the mailing list. A legal question may be raised or may be discussed which instead of allowing us to converge to something may be unintended consequence goes to divergence because the issue will be complex, will be opened. And we have opened another dimension, then we may get not any result of that.

So we should be very, very careful of mailing lists in a way that they contribute an exchange like others members and so forth -- not that they are not right. The issue is that they bring something quite complex and we may start some unnecessary discussions and generating unnecessary debates and disagreement of colleagues. Nothing was really there and we create some problems. So we should be quite careful.

Limit their useful contribution to the area that we really need advice from them and this advice is formerly soft and they provide on that. Being on mailing list as a recipient -- no problem. But as starting to discuss the issues may complicate the box. This is just for your consideration. Thank you.

Thomas Rickert: Thank you. That is well noted. (Becky)?

(Becky Burr): Not on the ideas part, but just noticing that we still don't have the legal advisors. And as far as I know the only legal advisor they're looking for is the international legal advisor, although I think we also need some input on California nonprofit law. I'm enormously frustrated by how long it is taking to get this legal advisor in place. And as Mathieu and I said early on in this process, not paying people for this service makes it very difficult to get.

And I would just like to sort of see if we can go on record as urging them to make this a priority and to consider whether, you know, payment needs to be made to secure the proper expertise.

Thomas Rickert: Thanks, (Becky). Leon.

Leon Sanchez: Thank you Thomas. You're right, (Becky). I think one way for us to reinforce that urgency for legal advice would be focusing on which kind of legal advice we need. I mean we have discussed this and we would like to make the exercise of trying to draft some questions that we consider to be from the mental to the work -- the cross community working group -- is doing. So this would, of course, help to get that legal advice.

We'd also like to take advantage of other efforts of being done in other groups like, for example, the CWG. I think the more we coordinate with them and the more we join our synergies, the best help we can have. So I would think that it's a good idea to try and have this approach by focusing on the questions we think that might be relevant to the work we're doing. And I'd like to welcome thoughts on this.

Thomas Rickert: Thank you, Leon. Before we dive more into the question of legal advice, let me just check whether there are any further contributions regarding the independent advisors -- the expert advisors. So that doesn't seem to be the case in which case I would like you to think about questions that we should ask them. I could think of some but I think we don't have to do it here. But I think we should get a list of questions out to the independent advisors as soon as we can.

I think everybody appreciates the requests for obtaining legal advice. (Becky), rest assured that we have made this a priority. But we had several discussions with ICANN on how to best go out with this. You've heard earlier that the (unintelligible) said that they're committed to the process and willing to facilitate this. I think we as a group need to do a couple of things. Leon alluded to that.

I think we need to properly frame the questions that we want to get answered. So we need to have a document scoping of what questions we want answers to. I think that our deliberations actually needed a few weeks to evolve so that we know in which direction we might go and what questions we might have. But I think that our discussions now have matured enough so that we have some specific topics that we need to get answers to.

So I think that is something that we need to work on. I think ideally we would have a volunteer or maybe two or three volunteers that could make an attempt to scope what legal work we want to hire or have hired.

And then the other question would be, "How do we satisfy the needs of this group to obtain independent legal advice?" And that is what independence again. You will remember that there have been multiple contributions on the mailing list as well as during our cause that individuals do want this legal advice to be independent. And I think there are different ways to achieve that.

What we think as co-chairs -- and also having discussed this with ICANN -- is that we need to take a couple of factors into consideration, first of which being that this is a highly specialized topic. So we can certainly try to get the most neutral legal advice in the world by going to a law firm that has never worked in the area at the risk of them needing half year to get up to speed and understand everything. And I think we don't want that. That will cause

additional delays and it will be much more costly because they will likely want to see money for being educated and get up to speed.

So I think one of the means to ensure that we get what we need is that we get the opportunity to directly liaise with the legal advisors, right? So not ask questions. Ask them onto ICANN legal and then ICANN legal would at some point in time get back to us with a response. ICANN is willing to offer that opportunity, depending on the working methods of the respective law firm. That there would not be an issue in us getting access to the advisors, right?

So I think that is critical and that is important. We have to bear in mind that we would like -- or I would hope -- we can avoid the proposal that (Keith) has made that we have to pass the hat to collect funds to obtain legal advice. I think we would be more than happy for ICANN to pay the bill for that.

I think one way for us to approach this is actually to piggyback on what the CWG is actually doing and trust the CWG in agreeing on a law firm with ICANN and provide them with our scoping document and directly liaise with them. And I would hope that you agree with us that by doing that we would have sufficient independence in the process early on...

Leon Sanchez: No. Definitely I mean if we want to catch up with the timelines of both working groups, that will be the best way to go, I think.

Thomas Rickert: Cheryl?

Cheryl Langdon-Orr Cheryl Langdon-Orr off the record. And not that I don't want to trust the CWG, I happen to be part of it and I'm also somewhat involved with scoping exercise to legal. But I do think there is a role for a couple of representatives - - at least one of your co-chairs and one or two others -- to act in the same way

as is being proposed in the CWG and that is to have a small nucleus of people who are acting as the client. And I think that is fairly important.

We might be out of step but we can't have disparity nor can be sort of coming in behind. I think we need to have attention to equitable treatment in this dynamic. Otherwise, it won't serve us so well. So it's not a lack of trust for all of you from CWG world who are listening. But, no.

Thomas Rickert: I was actually - I'm sorry for not having made myself clear. But I think we should more or less copy the model, maybe use the same firm, right, as they do because...

Cheryl Langdon-Orr I'd do an impact together. I would have us as joint clients.

Thomas Rickert: Yes. And I think it's a good idea to have a subgroup of ours to liaise with them. But I think there would be an awful lot of benefits in tasking the same team of -- or the same lawyers -- with these questions. Because what the CWG is asking them is likely partially congruent with the question that we might have. And we might actually be able to expedite the process and be more efficient in resources that we're using. You know, we certainly don't want to tap on a big legal budget. We want to get good questions at a reasonable cost, I guess.

And so if you would agree with this idea of working with ICANN legal to follow basically the same process as the CWG did, that would be more appreciated. In other words - Steve.

Steve DelBianco: Thank you. Steve DelBianco. I just read really quickly Greg's document and I'm talking about the potential scoping draft and it's just a draft. It's extensive about a number of things that do overlap. And I wonder whether there is a risk

that finding a firm that can do all of that might not get us the right lawyer who is an expert in nonprofit California law and structural members.

So it's not in there yet -- the structural like members. And I realize we have not even agreed. It's in WorkStream 1. But if it were and today's indications seemed positive in that direction, then someone who -- like a laser beam focuses in on that -- would be very helpful as sort of a gating mechanism for the work we do. Can or cannot a member structure exist? And if it can, what bylaws changes are necessary? And if it can, how do we restrict and enumerate the powers of such a thing?

So we should contribute that scope to Greg Shatan's document. I'm talking about the CWG's scoping document for the law firm. But keep in mind that it may be that one lawyer who knows all the things Greg is asking about might not be the same lawyer with the same firm who is locked in on nonprofit law in California and the notion of member representation.

Thomas Rickert: Steve to be clear, it is not our proposal to have a joint scoping document with the CWG.

Man: Why not?

Thomas Rickert: I think we should identify the questions that we have. Maybe there is overlap. But I think it's not for us to now go back to the CWG and ask them to potentially mingle with what they're doing. I think we should work on our own questions. If there is overlap, fine. If there is none and if we need different experts, that is also good.

My (unintelligible) was to seek permission or ask whether there are any objections in following the same process as the CWG did in having a group

scoping, having a subteam liaise with the lawyers with the possibility to open up that discussion to the whole group and to be able to use potentially the same firm as they do. Certainly always bearing in mind that we need appropriate and the best possible legal advice, right?

So Steve your point is well noted. And also - I understand. I see a lot of nodding that there is no objection to that. What we would do is we would work with Sam who is in the room and who is with ICANN legal who is following this whole process. Sam will help us with the administrative part of things because I think we would certainly liaison substance with the lawyers.

But I think the administrative part is something that we would be very thankful for ICANN staff to take care of. And Sam -- being very knowledgeable in this area -- would also identify to us if the answers that we're seeking have previously been asked for by ICANN.

So it's not unlikely that certain legal questions have already been explored at some time in ICANN's history so that we can then take a look at this advice that has previously been provided and assess whether that would answer to our needs in a satisfactory fashion. So I think this - looking at my co-chairs, does that exhaustively reflect what we had prepared for? Do you think so?

Leon Sanchez: Yes. I would just like to highlight what Greg Shatan has said on the chat. He is offering to liaise with whomever is interested on taking a look at the document that the CWG is working on. And I see that (Robin) has volunteered for that as well as (David McCauley). So I think it doesn't hurt the group of them to begin liaising with Greg and whatever positivity that we can get out of that, we'll take it. So (Becky).

So we have now three volunteers to liaise with Greg and I'll be the fourth.

Okay? Thanks.

Thomas Rickert: Unless there are further questions, I think we are a little bit ahead of schedule which is awesome news. We won't let you out of this room earlier but we have...

((Crosstalk))

Thomas Rickert: ...saved our time to - I think we can close this agenda item on independent experts and legal advice. We will keep you apprised of any news and hopefully we'll be able to report news actually.

There has been some progress in the meantime regarding the contingencies and potentially clustering them. In order to share this update with you, I'd like to hand over to my Mathieu.

Mathieu Weill: Thank you, Thomas. So this is really on the fireworks, following up on the discussion this morning about the need to categorize the contingencies in order to put flesh on the answers of the four questions -- I don't remember whether we kept them at four or five -- that we will slightly change. So the idea is to have categories and have skilled leagues try and put flesh to the bones of the answers to the questions and then reporting to this group so we can all review those questions and in the end try and prioritize with the most important contingencies in our minds regarding (re-transition).

So a small group of volunteers assembled during lunchtime. I am told they were not fully indicating the retention to the discussions in the afternoon. At least that is what indicated by the fact that some e-mails were exchanged during discussion in order to suggest categories at this point.

I noticed there is a document that seems to be rather agreed within this group. So my suggestion would be for a short overview of these categories right now to make sure we do agree and then we could even if there was agreement. (James)?

Thomas Rickert: So (James) can I ask you to please come in and share it? Do you have the document (Grace)? Not yet.

((Crosstalk))

Mathieu Weill: Why don't we do that? So the questions we'll have is, "Do we think this grouping is reasonably appropriate for us to move forward?" Remember, we are grouping at this point and therefore not taking anything away. It's just to organize work.

The second question -- if we ever had time -- would be to shortly have a show of hands of people willing to contribute to (unintelligible) groups of - I think it's going to be between three and five contingencies by (unintelligible).

So maybe (James) you can introduce the way you proceeded while we are trying to get the document?

(James): Yes, thank you. I think first off I proceeded under Cheryl's direction who told me that I was doing this over lunch. Generally, we looked at the list -- and I believe we started with 21 contingencies. We received four additional contingencies from (Malcolm) while we were discussing that and then the 25th that I added as part of our discussion in the morning session.

If you recall, my comment at the time was there was a significant degree of overlap and common elements that could be achieved out of all of these scenarios. That if we took a step back we could abstract them to a higher level and perhaps find a common theme underlying some of these contingencies so that we could categorize them.

I believe it was (Sam Eisner) who put them into some buckets. And then we took those buckets, moved them around a little bit and then tried to abstract them out into some overarching categories of accountability mechanisms. I'm waiting for -- because I didn't do this by member -- so I'm waiting for the document to come up. Okay. Great.

So the first one was to merge. And some of these numbers -- as Cheryl just pointed out a moment ago -- there are still some typos and they're duplicated. I'll just note that the first one was mainly involving ICANN's becoming insolvent or otherwise unable to perform its key functions. And that is elements of scenarios 5, 6, 7, 8 and 9.

And here it is. ICANN is fiscally insolvent and it does not have the resources to deliver on its obligations. And it could result from a variety of causes. And this is what separated all of the scenarios that were listed above. But we just roll those up into a more cause agnostic approach and said essentially that ICANN has found itself in a situation where its resources are no longer sufficient to deliver on its obligations.

And the second one is ICANN -- not for lack of resources -- but otherwise fails to deliver on its operational obligations, particularly with requests to delegate change or not delegate PLDs into the (route). And this is elements of scenarios 1, 2, 11, 17 and 21. Cheryl suggested some wording change there which certainly, I think, is a friendly edit and we can make that fix.

And - oh, I didn't catch the last part there. I think we want to run this by (Eberhart) as well because we're changing some of his contributions. So this is a consolidation of those scenarios.

The third one is called legal or legislative action which is merging consolidated scenarios 3, 4, 19 and 20. And this is that ICANN has become the subject of litigation under existing or future policies, regulations, legislations and is attempting to delegate a new TLD or re-delegate a non-compliant TLD but is blocked by legal action.

Going to Category 4 - new Category 4, which is a merger of Category 10, 11 - sorry, 10, 12, 13, 16, 18, 22, 23, 24. This is a failure of our accountability. I think what we're calling failure of accountability originally to internal stakeholders. I think one of us may have made that change to the header, which is that actions including expenditure of resources by one or more Board members, CEO, other staff are contrary to the mission or bylaws.

It's captured by a stakeholder including governments (with) the GAC and they are either able to drive their agenda over other stakeholder objections or act as a roadblock for the rest of the community. And that could be achieved possibly by abusing accountability mechanisms.

And finally was the failure of the accountability to external stakeholders and this is merged Scenarios 14, 15, 18; 21 needs to go out; and then 25. And this is ICANN modifying its structure to avoid obligations to external stakeholders terminating the AOC, terminating its presence in a jurisdiction where it faces legal action or moving contracts or contacting entities to a more favorable jurisdiction.

It also includes that other scenario that I discussed this morning, which was delegating subcontracts or other abdicating its responsibilities to a third party in such a way that it does not pass through its bylaws or its accountability; and then finally if it's merged or acquired by an accountable third party.

So that's, you know, I was rolling through that because I know we're into bonus time now. So I was rolling through that as quickly as possible. But generally we took that big long list. There are a lot of good ideas in there. But I think that at a certain point they're saying the same story, just using a - modifying the details or the scenarios just a little bit.

Certainly there can be - oh, I guess open to the idea that there is - that some of these need to be moved again or they don't belong or that there's another category that we're missing. But this is the first swing at taking that long list and boiling it down into some common themes.

Steve DelBianco: Steve DelBianco. Amazing work (James) in just an afternoon. Seriously. And we just met for half an hour over lunch and I'm amazed how quickly that worked out. And (Samantha), thank you for the categories.

(James): Well all credit goes to Cheryl for...

Steve DelBianco: For enlisting you. But it just goes to show that delegation that are deliverable in an afternoon are often easier than things that you have to squeeze into your overnight schedule and everything else.

But I wanted to suggest is the Business Constituency was the author of ten. And I would suggest you - we're more than happy to have them consolidated in the way this is done. And I saw this and edited it today.

I do think though that the underlying color that was available in the original detail could be made available as an appendix to these and that the consequences of the contingencies could be fleshed out to a greater degree.

And this would only help volunteers who take these five contingencies, not 24 but five and deep dive into analyzing whether our mechanism could do it. But it's great work and I think this is the kind of consolidation we need to do with respect to the mechanisms tomorrow in Work Area 2.

Man: (Unintelligible).

(James): Yes. Steve, do you mind if I just respond really quickly? If you see anything that doesn't align with the ten scenarios from the BC, then I would say point that out. I think we should preserve all of the other details. And this is just more of an executive summary so it's digestible, you know, I think to someone, you know, who may be just reading this in between appointments.

And I think that, you know, the problem with the way we were going about it before is when you get into that level of detail you run into the potential of creating a non-exhaustive list, you know, where if you left out something, it doesn't fit exactly, then you've, you know, torpedoed the whole effort. And so I think that's what we were going for here.

Mathieu Weill: Thank you very much James. And really congratulations on the small group for this remarkable achievement in such a very short time. Also your attention drifted at some point.

So this morning we were targeting finding small groups on each of these categories. And so that's one of our options. And the other one would be to

have a small group but maybe a little bigger to address (the five) once we have clarified the questions and the (methods); the reporting we're expecting.

And obviously keeping in mind that the final discussion has to take place within the whole working group because it's so important to our work. So (James), Cheryl, Steve and we're using - we're using five groups or one?

Steve DelBianco: I would vote one.

Man: I would say one.

Mathieu Weill: Yes. Well might be a more consistent outcome from one to (unintelligible). We're not going to make a final decision in one meeting and we're going to be open and inclusive. But is it possible to have a quick show of hands for volunteers for this exercise at this point?

Thomas Rickert: So we should note that (Achemal) and (Carlos) had also indicated their willingness to contribute.

Mathieu Weill: Yes. So just (Grace) is right. I should remind everyone what's the scope. Well the scope is going from these and the relevant contingencies behind this. And answer four questions in the charter - which are in the charter, which I can get back to you. Let me get it back. (Sort of stress test).

Man: (Go to) Page 4.

Mathieu Weill: Should be the deliverable section. Page 4. That's right. So analyzing - so potential weaknesses and risks are the ones we have done already. And there's analysis of existing remedies and their (reverseness). Definition of additional

remedies or modification of existing remedies. That was what we were saying about tweaks or new mechanisms.

Description of how the proposed solution would mitigate the risk of contingencies. That will come later. And we had the questions this morning about how is that relevant to the transition itself, which I think remains quite important. As (Kevin) said, we must be clear on that. It might give us a hint of where to focus our effort at some point.

And the fourth one I don't remember but that's not the point right now. There will be specific questions to - that basically provide context and explanation about regarding to this contingency.

Man: (Unintelligible).

Mathieu Weill: And I mean I expect this to be a one or two iteration kind of work and obviously the group could be four, five, six persons would be the minimum for - to get the right balance in that.

So this being put back into context, we have had volunteers from the Adobe Connect room by (Carlos) and...

Man: (Achemal).

Mathieu Weill: ...and (Achemal). In the room we have also volunteers (stretching). We have Alan. We have Steve.

((Crosstalk))

Man: I was waiting for instructions.

Mathieu Weill: So (James) been instructed to - (Robin) in the back. (Sam), was that a hand raised? Yes. (Sam) is volunteering as well.

Woman: Jonathan Zuck.

Mathieu Weill: And Jonathan Zuck. Try to...

Man: Okay.

Mathieu Weill: ...some legal help. Okay. We have any lawyers in the room? (Oh no).

Man: (Sam) volunteered.

Mathieu Weill: (Robin). (Robin).

((Crosstalk))

Man: And (Robin).

(Becky Burr): (Robin). (Camino) volunteered.

Mathieu Weill: (Camino) volunteers. Excellent. Good. You have some government perspective as well (to that).

Man: (Unintelligible).

Mathieu Weill: Sorry.

Man: Root server expertise.

Mathieu Weill: Root server expertise. Well at least someone with a bit of the technical and operations skill.

Man: (Eberhart).

Mathieu Weill: (Eberhart). I think (Eberhart)'s qualified.

(Becky Burr): Yes.

Mathieu Weill: And of course this is - I mean if anyone wants to join at any point, that's - we're going to apply the opening included policy to this as well. That's very good. So you can - I mean there's a lobby and you can work overnight and...

((Crosstalk))

Mathieu Weill: So anything you progress by tomorrow might be useful. But I'm not putting any pressure on it. Well, thank you very much. I think it's good that we're making progress on that.

I am going to transition into the recap of the day now with a little bit of time in advance. And I will do - I will recap. And then I will hand over to Thomas to shape the discussion for tomorrow so that we have a shared expectation of what's going to happen tomorrow.

So we have made good progress on contingencies. That you very much once again to the group because we now have a way forward to probably focus our efforts and have a view that can be shared with the community to ensure we are on the same line about what the main stress test should be.

We have also heard this morning that we are now clear on how to interact with the CWG and there is reasonable hope we could - we can escape the deadly embrace phase by thinking on the document through our Work Area 3. And Avri is perfectly positioned for that. She has one step in each group. But we will have to probably (hear) with a little bit more volunteers to Work Area 3 to address that.

And at co-Chair level we all liaise with the leaders of the CWG to provide a joint statement that would clarify the timeline - the respective timelines how the process is going to work regarding the so-called conditional accountability.

And I'm putting quotes because we said this morning that we want to get out of this wording and what the respective scopes are and clarify this for everyone within our groups but also outside. And I think there's a lot of stake in clarifying this from the outside. So that was also an interesting perspective.

Regarding the definitions and scoping, we spent a good part of the afternoon on that. We owe you to come back with a number of comments being taken into account regarding independence. Transparency and consultation are two items we will be able to include I think once we get some input.

We've made good progress on the purpose of accountability including a valuable discussion regarding human rights. I think it is worth nothing that we have gone through this discussion. And we have also identified a way to move forward independent (trigger) advice.

And I will remind everyone that we need to pass on some questions to the advisors of our group as well and that's - that will be useful. So that's the legal

team. Right. So on the legal team right now I have (Leon), (Sam), (David), (Becky) and (Robin).

And finally because it's the transition towards Thomas, we had this really interesting session this morning regarding the visions and I want to express the - how grateful we are for the various speakers who delivered their own vision (fairly) and with great convincing abilities in what is very - what I'm very impressed by is that there was a lot of converging views coming out of this, which is a very good signal for our work.

And around the idea of the community having some form of authority over the Board when need be, about redress mechanisms being need whether they're internal or external kind of is an option.

And clearly a question about what membership should be like that is not fully addressed but we can perceive this as one of the main topics for our work in the next few weeks probably. So that's very encouraging that we've had this discussion and that we seem to have some common ground for moving further into Work Stream 1.

That's it for the recap of the day. Already quite a lot of substance. It could be captured in a (tier) statement after our meeting. But I'm hopeful we are - we'll go even farther tomorrow. And Thomas is going to lay out the scene for tomorrow's discussions.

Thomas Rickert: Thank you very much Mathieu. I'll try to keep this brief. But tomorrow we have a lot on our plate. We're going to talk about the definitions of Work Stream 1 versus Work Stream 2 and then we're going to talk about candid mechanisms for Work Stream 1.

I think there's a big risk with this group demanding too much to go into Work Stream 1 because nobody really knows what the mechanisms would be. SO I think what we should all consider doing over dinner or over a beer is working on requirements for the things that we need most urgently.

So let's not talk about we need to turn this into a membership organization or we need a supervisor board. We need to have that legally checked. But what we can say is we have certain requirements that this group seems to have consensus on.

We need a mechanism that can force the Board to do certain things or that can reverse Board decisions. Right? So that's an abstract question. We need that mechanism to have members both from inside the community as well as potentially outside the community. That may be a condition or requirement that this group might come up with.

There may be one thing that this new body shouldn't have any fiduciary responsibilities. That there shouldn't be a possibility for the groups that it represents to be sued. You know, that goes back to the point (Chris) was making.

So there were a couple of requirement specifications that the group came up with without saying in concrete terms what the solution would be. Let us try to identify common ground on the requirements and then let's ask the lawyers to find the appropriate corporate legal response to that.

So they might say okay, you have to turn it into a membership organization. Or they might say it's going to be a supervisory board that would fulfill your requirements. But I think we should take one step after the other because

we're all not experts; at least I'm not in California and not for profit law. So we should specify our requirements and try to get consensus on that.

And also let's try to remember our high level statements. We said we wanted this independent mechanism. We also stated that we need to make sure that this mechanism can sort of guarantee that Board decisions can be over - turned over, that Board members can be dismissed, that we ensure that ICANN's mission can't be altered.

And so I think there are three or four main topics. And if we put those in front of the bracket and have the sledgehammer or stick as (Rulaf) would call it, then everything else might easily fall into Work Stream 2.

Maybe I've missed one or two requirements but I think we should focus on doing the requirements and try to establish questions that need to be answered prior to the transition.

And I think that a lot of the things that's been identified in Steve's document, which are now in Work Stream 1, can potentially move to Work Stream 2 if we put the right tools into Work Stream 1.

And we certainly need that to be tested by the lawyers but I think we shouldn't confine ourselves by jumping to one legal solution too quickly or being amateurs in that area. But let's focus on the requirements.

And I think that's the encouragement that we would like to give to you for your evening pleasure is to discuss with your colleagues. I mean we are such a wealth of experience and expertise in this room. I think we should not let go of the opportunity of trying to tap on that and put together the results

tomorrow. And then I think we will actually be able to make more progress than we might have hoped for. Are there questions?

Mathieu Weill: Yes, Kavouss and then (Roelof).

Kavouss Arasteh: As I mentioned this morning and I request you Mathieu kindly maybe with the (two cultures), I would like the possibility or at least describe very, very briefly what do we mean by conditional accountability. The work has some meaning. The way you explain has different. So we would like to know what is meant or being mean at this stage by conditional accountability.

Later on once this issue is clear, maybe we take it out. But for the time being would like to know what is the meaning the conditional accountability. In a footnote maybe? Have to have accountability - condition - have (risk) and below the page explain or (around blanket) explain for the time being conditional accountability means and then say what does it mean. Thank you.

Mathieu Weill: Thank you Kavouss. Probably expand our time but the intent is not to use definitive words conditional accountability at all because it's so confusing. It has no real - it's a difficult choice of words. And Jonathan Robinson was acknowledging as well that the choice of words might have been improved and there was room for being clearer.

So that we have no (feel) - no mention of that. But rather be a mention of how the two processes interact before the final transition. Next in the queue is (Rulaf). So we are slightly moving on the right.

Roelof Meijer: Thank you Mathieu. It was not a question but just a remark. I agree that we have to work on the requirements for whatever structure or organ we want. But it might - I think it - we shouldn't take that too far because we will get a

lot of feedback from the experts in form of questions what do you really want. And it'll also help develop our thoughts.

So I would like to warn against too much (theorization) before we meet with the experts. But let them help us really define what it is that we are looking for.

Mathieu Weill: What you're saying is that we need to be aware of the curative nature of the discussion and it's not just requirements and then three months of legal work and then oh, we have a solution. Right? We need to interact and loop back. Is that what you're saying?

Roelof Meijer: Yes. It's what I'm saying. And especially at the beginning so we can spend another few weeks to think what it is that we really want and then there's this chance if we get a question as soon as we present it to the experts to which we don't have an answer yet after all that work. So let's talk to them quickly and help them form our ideas.

Mathieu Weill: Okay. Get your point. That's a good point.

Man: (Can close it).

Mathieu Weill: We have a question from (Malcolm). I wouldn't squeeze him out.

(Malcolm): Thank you. On the subject of taking all of that stuff that was identified as being suggested for WS1 and being able to say well if we do these other things we can then ask the lawyers whether we could do these things as WS1 later and therefore we designate it was WS2.

I would draw attention to the distinction between asking the lawyer the question if we did X would be able to do these things later. And if we did X could we be assured that we will be able to do these things later even if the Board didn't want us to. Because the latter is actually the question and I don't know that a lawyer can answer it.

Mathieu Weill: Okay. So the message here is think about requirements overnight. Yes. You probably don't have a full day's work to catch up with now. And before we turn this meeting into a close, I think (Grace) wanted to make a small totally unrelated announcement.

Grace Abuhamad: Yes. That's correct Mathieu. So as you may know, there are 19 people present here today who overlap with the CWG on the names CWG - on the names community. So there's a call tonight for that group at 2100 UTC, which is 2200 here.

And that call we will take in the (Pele) room, which is the room on the first floor of the old side of the hotel. And we will take the call just as we normally would, operate - you know, operate the call, remote participation, that kind of thing.

So we should - we'll meet there at 10 o'clock. And we'll have a ten o'clock to midnight call. How wonderful. It's for the - it's for the RSP3 subgroup of the names Cross Community Working Group. So you don't - I mean you're welcome to observe if you'd like but it's mainly for the people who are here who should be on that call that we're arranging a room.

Thomas Rickert: And for IANA Stewardship transition addicts who still haven't enough after midnight, we can make a room available for you guys between 12:00 and 5:00 in the morning but we won't be there.

Mathieu Weill: And just to mention that tomorrow we will start at 8:00 am...

((Crosstalk))

Mathieu Weill: ...in order for us to be able to finalize at a convenient time for everyone's planes and everything. And therefore, yes. That's - I think that's consistent with the call that finishes at midnight. That's okay. So Alan, you have a last word?

Alan Greenberg: I just wanted to point out that some of us also have another call tomorrow night at 10:00 pm.

Grace Abuhamad: And there will be - we will arrange for that call as well.

Mathieu Weill: Well, it was a great first day. I really appreciated the - how constructive and productive our discussions have been. And I hope everyone enjoys the evening whatever your activities may be. And I will look forward to seeing you tomorrow morning.

END