ICANN

Moderator: Leon Sanchez

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8:00 am CT

Leon Sanchez: Good morning, everyone. Good morning, Cheryl. Good to see you all alive today. It's been a great working session yesterday. We thank you for your efforts and time to continue building for the working group today.

So I'd like to begin by going through the roll call. Alice, would you help me with that please, the roll call? May I remind you to, of course, say if you are on the Adobe Connect well you'll be included of course in the roll call. If there anyone in the audio bridge could you please also let us know so we can have your name added to the roll call.

Okay so I also want to remind all participants and members to please state their name before speaking so we can put that name in those records, it is most helpful.

And well just that we forgot - or I forgot to ask for Statement of Interest updates so if you haven't done so we would really much appreciate if you could update your Statement of Interest.

And, well, today's agenda is not less packed as yesterday's so we have a lot of work ahead of us. And I would like to begin by asking Mathieu to do an introduction to the definition of the scoping document that we were discussing yesterday so, Mathieu, please.

Mathieu Weill: Thanks, Leon. Good morning, everyone. I think the room will fill, over the next few minutes probably, but it's good to have the best of our group colleagues already here with us as early including the remote participants who are already in the Adobe Connect room.

A quick update regarding the document as was mentioned by Leon and we will be - we have been working on that document overnight and will provide a quick update probably right after lunch.

We thought we would dedicate most of the morning into trying to discuss the requirements for Work Stream 1. So this is picking up on what Thomas was saying yesterday at the end of our working day. The goal we have for this morning is to try and get a sense of what we would require from this accountability mechanisms in Work Stream 1 and so not exactly how they would work but what they would achieve. So that's really going to be our focus right now.

Just to remind what Thomas said yesterday, and I just want us all to remember why we're taking that approach is that we said yesterday we will need - there are a lot of legal stuff behind how we can do things and if we're not clear about what we require in terms of either independence or the type of stick we want this - the mechanisms to have over certain decisions and which decisions we're talking about then we cannot expect any lawyer to provide anything that

then either - well that basically lawyers will say, "That's risky. You may be able to do that but we're not sure."

And so we don't - that's not the type of question we want to ask; we want to ask how can we achieve this legally within a certain framework. And for that we need to be very clear about what we require from the outcome of Work Stream 1. And that's going to be our focus.

So we've been discussing about the best way to achieve that and while taking into account the variety and diversity of inputs that we've had, and I think we need to acknowledge that. And so our proposed way forward is to start with the ongoing discussion about Work Stream 1 definition and then look at the various parts of this definition to actually discuss among ourselves whether we have the same understanding of what the underlying requirements are and that's going to be the way we are going to start this work.

So it's really - I have to say at this point it may not work. We're not really the right set of full creative collaborative work. Usually you say that beyond 10 persons you cannot manage a group. I think we're slightly above 10 persons, I mean, my calculations might be a bit rusty but I think we're slightly over it.

Thomas Rickert: Even if we each take 10.

Mathieu Weill: Yes, not to mention that. So there's an element of risk in the way we are trying to advance this. And at any point in the meeting if we're feeling that this is not taking off then we might have to review that approach but I think it's worth trying. And the debate we've had yesterday gave us confidence that the constructiveness - the spirit we've had in terms of constructing something out of this meeting makes us hopeful that we can achieve an interesting outcome.

And I want to also stress that it is at this point that we also need to voice these agreements on requirements. If there is disagreement on certain requirements it is essential that we (truck) it, acknowledge it at this point as well because otherwise we might end up with group-think like oh this is perfect and everyone's going in that direction and two to three weeks later we might get a pushback by someone maybe in this room saying but I never agreed to that.

And it's okay at this stage to have some disagreements that we can look into to understand exactly what we disagree about, because that's not going to be an easy task because sometimes it's not as obvious as it seems. And that will be extremely helpful to find the right requirements. So that was quite a long introduction but I think it's important that we are on the same page on what we are trying to achieve here.

So next step would be can we have the latest...

((Crosstalk))

Mathieu Weill: ...definition? Oh yes, we will need the white board. Do we have a white board? We have Board members, that's the first step. I think the group would like to be able to write on the board - the white board obviously.

((Crosstalk))

Mathieu Weill: So, Grace, you wanted...

Leon Sanchez: We also have an updated agenda so the agenda that was circulated yesterday is no longer the agenda we're having today so - while the agenda was obviously on the screen here and in the Adobe room just minutes ago and,

well, there are slight changes when you go through the agenda as opposed to yesterday but we'll try to keep focused on the work today.

So the latest definition, Mathieu?

Mathieu Weill: Yes, so we've put on screen the latest version of Work Stream 1 definition as per the exchanges that have been taken on the list. The credit goes to Mathew Sheers for this particular version. And there may be some tiny edits on this but let me just recap where we are on that.

There's - the first part, the Number 1, is focused on mechanisms that, "1, enhance ICANN's accountability and must be in place or committed to within the timeframe of the IANA stewardship transition," is our charter. This is how the charter of our group mentions Work Stream 1.

We have been working at trying to provide more clarity about what we as a group think that must be in place before the transition or committed to. So, you know, the section starting with 2 is actually our own efforts to try and provide clarity about what we intend to do.

And that reads like this - so the 2 is that, "The mechanisms that provide the community with confidence that any accountability measures that would further enhance ICANN's accountability would be implemented if it had consensus support from the community even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity."

There's a lot of room for discussion within this definition and that's exactly the intent because that's what we are planning to actually do now. What we're planning to do is to look at the various items in this definition such as the

community ad try and define what we mean by that and the features we see for the mechanisms so that we can reach this level of confidence. Okay?

So the exercise we are planning to introduce now is taking small parts of this definition, one after the other, and having an exchange about what the required - the interpretation would mean. Okay? On my co-chairs side I'm checking that I'm accurately reflecting our intent? Yes? I see nodding.

Leon Sanchez: Yes, yes just to reframe that, the first part would be focusing on features or powers that would think we want. And the second part of the exercise which will come, of course, after the break, would be the mechanisms, okay. So this is what we ought to focus on the first and the second part. The first features, then mechanisms. So if you see someone jumping into mechanisms in the feature part please wait until the second part of the meeting.

Mathieu Weill: Okay. Regarding the exercise itself or definition or anything before we jump into raising the key questions and before we get a white board, I have Tijani for a question.

Tijani Ben Jemaa: Thank you, Mathieu. Tijani speaking. The Part 2 of the definition on the screen now it is now restricted to - to the mechanisms of Work Stream 1. Is it really restricted to that? We can apply it also for Work Stream 2. So why don't keep the charter definition of the work streams and add the 2 after the Work Stream 1 and was 2 definition. This apply to any, any accountability mechanisms. Thank you.

Mathieu Weill: Thanks, Tijani. I'm not sure it applies to any accountability mechanism - any additional accountability mechanism.

((Crosstalk))

Mathieu Weill: Avri and then Matthew.

Avri Doria: Yeah, two things. One, I actually do believe that this is specific to Work Stream 1 because it says must be in place or committed to before, you know, within the timeframe of the transition whereas Work Stream 2 can go on for much, much longer.

And also, I just want to sort of put a caution in about the last sentence is, "If it were against the interests of ICANN." I know what it means as a corporate entity and we're saying it's almost as if it were deemed by the Board to be or something but my tendency is to believe that anything we come up with with accountability is going to be the interest so we don't - I think we have to be much more careful in that final clause to say even if it were against the interest because - right, even if it were against the perceived interest of ICANN as a corporation or something but I think we need to be careful because we don't want to admit to it being against the interest. Thank you.

Mathieu Weill: I have a specific request by my fellow co-chair, Thomas, to jump into the line for that to answer.

Thomas Rickert: Yeah, just a suggestion that might make the other hands lower subsequently. If there is a tendency that we're uncomfortable with the last bit we can put that into the requirements that we're going to talk about. So by doing so we could preserve the request which is obviously of concern of many of you but not change the definition in the charter.

((Crosstalk))

Thomas Rickert: Because it's not in the charter so we can leave the charter with its own definitions of Work Stream 1 and Work Stream 2 untouched and we take these as requirements for the mechanism.

Mathieu Weill: Okay so this is our starting point for mechanisms and your suggestion is that it's - we translate this as no longer a definition but a starting point for defining the requirements. Okay. I have Matthew on the line who's next.

Matthew Sheers: Yes, Matthew Sheers. Thank you, Mathieu. Just a little bit of background just so that everybody's on the same page, what this does is it combines the definition that's in the charter at the moment, which is Point 1, and Point 2 which is the evolving additional part to the definition that was being developed online over the past couple of - I guess about two weeks.

The - I have - all I've done was add back in the first definition from the charter itself just because I felt it didn't quite cover it all with the evolving definition online. I would note, though, I do agree with Avri, I think we have to be very careful about how we phrase the latter part of Point 2. Thank you.

Mathieu Weill: Thank you. We'll come back to that, as Thomas was saying, for - during our requirement discussion. Next is Kavouss.

Kavouss Arasteh: Kavouss speaking. Good morning to everybody. At this time I just want to refer to the point made by Avri, the word or term "against" is very strong here. We have to replace it by something such as if they're not compatible with or consistent with - some other word but not "against" because the issue is not we're preparing something which is against something. It may be compatible with that - with the interest of the ICANN as a corporate so this is just, at this time, I refer only to this one. Thank you.

Mathieu Weill: Thank you, Kavouss. So that would lead to something - if it were perceived as in conflict with some corporate interests or something like this, which I think is a useful clarification.

Malcolm.

Malcolm Hutty: Thank you, Chair. My comments relates to the word "enhance" here. This is - this definition is focused on future measures that may further improve ICANN's accountability. I believe that this is too limited. It is possible that as a result of IANA stewardship transition and things relating to its existing accountability measures may be removed.

For example, I've heard it said that the Affirmation of Commitments may end up being canceled as a result of IANA stewardship transition on the grounds that that special relationship between ICANN and the US government, the intention of transition of which is to normalize that relationship. The AOC clearly includes non-IANA related accountability mechanisms for ICANN.

So I would suggest that we should be focused on mechanisms that enhance or maintain ICANN's accountability because Work Stream 1 should not merely create the circumstances by which we can recreate existing accountability mechanisms, it must prevent there being an interruption of essential current mechanisms.

Mathieu Weill: Very relevant. And that was noted also on the mailing list, I can remember. And I think we're already touching on the requirements that somehow one of the requirement that some form of control is - that we have a form of security about the - maintaining some - the existing mechanisms in place even if it was an intent to remove them or something like this.

But I think we'll come back to that in the...

((Crosstalk))

Malcolm Hutty: ...read then enhance or maintain.

Mathieu Weill: Yeah, yeah, that's - got this. I have a remote question from Siva. We should check that the sound is working. Is it? All right. Siva, you have the floor for your question. I saw you raised your hand.

Sivasubramanian Muthusamy: Hello.

Mathieu Weill: Hello.

Sivasubramanian Muthusamy: Yeah, my question just relates to the comment that even if it's (unintelligible). What I wanted to ask is (unintelligible) ICANN management for the possibility (unintelligible) could come from one stakeholder group or from the cross community, from maybe there. But why (unintelligible) ICANN management (unintelligible) but thank you.

Mathieu Weill: Siva, I'm afraid the audio on your side is a bit confusing and I think we didn't get your question very right. Can I ask you whether you could put it on the chat and we'll take it - and we'll take it from there right after the next question.

Sivasubramanian Muthusamy: I'll do that. I'll do that.

Mathieu Weill: Excellent. Thank you very much. So while we wait for Siva I will go to another question that was raised on the chat by Keith regarding the word "timeframe." And I just did a quick check that this is the wording of the charter. Steve, do you have any - was that appropriate? Are you - okay fine.

And I have - Sebastian raised his hand? Okay, Sebastian. And then I have Jordan.

Sebastian Bachollet: Thank you. Two points, the first one is about announcing - the question for me can we imagine to create new accountability mechanisms because the word "enhancing" in my translation to my language it's just to some tuning and not to be able to create. And I want to understand what is the real meaning here.

And the second point it's that I really can't imagine that we, as a community, we want to do something against our organization. We can be against - we can suggest announcement who will be against the local law, California law, but I really don't think how we can be against our own organization even if you write it as a corporation because it's a word used in the California law.

We are - when we talk about the community, the community and if we want a consensus we need the consensus of the whole community and the whole community includes the Board and include the staff and it include also the management. And it's contradictory sentence here and we have to really be careful on what we want to write. Thank you.

Mathieu Weill: Thank you, Sebastian. So I'll turn to native English speakers. But to my understanding "enhancing" is very close to improving, it does not prescribe, in any way, that it would only be incremental change. But so I see some nodding and some - some of the faces. I don't think we should elaborate too much. I think it's improving. There's no prescription whether we should only be amending or whether we can create new stuff.

Obviously acknowledging that creating anything new is a big challenge and takes more time and everything so that's - the goal is not to create things that are new but enhancing is the goal.

And then with regard to the last part of your question, Sebastian, I think it's fair to say that in any organization there are conflicting interests. Staff has interests. Stakeholders even in corporate organizations, customers have interests. Staff have different interests. And sometimes significant business partners have different interests. Shareholders have different interests.

And what we're doing through this definition is trying to acknowledge that at some point these interests do conflict. And that's where we're going to have to go through the discussion about when we say community over others, who's in the community, you raised that question. Does staff belong to our own understanding of community? And how if needed? So that's, I think, acknowledging this.

I go back to you, Sebastian, I have seen your hands and you want to follow up. But I just want to emphasize Siva's question which is along the same line which was - which was mentioned - he was mentioning there could be resistance from the Board, from staff, from one stakeholder group, why single out management?

And a reformulation later why do we foresee resistance only from management? And that's a good point. And obviously staff could take over management. There's probably some form of cultural bias where we would think that management has control which obviously - well we can discuss later over lunch whether it's the case of ICANN or not.

And, Sebastian, you wanted to follow up?

Sebastian Bachollet: I wanted to say exactly what you was writing, then I just concur with what (unintelligible). Thank you.

Mathieu Weill: Thank you. Jordan. And just for your information I'm closing the queue on the definition so that we can move onto requirements because I sense we are sometimes already impatient to go ahead. Jordan.

Jordan Carter: Thank you. Jordan Carter, dotNZ. I think we can, in that definition, introduce new measures because it's about mechanisms that enhance ICANN's accountability, it's not about enhancing mechanisms that hold ICANN accountable. So we're not restricted to just improving things. I think that's quite clear.

The broader point I wanted to make is that the charter definition stands and we can't change it. What that whole paragraph 2 looks like is just an attempt to explain to ourselves or the community what the requirements are that deliver like why would something need to be in place or committed to within the timeframe of the transition.

And that provides one rationale, which is that we would have to be sure that we could deliver further accountability improvements regardless of corporate resistance to them. And I would relaxed if we just captured the original definition as per the charter and set out a number of requirements that explains why we chose the mechanisms that we did.

And I think the way it's worded there isn't wrong, I see what it's trying to sum up. But if we're only having a debate about this mandate for the particular words or phrases in it then it's easier to just have a different approach.

Mathieu Weill: Thank you. Steve and then Alan and then we'll wrap it up.

Steve DelBianco: Steve DelBianco. Let me associate myself with what Jordan has suggested. The charter itself gives two definitions, Work Stream 1 and Work Stream 2. The first sentence you have for Work Stream 1 is identical to what's in the charter.

The charter does go on, though, and I put the link to the charter in the chat because Pages 2 and 3 of the charter go on to explain Work Stream 1 and 2 with specifics that will really be helpful to this discussion. For instance, it says, "If there are enhancements or reforms that can be addressed after NTIA disengages what new or existing processes ensure that they'll be addressed and implemented?"

So the notion of new processes that enhance accountability is anticipated in our charter and enhancing accountability doesn't mean enhancing existing accountability mechanisms, it means enhancing the quality of accountability which can be done through new or existing mechanisms so I don't think we need to worry about that.

But I would suggest that Jordan is right is that given that the chairs are pursuing a slightly different track than we've been on for the last six weeks we had - we had initially embellished Work Stream 1 and 2 definitions so that they stood alone at the top of an inventory list of actual mechanisms.

What you're now doing is inserting something between work stream definitions and the mechanisms; you're inserting the notion of requirements. I think that makes great sense; let's get on with it.

But by doing that, you relieve yourself of the burden of having to embellish the charter's definition of Work Stream 1 and 2; we can just go with them as they are in the charter and then as we begin the requirements there can be categories for requirements. I believe I sent you three or four categories last night.

Categories of requirements where you can explain in this category are requirements necessary to ensure that the community can implement enhancements that have community consensus even in the face of resistance from management and Board. So that can be part of the requirements set up in the requirements definition. I think it's pretty much what Jordan said. But I think that would allow us to move on. Thank you.

Mathieu Weill: Thank you, Steve. Alan.

Alan Greenberg: Thank you. Again, I find at the end of the list much of what I was going to say has been said. Just pointing out to Sebastian that the enhancing is modifying accountability, not the measure, the existing measures so I think we're quite safe there.

That last sentence which we've decided to put off to some other time I still find very troublesome in almost any form. Ultimately it does not serve any of the stakeholders if we put ICANN, you know, essentially kill it. So obviously there are choices that will have to be made, there are balances as Mathieu has pointed out.

And it's got to be phrased carefully. Just because you're against something good because there's a worse thing that comes associated with it doesn't mean you're, you know, you're not for good overall so.

Mathieu Weill: Thanks. So to recap this part of the discussion, we will keep the definition as stated in the charter and so remove the end 2 section, and insert like Steve was alluding to a section that will have - we will have to be (out) on requirements.

And our suggestion is to start with this sentence to try and be of those requirements up front from now on because I think it captures some of the discussions we've had so it's useful to guide our discussion. But it's no longer - has the status of a definition; it's a work product that we're going to elaborate on right now. And that's where I'm turning to Thomas.

Thomas Rickert: Thank you very much, Mathieu. And good morning everybody. Yeah, let's embark on this journey of working on requirements. Just to get everybody focused on that, the idea is to move away from concrete implementation methods, right? Let's not talk about the supervisory board or a general assembly of the membership organization. But let's talk about what we need first. And then let the lawyers work out whether - what animal that's going to be that's needed in order to achieve what we plan to get, right?

And I think the starting point for that would be to think about what the sticks are, as Roelof called it, what are the sticks the community needs because the sticks are what's required in our charter, just in more elegant words, i.e. how do we replace the historic relationship with the US government which, as we said, has certain powers by threatening ICANN not to prolong the contract.

And in doing so I think we should focus on the biggest sticks will need to be in place prior to the transition. And I think if we find the biggest sticks and cast them in concrete, if you wish, then the smaller sticks that the community might want to have can all move to Work Stream Number 2.

So let's try to think of the most urgent powers the community needs to have to make the transition happen. So what are the sticks, what are the requirements that can replace the historic relationship of the US government? And I think that the definition as well as the high level statement that we published gives us an indication of where this might move. And we would hope, as co-chairs, that we can do with the very limited set of those big sticks that we need.

And if somebody would like to use the white board for scribbling something or drawing something that might help our understanding, we can do that. For the sake of our remote participants I would add that we've agreed with our excellent staff that they would try to reproduce what's been scribbled in real time. And also we will instantly send pictures of anything on the white board to the mailing list so that you can see exactly what we're doing.

I would still ask to -for those participating remotely if they have an issue with that approach, we don't want to make it more difficult for remote participants so we might let go of that approach in case there are any objections to doing so. Maybe we don't need it but just wanted to have it there. Steve.

Steve DelBianco: Thank you, Thomas. You gave us a heads up yesterday that you'd be moving to a requirements approach without defining the specifics of mechanism. With that in mind, as the rapporteur for Work Area 2 the inventory, which will presumably be subsumed into this effort, set aside.

I went through at least the first page of the inventory in an effort to get things started. And I think it could relieve the white board problem for our remote participants. Now I just circulated to the list a dozen or so requirements which were easy to derive from the actual mechanisms of inventories that community members have suggested over the past 9 months.

Try to use words like capabilities, "community may approve or disapprove proposed annual budget" was an example as opposed to saying that a member statutory group by a 2/3 majority vote can approve or disapprove. So it avoided the mechanisms but just got to the sentiment of the requirement.

So I've circulated that. And I offer it as potentially a way to jump start the white board process electronically. You could, if you wish, paste those dozen or so items up. People could pick them apart but it's good to know where they came form. They came from the inventory of items - and I chose the ones on the first page or so that seemed to have consensus.

Thomas Rickert: Thanks, Steve. So I think we can put them onto the white board. I'd like to get more interventions from you as to what you think your top priority - your most needed stick would be to replace what's been provided by the NTIA. Steve.

Steve DelBianco: They're in the first group there and it's - the community would have standing. And standing in two ways, the community would have standing to send any board decision to an independent review; the community would have standing to begin a reconsideration so they're items 2 and 3 in that list. Thank you.

Thomas Rickert: Thanks. Next is Avri.

Avri Doria: Yes, thank you. I was thinking of the binding arbitration is one of the building sticks. And I assume we're talking about building sticks when we're talking about sticks. The need for binding arbitration.

Thomas Rickert: Okay, can we collect that. Becky?

Becky Burr. :   Sorry, I just want to second Avri's mention of binding arbitration because we have to keep in mind that there are two things, one is the community action with respect to policy generally but we also have to have a mechanism that permits specifically harmed parties to get redress. So we shouldn't just collapse those two things.

Thomas Rickert: In the list. What I think what we should be doing as a group is try to prioritize also. So what are the most needed sticks, bigger sticks that we need. I'd appreciate your help with the queue. Is it correct that Robin is next? Robin, please.

Robin Gross: Thank you. Yes, I also wanted - thought we needed to focus a lot of our work on the binding arbitration but I would also say - broaden it and say that we need to reform the IRP process in general so it's not just making it binding but I think we need to address the costs and we need to address the standards of review so it's just sort of a general reform of the IRP process.

Thomas Rickert: So when talking about binding arbitration do we have common understanding that we mean the IRP process by it? And can we maybe amalgamate that into one point?

Mathieu Weill: Can I suggest that...

Thomas Rickert: Sure.

Mathieu Weill: I think what I heard from Robin is there's binding as a feature and there's cost which is something you think, Robin, has to be taken into account as a requirement. That it's, I guess, accessible costs.

Robin Gross: And the standard of review.

Mathieu Weill: Standard of review. Could you expand, I mean, every process has a standard
                   of review; what is the one thing you think it's high level priority to change in
                   the standard of review?

Robin Gross: Well, I'm sorry, are you asking me? I'm happy to sound on that.

Thomas Rickert: Yes, please do.

Robin Gross: I think the issue is the standard of review is too high to actually win a ruling
                   right now. You have to prove that there was some kind of intentional
                   malfeasance or inappropriate behavior in order to get a ruling that ICANN
                   made a mistake and needs to possibly enforce its own bylaws. So that's the
                   problem is that we need to rulings that say, yeah, that mistake was made, we
                   need to fix it as - whereas the standard we've got now is well they may have
                   made a mistake but it was an accident so we don't have to face it.

Thomas Rickert: So that's an instant reaction to Robin's intervention?

Leon Sanchez: I'd like to make a position here. I think we should be careful when trying to
                   say that we would like to have a mechanism that makes us win. I think what
                   we should be aiming to is we have a mechanism that is able for us to have a
                   standing point that might or might not have as an outcome that we win the
                   situation. Because that's something we have to keep in mind.

                   There are - there may be two possible outcomes on any, let's say, litigation. I
                   don't want to say that word but in any contingency that might be that we make
                   our point, that we are proven wrong. So just let's keep in mind that that's -
                   possibly that might happen.

Thomas Rickert: If I'm not mistaken, Julia is next then Becky. Okay, Julia, if you would permit let's go to Alan first. That was not to suppress your views.

Alan Greenberg: I had this funny idea that if you're at the top of the list you get to be next but apparently not.

((Crosstalk))

Leon Sanchez: We review and we redress.

Alan Greenberg: Two things. One of the things that's missing from this list is the ability to initiate action if there is inaction at the Board. And I think that needs to be there at some measures.

The other thing is it strikes me as I look at this that all of these are fixing bad decisions or attempting to fix bad decisions or fix problems. There is nothing here, to use the word "comparable" to arbitration, there's nothing equivalent to mediation, there's no attempt to get a good answer. It's once it's messed up let's figure out how to fix it.

I would think we want measures such that the Board doesn't do stupid things from the community's point of view to begin with. And I'm not quite sure of the wording there but the tone is very different from let's fix it after they've messed up as opposed to try to - let's make sure we as a community get it right.

Thomas Rickert: Okay, Alan, I guess the - my answer to that would be that we're focusing on the worst case scenarios that we need to have sticks against. So as we further flesh this out I think you will see that after the biggest sticks there will be smaller sticks and they will be much less invasive and much friendlier. But I

think the purpose of this exercise is actually to find the worse case scenarios that we could imagine.

Alan Greenberg: Just for the record, I believe in our laundry list of ways to do the right thing; trying to do it right should trump fixing it when it's broken.

Thomas Rickert: Point taken. Yeah, well not so much to write on the white board at the moment, I'm more than happy to take my seat again and can see the list. Julia.

Julia Wolman: Yes, thank you very much. It's Julia Wolman from Denmark and the GAC. This is not a unified GAC position but to us it is very important that the new governance structure has responsibility of awarding the contract to another entity so that the IANA function can be, if deemed necessary, can be taken out. Thank you very much.

Thomas Rickert: Next is Jordan.

Jordan Carter: Thank you. I was going to try and be a bit more positive following Alan's intervention. I think one of the requirements that we have to have is a power for the community to endorse or make key decisions that shape ICANN's development. So - and making final decisions for that changes to the bylaws, making the final decision for that approving the budget and so on.

And as I discussed in my vision statement yesterday, I think the easiest way to that is members but I know that we're not on mechanisms yet. So I just think that requirement is to revert the kind of - the power dynamic away from the Board towards the broader conception of the community.

Thomas Rickert: Thanks, Jordan. Next is Becky.

Becky Burr: I think - it's hard for me to understand how deeply into the weeds we want to get here but with the independent review binding arbitration or arbitration, whatever, I think that saying that it has to be reformed may be one sort of high level way to approach it.

But I do think it's much - goes far beyond whether it's binding or not to cover who has standing and under what circumstances there is standing to bring - to cause an independent review to be undertaken. What the standard of review is, you know, costs and access and those kinds of things. I mean, so we could either make a kind of detailed list about the issues that need to be there or we could say at this point that what we're talking about is reforming the IRP process.

But I would be uncomfortable if we were just saying that it had to be binding or binding on costs or - because for me there are fundamental issues like who is actually available on a panel to be an arbitrator and how much familiarity they have with the ICANN process, for example, are also critical pieces of that.

Thomas Rickert: Yes and I think we will get to these points when we proceed in our discussions. We have Keith next in the queue.

Keith Drasek: Thank you very much, Thomas. Keith Drasek. So just - I've typed in the chat a couple of things. The list that Steve sent around actually I think would be a very helpful guide for us as we work through these questions. These are extremely important questions obviously and we can very, very quickly get into sort of the minutiae and the details if we're not careful.

But the community has already done substantial work over the course of months. And Steve and some others, you know, sort of collated a lot of those

recommendations into this list that's now been circulated that came from the inventory that was worked o previously by this group.

So I would just suggest that we use that as a framework for discussion in this particular session today. And then, you know, that way we make sure that we cover the things that have already been identified and then we can look for any gaps. That's just a recommendation. Thanks.

Thomas Rickert: Thank you. That's well understood. Next in the line is (Akimbo) - Athina, excuse me. I couldn't read his handwriting. And then Hubert. Athina.

Athina Fragkouli: Thank you very much. For the record this is Athina Fragkouli. I would like to address what was heard by the GAC representative for Denmark. Indeed in our proposal from the numbering community we have the stick already for ICANN. So if ICANN doesn't comply with the communities' decisions this is, like a breach of our - its obligations and we can terminate the contract and then find another entity. So I think this stick is part of our communities' proposals and I'm not sure it should be part of this group's tools. Thank you.

Thomas Rickert: Thank you. Next is Hubert.

Hubert Schoettner: Thank you, chairman. From our perspective I just would like to echo what our colleague from Denmark said. I think it's a very important step for accountability to have the possibility to withdraw also the contract on the IANA functions insofar I think it's the appropriate place also to raise these issues here even if it is discussed in other groups on the issues. I think in the end we will find a way to combine both approaches - have an exchange to extend it's mentioned and discussed.

What I also wanted to raise...

((Crosstalk))

Hubert Schoettner: ...a question of an independent interview, we have a part of this independent interview, if you have fewer processes for individual decisions. But I think review is a bit broader to be understood. And we would also like to have something as a review of ICANN processes. We have already something installed in the AOC, the ATRT teams. I think this needs to be discussed and although this is a part of review process that needs to be raised.

Just a question do we still have this white board or as an issue where we raise certain points or is it only - was it only for the first steps that we put something on it?

Thomas Rickert: It wasn't meant to only be for the first bullet point. We might get back to it but I see that we're capturing things in the Adobe room, which is - I guess easier for the remote participants to follow.

As Athina did and Hubert did, I'd like to remind you of trying to raise your top priority point. I mean, we have the points that Steve mentioned and we go through the list in a moment. But I think it's valuable for us to understand better what the priority of the people in the room and the remote participants would be, what the biggest sticks we need might be.

So let's move to Martin Boyle then.

Martin Boyle: Thank you, chair. Martin Boyle from Nominet. Yeah, picking up on what Hubert just said about developing ICANN processes, it seems to me that in Steve's email he makes reference back to the Affirmation of Commitments and the possibility of merging those into the ICANN bylaws.

And that led me to think that what we are doing is looking at responding to things going wrong. But what we're not doing is making sure that we're picking up the learning points that we're not developing that culture of accountability within ICANN which I think was what the Affirmation of Commitment reviews were all about.

So certainly I would like to see something that goes into the sort of top priorities about developing and reforming rather than just responding to things that go wrong.

If something goes wrong and a judgment works out against then we need to look subsequently at how to make sure that that sort of bad decision doesn't happen again so that we're amending perhaps the bylaws, that we're responding to what the reviews say and building that culture. Thank you.

Thomas Rickert: Thanks, Martin. Steve.

Steve DelBianco: Steve DelBianco. It was a suggestion earlier that we could perhaps rely upon cancellation of the naming functions contract as the old stick, let that be the ne stick for all these broader accountability mechanisms. But I think we'd all agree it's a relatively imperfect kind of a stick. It's rather brute force and it's attached to a mechanism that wields it only if ICANN fails to do a good job on the naming.

If in fact the accountability concerns that are in this list come up they don't have really anything to do with the naming and the performance of ICANN on the naming contract so that this is an opportunity to use that leverage in order to put not just sticks but what did we call them - checks and balances, redress and review mechanisms, explicitly in here so they're attached to the broader

range of activities and policy work that ICANN does and not have everything hinge on withdrawing the IANA contract forever. That was an imperfect world before. The leverage of the IANA contract was present and only really exerted one time.

We're using that leverage now to get other mechanisms that are explicit and transparent and lot easier for us to use. So I do think it's appropriate for us to keep the leverage and sticks, as you are, multiple sticks, as well as carrots, in this list.

And to Martin's point on the Affirmation, if you're able to scroll up - if I could get staff - because we can't scroll that white board - the Affirmation - a little bit lower - you'll see Affirmation listed twice. See the Affirmation of Commitments, and to Martin's point, merged into the bylaws and that one of the things we have to concern ourselves with, Martin, is currently the Affirmation of Commitments has four different reviews in it.

It may well be, Martin, that those aren't the right four reviews to have forever, right? One of them is a Whois, one of them is a review of the new gTLD program. So without specifying a mechanism this is suggesting that however - whether it lives in the bylaws or lives in the Affirmation, one of the review teams ought to be able to sunset the other reviews and launch new ones.

And the review teams that's the sort of mother of all review teams is the ATRT which I guess everyone in this room has served on at one point. So, Martin, to your point, take a look at those two. And I think they capture what you're getting at and they probably - I think Martin is expressing that when you go through the list it becomes apparent to you which one's - you need the most. And Martin is expressing the Affirmation is on his - the top end of his list.

Thomas Rickert: Thank you, Steve. Eberhard.

Eberhard Lisse: I'm not sure I understand how this Contract Co discussion is going. Either we have one who holds the contract or we don't. But what we don't - not going to have is a company that we use as a (unintelligible) and if we don't like it we change it to something else? The things, they're not going to fly.

Thomas Rickert: I think we need to discuss that idea a little bit further of contractual relationships that you're asking for. But let's move to Kavouss now, he's next in the queue.

Kavouss Arasteh: Kavouss Arasteh. I think the structure or the order of discussions perhaps need to be changed. We are talking what Work Stream 1 apart from the definition. The first thing, as I understood, was which entity replace the US government. Before talking about that we are just talking of requirement of that. But first you have to see which entity is replace.

It is a community and then we go to the definition or description of community as you mention this at the beginning of the meeting. But the way it is now - we discussing many items but in the very spread way. We have to start from a point, we have US government, NTIA. Would we replace why, by what. And then what is the mandate responsibility and authority of that entity as well as the composition of entity. And what is the appellation of the entity. So this is the things that should be quite clear. Thank you.

Thomas Rickert: Thank you, Kavouss. Let me try and answer with an analogy. You say we need to know what entity replaces the NTIA. I would say we do know we need a car. We need a car. But what we don't - but we don't know what car to buy so we need to find out does it have to be fast? Does it have to be small, to

be good in cities? Do we have to go off road? Right? So we have to flesh out what we need, what the functions are and then we can make a conscious decision to buy a car.

What we're doing now is we know that we need something, a mechanism, whether it's an entity, I think we don't yet know. We need the replacement mechanism to have certain capabilities and these we're trying to define together. And once we know what the capabilities, what the features are then we can put the lawyers to work to find out what the right vehicle for that would be whether it's an entity or whether it's something in existence.

But I think we need to know what powers the community as explained in our charter, what powers the community needs to have. This is what we're trying now and we get to the question of what the replacement mechanism would be subsequently. Please.

Leon Sanchez: To put it other words, Kavouss, what we're looking at now, as Thomas said, what we need the powers that we want to have. These powers then will may be reduced through either a body, through either an organization, through either a bylaw change. We still don't get to that point. We first need to define what we want to accomplish and then how we accomplish it.

Thomas Rickert: Thanks, Leon. Next. Kavouss, is that a direct follow up?

Kavouss Arasteh: Yes, is follow up. What you said is right, and what Leon said, but it is not mentioned here. We should mention that before identifying what entity would replace we have to identify the requirement of the entity or the scope of all or mandate, responsibility, authority and so on. We have to put it in a way that is understandable to everybody.

Thomas Rickert: Thanks, Kavouss. Obviously I haven't made myself sufficiently clear. But I thought I had tried to mention that but I think we're on the same page. Thanks, Kavouss.

Next in line is Lars.

Lars-Erik Forsberg: Thank you very much. I'm very pleased to see this list and it's very good to have this list of community powers. One community power that I think it's missing here is the appointment of the ombudsman. I mean, being a Swede I think it's important when we have, of course, the good thing to have been the ones that started this about ombudsman.

And it's important that there is an independent group of people actually appointing them - the ombudsman. The ombudsman is not appointed by the Board or by the internal organization but it is appointed by somebody exterior. I happen to think that the community should do it. But so can we add that to the list...

Thomas Rickert: Sure.

Lars-Erik Forsberg: ...the appointment of the ombudsman?

Thomas Rickert: Sure. I mean, this is a collection of the top points that you have. And if the ombudsman is a top point for you we'll add it to the list. I think we will have to discuss the list and find agreement on the list as we move on. Chris.

Chris Disspain: Thank you, Thomas. Good morning, everybody. Chris Disspain. Just a couple of things. It seems to me that so - first of all - speaking as a ccTLD manager - extremely uncomfortable by any concept of using the running of the IANA function operationally as leverage to do anything within ICANN other than

run the IANA operation properly. I just don't think that's the way that it should be done.

I think that should be a discrete piece. There should be mechanisms for removing it under certain circumstances but they should be confined to the way that that operation is run. The concept that you would move it somewhere else because the community was upset about something that had nothing to do with it doesn't fly for me.

It seems to me that when it comes to sort of choosing things to put in Work Stream 1 one of the things that we need to make sure is that Work Stream 2 was created specifically to give the community comfort that stuff that couldn't be done immediately but needed to be done, stuff that wasn't entirely dependent on transition, but needed to be done, would get done.

So one of the things that we need to do is to build the mechanisms into - build mechanisms under Work Stream 1 that ensure that the things that are in Work Stream 2 will actually get done in the event that there is consensus around them. So whether that's some kind of mechanism for bylaw changes so that the community itself has some power in respect to bylaw changes, whether that is a mechanism for, you know, treating governance changes as policy.

So for example, you could create a circumstance where a cross community working group made recommendations on governance changes and those governance changes recommendations were treated in the same way as policy recommendations are currently treated that come out of the supporting organizations, in other words the Board basically has to implement them subject to various checks and balances.

Those are the sorts of things that I'd like to see in Work Stream 1 so that the ongoing improvement of ICANN isn't just done in a rush in order to get the transition done; what we do is we create the ability for the ongoing improvement of ICANN to continue to the satisfaction of the community forever and ever. Thank you.

Thomas Rickert: Thanks, Chris. I think we will have to discuss that in depth when further defining "must be in place or committed to" you know, so we will have a discussion on how to ensure that things that ICANN needs to do, both in Work Stream 1 as well as subsequently in Work Stream 2 are actually taking place. So we need the right approach to that, we need the right tools to make that happen so that's certainly on the list.

Next in line is Alan.

Alan Greenberg: Despite that last intervention of yours, I want to support what Chris said. I think it is totally within our scope to put in that the community can essentially direct the Board with regard to accountability and governance changes. Don't need to put in - I'm trying to point to something which keeps on moving up and down - one that we have the ability to go out to arbitration on any issue because that is an accountability and arbitration issue.

That one, if we put in the guarantee in Work Stream 1 that we can add that one to Work Stream 2 we don't need to worry about all those details here. I've - from when we started off I said I think we need to put in to Work Stream 1 what we need. Every other thing we put in is going to delay the time it takes to get our recommendations out and be used in sync with the IANA transition.

I think we really need to cut out of the Work Stream 1 anything we don't need for IANA but that includes ensuring that we can make governments and accountability changes in the future as we need them. Thank you.

Thomas Rickert: Thanks, Alan. I'd like to check - there was one point at the very beginning - the requirement that the community needs to be able to make sure that the Board does certain things, right, not to reverse Board decisions that have to be made, that we can force them to take action in case they are inactive.

I'd like to hear from the floor whether there are any further points that are not yet on the list because if we have grasped everything that people have on their minds I think we should now go through the list and try to prioritize or remove or, you know, otherwise reach consensus on the powers - or merge, maybe there are some points worth merging.

In order to do so, I would - would it help us to break for like two minutes for everybody to be able to go through the list and make proposals as so we can - as to how we can maybe condense it or improve it?

Mathieu Weill: Let's take 5 minutes or 2 minutes to actually read within to the list, okay?

Thomas Rickert: Yes, and this must not be mistaken for being a break.

((Crosstalk))

Thomas Rickert: So please do go through the list. Read it carefully and then make suggestions as to how we can prioritize, how...

((Crosstalk))

Thomas Rickert: Isn't it scrollable in the Adobe?

Mathieu Weill: And it's been circulated by Steve this morning to the accountability mailing
                   list.

Thomas Rickert: But we've added points to it so...

((Crosstalk))

Mathieu Weill: The update - can we circulate the update right now?

Thomas Rickert: So the update - the update is now being sent to the list by Alice. Okay. Let's
                   continue. So while you've been reading and working we've also been reading
                   and working and in order to facilitate our discussion we are going to bring up
                   in the Adobe an attempt to group some of the points that we raised and also
                   we made an attempt to reflect the priorities that you mentioned in an order that
                   we're going to bring up here. So the upload is in progress, which is a good
                   thing.

                   So what you see there is, as the first point, the approval of key decisions such
                   as changes of bylaws and budget. You will recall that this is one of the main
                   themes from the very beginning and changes of the bylaws would also
                   encompass broadening or otherwise amending ICANN's scope which was a
                   big concern that was mentioned.

                   Then we have redress and the notion of binding redress. And we need to work
                   on accessibility of redress mechanisms. Then we have action that needs to be
                   possible against Board inaction however that's achieved but I think that's
                   something that we need not only to turn over or have rectified. Board

decisions that if people find objectionable but also to make them work in case they choose to idle.

Then we have building on AOC reviews, merge them into the bylaws and the ability to sunset review teams and launch new ones which are intertwine. Then we have the ability to direct the Board with regard to governance changes. And that would be the point that Chris Disspain was making which was echoed by some of you to ensure that Work Stream 2 is done and the transition of the ATRT.

Recalling or dismissing Board members was one of the big concerns as well as the ombudsman we mentioned here - the appointment of the ombudsman but actually we do have Mr. LaHatte so he's already there. But I think the notion that Erik wanted to convey is that we strengthen the role of the ombudsman and maybe revisit that.

And then the last point that was mentioned is take out the IANA functions. And we put that at the bottom of the list not because it's not important but I think we have to be very clear about what our mission as CCWG and to what extent we should be taking care of the asks of the CWG. So I think that's one of the points we have to make clear who's responsibility the definition of what accountability mechanisms would be.

So I'd like to open it up for immediate reactions. And I see - I think Camino was the first but actually Lars was quicker unless that's an old hand. Lars, please.

Lars-Erik Forsbeg: Lars and Camino is one so...

Thomas Rickert: So you're one.

Camino Manjon-Sierra: Well I will take the floor first. In the reconsideration request process and pertaining to the community powers, if we may say, it would be perhaps good to have one member of the community present in all the Board governance committee meetings. Thank you. It's not there yet but in the reconsideration request normally there is the intervention of the Board's governance committee. And the Board governance committee is a subset of the members of the Board. And perhaps it would be good to ensure independence and fair play that there was one member of the community as an observer. Thank you.

Thomas Rickert: Yeah, let me make an observation. I think this is a good point but I think it's an implementation feature of a mechanism. And in order to structure our discussion I think it would be good to focus on the powers on the sticks that we need. But we will surely get, you know, for each of those points, should they make it to the final list that we reach consensus on we will have a lot of work to do to flesh out the details and the implementation of those.

Next in line is - sorry.

((Crosstalk))

Thomas Rickert: Alan. It's always good, you know, just say Alan whenever...

Alan Greenberg: I'm learning to be invisible, that's all right. Number one, I think governance should take governance and accountability because they're not quite the same. In the bullet about 60% down on the mind map.

Thomas Rickert: The PDF, we can't change that online but it's captured.

Alan Greenberg: I'm somewhat in awe that you understand what I'm talking about. And I question why the three above it are necessary if we have that one, the redress, Board inaction, AOC reviews.

Mathieu Weill: You mean necessary at this point?

Alan Greenberg: Well they're all linked under Work Stream 1 in the diagram. So I would tend to say those do not need to be Work Stream 1. And I believe because it's a completely different thing, I'll reiterate what I said before, the ability for the community to initiate discussion with the Board or some sort of interaction with the Board I believe is an essential part. And I don't think it's covered by governance and accountability. I believe that should be there to begin with.

Thomas Rickert: Alan, just in order to make sure that we capture this, which - you're saying if we have this then we don't need that. Can you...

Alan Greenberg: Point Number 1, if we have the one on direct the Board with regard to governance changes and add accountability, if we have that I do not believe we need the three major lines above it in Work Stream 1. One's called redress, initiate action against Board inaction...

Mathieu Weill: But that's priority setting in your opinion. And I see...

Alan Greenberg: Okay, sorry, I thought we were trying to identify things that need to be in Work Stream 1 versus...

Mathieu Weill: That's perfectly relevant.

((Crosstalk))

Mathieu Weill: But it's -your second point I'm not sure I...

Alan Greenberg: Second point is I believe we need a new one that is not there right now that says the community can initiate discussions with the Board with respect to issues of interest to the community.

Thomas Rickert: Don't we have that?

((Crosstalk))

Alan Greenberg: No, the community, that is a formally defined term in these things and that's something that you can't say yes we'll look at it and maybe give you an answer in six months. Initiate discussion, that's a bilateral word that's going in both directions.

Mathieu Weill: For what purpose exactly? Is that a preemptive action before...

Alan Greenberg: It's preempted to perhaps make sure that we don't have to fix something afterwards.

Cheryl Langdon-Orr: (Unintelligible).

Thomas Rickert: Let's edit and...

Alan Greenberg: Except a little bit more formal than that in that it can't be ignored once the meeting is over.

Thomas Rickert: I suggest we add it to the list. Everybody can digest it and we revisit subsequently. Sebastian.

Sebastian Bachollet: Thank you. I will speak on my own behalf. I want to stress that because I will be - I will try to give my sense of what is happening here. I almost disagree with everything here because you didn't try to enhance, you try to change. And you try to change in a way that you forget the first thing - this community is doing is selecting the Board.

If you disagree with the board, change the selection. And it has happened sometime, you have people reelected and sometime where people not reelected then you may have to consider that the one reelected was not reelected because he was not doing right his job; and the one who are elected again is because they are doing well.

And that's the power of the community. And if we take each point, if it's to transform this organization it's - I already say that yesterday - in over-complicated, it's already very complicated organization. But if you add layer, if you add complication - complexity it will not be easy and visible - there are echo, sorry. It's why I am stopping.

And you can imagine that each one of these could be a good remedy but for example let's - we can discuss about the annual (unintelligible) how it's done by the Board, it's not just done without taking into account the community input and at the end the decision is taken with this - with its input. It seems that the Board is doing that in its own vacuum and not doing well its job.

Then once again if you disagree with the way the Board is working then change the Board or change the bylaw to change how the Board is elected but don't create a new structure and give more - organize things that will be more (unintelligible).

For example, if really you decide to have - to send any Board decision to independent review panel where you will go if it's any, you need to just remind what it's important and what it's less important. If you say any it could end to be a lot. And then we will spend time to that and that's the goal of ICANN? No, I don't think so.

Thomas Rickert: Yeah, Sebastian, thank you very much for that. And I think we will - to pick up your last point, we will have to decide which mechanisms can be accessed by whom, i.e. what escalation path there are for different issues, right? So I think the - I would tend to believe that the idea is not to give the big stick to everybody for every reason however minute it might be. Let's say if you refuse travel support by ICANN staff you can't use the big stick to dissolve ICANN or something like that. So that's not the idea.

But, Sebastian, I've heard you say what you said in variation. I have the impression that the notion of maintaining the status quo is not picked up by others in the room. And I'd like to understand better if there is anything that you could suggest in terms of changes, you know, maybe we just don't grasp the idea correctly. You know, maybe there are tweaks that you have in mind that would solve things.

All right, but I have the impression that you are very much favoring the idea of trusting the Board, trusting the current system and making that work.

Sebastian Bachollet: It's not at all what I say. If you - I want to be clear. I say you need to change - if we think that we have something to move we need to change the way the Board is working and not trying to create another structure, another layer. And I have the advantage or disadvantage to be the only one in this room, and I guess online, to be - to have been member of the Board for four years and not to be anymore Board member.

I have nothing to win to say that the Board is doing some good job. And in the same time what we need - I have a long list of what to fix. And the last point I want to make is that if we want to be - how I can say that - if we want to be balance then let's do the same for each of our organization. Because each of our organization has the same type of trouble that the Board itself; how is the GNSO is working, how is the ccNSO is working or the (unintelligible) of those organizations, how is the ALAC is working.

We have a lot to change to be more accurate today. Then this organization need - what I will call ICANN 3.0 and the 3.0 it's not to create other layer. It's already too much complicated.

Thomas Rickert: Okay, Sebastian, we're talking about - or we're trying to identify measures to be taken prior to the transition. I think creating ICANN 3.0 is a too ambitious task. Do you have concrete suggestion as to how you would improve the Board's operations? And I think we'll gladly discuss them.

Mathieu Weill: But very shortly because I'm conscious of the need...

((Crosstalk))

Mathieu Weill: ...to have everyone express themselves.

Sebastian Bachollet: Yeah, I will not give this answer right now. But I want to stress again that it's not just the Board, it's not just the Board, it's the whole organization.

Mathieu Weill: So what I'm taking on note is a proposal by Sebastian to work on features that would enhance the way the bodies within ICANN, the Board and SO and ACs are working. And it's yet to be determined exactly in what directions that

could be. I think that's a candidate that - but it would be great, Sebastian, if you could expand offline on what you mean on that.

Thomas Rickert: Thanks. With that we can move to Becky.

Becky Burr: Thanks. I'm a little confused about why is the issues relating to mission and mission creep and scope of ICANN work that are on Steve's list don't appear there anywhere?

Steve DelBianco: Bottom two.

Becky Burr: Bottom two?

Steve DelBianco: (Unintelligible).

Becky Burr: Okay, yes, the last two. Those...

Leon Sanchez: Isn't it covered by the bylaws?

Thomas Rickert: Bylaws?

Becky Burr: No. I mean, and I think that - I just wanted to point out that actually making certain changes to the bylaws could be one very effective way to ensure that the community has the ability to continue to work on these things after the transition.

So, you know, the so-called picket fence, which is really related to scope creep is in the Registries and Registrars contracts but it's actually not part of the ICANN bylaws. And that would be - that would go a long way to

addressing many concerns and just certain limited bylaws changes really could help us carry through and put a lot of stuff into Work Stream 2.

Thomas Rickert: It's been added to the diagram as you speak. Next is Bruce.

Bruce Tonkin: Thank you. I just wanted to - I posted couple of things in the chat room just from the ATRT 2 and also a little bit of dialogue between myself and Robin. And in the ATRT 2 report the ATRT 2 basically recommended forming a special community group to review the IRP and the reconsideration and ombudsman.

Just want to be absolutely clear making sure this aligns with the Board's expectation. But our expectation is this that special group so we're not forming a second group.

And I wonder whether you might want to actually form working groups to look at those things because some of what you've got up there like appoint ombudsman, that's probably one thing you might do within the ombudsman review. But it - really what you want to do, I think, is review that area as a sub group and then come back to this group with what you want to change.

Or Becky and Robin have made comments about the standard that's in the IRP, I think actually having a small working group review that and come back - because otherwise - and then I'm really concerned about understanding what's in Work Stream 1 and Work Stream 2. You might decide ombudsman is Work Stream 2, I don't know.

But just be wary of trying to do too much by June. And, you know, maybe you look at the main one, the IRP, I don't know, I'm just trying ideas out. But you've got three existing mechanisms, maybe prioritize those and work out

what do you need to do before June and then have a working group on it rather than just sort of cherry picking little bits and pieces because I think you got to look at a bigger picture.

Thomas Rickert: Yeah. As you will recall, the purpose of this exercise was to identify the most urgent needs, the most urgently needed powers for this whatever new mechanism. And we will prioritize and hopefully condense the lists a bit. And I think we need to do that against the background of what needs to be in place. And when talking about what needs to be in place we need to make sure that there is feasibility in terms of timing, what needs to be committed to. And so I think we will have a natural sequence so that feasibility is ensured.

Next is Avri please.

Avri Doria: Thank you. First of all I want to thank Bruce because I've been trying to understand and get somebody to say with some definition that this was indeed the response to that ATRT 2 recommendation and that we were focused on that work here.

So - and in terms of that I do agree with Bruce that, for example, on the ombudsman, we had a lot of issues with not only the appointment - actually we didn't quite get into the who appointed the ombudsman but we certainly had a lot more issues with his scope. And I tend to think of that as more a, you know, one of the ones that doesn't necessarily need to be in Work Stream 1 as long as the work is ongoing.

I guess that I don't quite agree with taking out as many as Alan says. I think building on the AOC reviews and getting those into the bylaws is probably an important Work Stream 1. I believe at least some of the redress and the redress mechanisms that come out of the ATRT 2 that may take a little longer

than Work Stream 1 but there may be a couple of those that do need to go into Work Stream 1.

So I think that that pile there is probably one that can get a greater breakdown as we - and I think the idea of getting a workgroup on, you know, looking into those things in detail is a good one.

I agree that while we all know that whatever the CWG does in terms of IANA functions and its removal being an ultimate threat, I do not think it should be explicitly listed as a Work Stream 1 accountability measures. Yes, we all know that de facto it is, but to actually list it as one I believe is problematic.

I don't agree with Sebastian's claim that we can do everything with elections. We've been trying to do stuff for elections for a while. It's a very slow and clumsy method and especially with the NomComm being the (sell) Com that it is. I don't think we will, you know, achieve things that way. I do think we have to achieve things in this Work Stream 1 on accountability.

So I think it's a good list. But I think it can be pruned a little to make it tractable by the deadlines that we've got. But I think with a little bit of pruning it actually starts to look like something that can be done and actually gives me a certain amount of optimism contrary to my personality. Thank you.

((Crosstalk))

Thomas Rickert: You will remember when Jeff Neuman once said at a public GNSO session, "Mark my words; this is the death of the GNSO." I think this is as remarkable as that statement.

Thank you for that. I'd try to understand, as a follow up question - and this is addressing both Bruce as well as Avri, in terms of concrete language would you - or would you be as kind as to suggesting tweaks that might make the list smaller? So are you suggesting that if we - if only we implemented ATRT then some of the other points would go? I think I don't really understand the ask.

I think the point that we're having here should be that but that's, you know, just my understanding. So please let us know in case you have suggestions for alternative wording. And I think we can now move to Roelof.

Roelof Meijer: Thank you, Roelof Meijer for the record. I've got three points, the first one is as a member of - for many years of a group that has been, among other things, urging ICANN to bring a more logic connection between its budgets and it strategic plan, and it's definitely moving in that direction so I would suggest that approval of the strategic plan is even more important than approval of the budget because the budget will be a logic annual result of a multiyear strategic plan.

The second one is especially in the list that we saw before we had this diagram on the screen, there was this abiding nature of independent panel conclusions. I would like to warn against that because if that is a panel of independent external experts I would suggest that some kind of community approval of those conclusions would be necessary before they become binding. Because I'm sure that we've all seen some recommendations by external expert partners that were really silly

Thomas Rickert: And I think we would all have real life examples to evidence that.

Roelof Meijer: Yes.

Thomas Rickert: Thanks, Roelof.

Roelof Meijer: And the number three, but that's probably something for the near future, again, in the list that we had on the screen before, there was a very often the mention of the word "community." I think we should anticipate the question from the expert what do you mean by community? The whole community or representatives of the community because we elected representatives, do they have to go back to the community every time they want to take a decision? Minor detail, yes, Mathieu.

So we have to think about what we mean, what kind of a group because to have everything that we state now be done by the whole community that would just - that will make ICANN come to a grinding halt. Thanks.

Thomas Rickert: I think we don't have to wait for somebody else to answer - to ask the question; it's going to be asked by us. So we're going to discuss that hopefully still today.

Just as a heads up, we're now closing the queue so we're going to hear all the interventions of those that have now raised their hands and then we're going to break for coffee.

Next, Steve.

Steve DelBianco: Thank you, Steve DelBianco. So where is this power? I appreciate the mind map; it ends up being easier to see it all in one place then scrolling up and down on a list. But as Becky indicated, four or five items were left off, in good faith; they were just thinking maybe it didn't need those bylaws changes.

But three others that were left off have to do with the redress. There was some strong community support during the inventory for the reconsideration request, not just the IRP. And what you've done here is for the sake of condensing you just call them redress. There was a discussion yesterday that review and redress are somewhat different so perhaps it should say review and redress.

And the notion of binding cost accessible, substantive as well as process, you're kind of mixing things because some of that, for instance, substantive as well as process, that was with respect to a reconsideration. That comment only makes sense with a reconsideration request which is, today, bound by a process question.

And the community had said we ought to be able to, in a reconsideration request, challenge the - have a reconsideration of the actual substance of it. So this would be an opportunity, if you go back to the list, to fine tune - you can do it at the break, if you wish - but to fine tune a bit under redress and review.

There was one other one which could probably go to Work Stream 2 but there was strong support that the community would be able to appoint the affirmation review team members as opposed to the chair of the GAC and ICANN CEO. And that's a relatively easy one, maybe you put it under the mind map under Build on AOC. Let the community designate those members.

And with respect to the powers, if it said community powers and not just powers, put an asterisk and then put the definition of community that was in that list, we said that community refers to a cross community accountability group whether that be done through members, supervisory Board, Roelof, or other mechanisms. So we're just punting that for now but making it clear that

it doesn't mean every single individual but some other structure to be designed at some point in the future.

Roelof Meijer: I will definitely need your help to - your expertise on the review and redress and my limited knowledge of that is not - is probably reflected in this graph and certainly I'll be taking your help on it.

Thomas Rickert: Thanks. James.

James Bladel: Thanks. James speaking. I think the queue is so long some of my topics have already been covered. But just to throw a couple of quick points onto the pile. I don't necessarily subscribe to the idea that the ombudsman change needs to be included in Work Stream 1. I believe that that's important but that is not necessarily addressing accountability of the organization, it's more of an interpersonal, inter-staff function. And so I think that can probably safely be moved to Work Stream 2.

And then with regard to the AOC reviews, I wanted - Steve makes a good point about, you know, having the community appoint AOC members - review team members rather than simply having them elected by the chair of the GAC and the chairman.

I'd like to add that recommendations from the AOC - I know we're trying to avoid the word "binding" but I think that recommendations from the AOC should have a little bit more of a force than simply a suggestion for a best practice on the Board. They should be adopted unless there's the compelling reason why they wouldn't be.

And not only that, but then they should become permanent. I note that some of the changes - and it's a minor point but I think a change from ATRT 1 regarding comment periods that was adopted for a while and it was

determined that it wasn't working and it was just - has been recently just abandoned and I think that's fine, maybe the right decision.

But, you know, I don't know that you can accept a recommendation from a review team and then later unaccept that without at least having that discussion with the community. So, you know, I think all of those thing could be folded in under the heading of strengthening the AOC reviews and building those into the bylaws. Thanks.

Thomas Rickert: Thanks, James. Kavouss.

Kavouss Arasteh: Yes, thank you. Kavouss speaking. I think there must be some coherence between various elements of these charts. If you go to the first one you have approval of key decisions, that is coherence between the substance, which is change of bylaw, and budget (unintelligible) strategic plan. That is consistent with there.

Then you go to the redress, binding is not subset of redress; binding is the nature of redress. And cost accessible is not subset of redress. Maybe it would be a part of element what we wish to redress. Then there should be a link between review and redress unless you create the quite separately. You do not redress anything unless you review that things and you see whether the require to redress something so there should be some link between redress - it should be more close to each other, not set apart.

And then recall the Board members. Recall has different meaning and connotation. Reminding the Board members; warning the Board members; alerting the Board members or what means by recall? You have to.

And then the last one, take out IANA functions. It is something at the beginning and then once is finish is finish, it would not be something which we continued. Whereas the change of bylaws is the same thing or maybe we can continue to change bylaw in the (unintelligible).

But take out IANA function is one time action only. Once you take out it is taken out. You don't review it anymore because it doesn't exist anymore. So it should be perhaps the reconstruction of the chart to first the subset be coherent with the main set and issue related to each other to be connected such as review and redress and clarification on recall what do you mean and take out IANA function which is one time action but not continuous one. Thank you.

Thomas Rickert: Thanks, Kavouss. We will certainly polish language to make things unambiguous. Robin.

Robin Gross: Thank you very much. This is Robin speaking I think we can boil down to three main issues. Many of the bits and pieces that we see on this list for what we need for Work Stream 1. So those three issues would be the reforming of redress mechanisms and what we discussed a little bit this morning with respect to the IRP and the reconsideration request reforms so that would be the first thing.

The second would be approving or, excuse me, implementing the transparency and accountability recommendations that are in the ATRT especially with respect to changing the bylaws, making sure that those bylaws are changed in accordance with recommendations of those reviews.

And then the third would be this idea of David Johnson's accountability contract, something that where the Board agrees to limit the scope of what it

can do, what it will do, that can take away a lot of our concerns about what could happen or what might happen.

And maybe that's what was meant here with, "Direct the Board with regards to governance changes," I'm not really sure. But I think that those three issue can encapsulate a lot of what's on this list and I think will get us what we need for Work Stream 1. Thank you.

Mathieu Weill: Excuse me, Martin.

Martin Boyle: Thank you, chair. Martin Boyle from Nominet. Yeah, I'd like to pick up on the bottom line of the mind map, take out IANA functions against to which you've written a warning from Chris on the political views of this power. And actually don't think that that is the warning.

I think that the IANA functions should only ever be taken out because it is a fault, an error, a problem, an issue associated with the delivery of the IANA functions.

And I think we do need to make sure that this particular one is very clearly referenced as to the reasons why we would do that. I think Chris's reference to political power is the fact that, you know, we have a tool, the button the president's desk, and there is a sort of feeling that, well, actually, you know, this is our ultimate recourse.

But no, the IANA functions is a very clear and very and very specific role that IANA - that ICANN is carrying out and it is only when they fail in the carrying out of that duty that I would want to see there being - we are now going to exercise that nuclear option. Thank you.

Thomas Rickert: Thank you very much. Fiona Asonga.

Fiona Asonga: Thank you. Just to add on to what Martin has said, I think I would recommend
                  that taking out of the IANA function gets moved out of the Work Stream 1
                  area for the time being and - because we would look at it a bit more as Work
                  Stream 2.

                  Because it only arises when IANA, for example, is not able to fulfill on the
                  protocol parameters, on the IP address management, the domain names and
                  the ccTLDs so when it's failing then we shall be able to sit as a community
                  and say, okay, we want to move.

                  Case in point, Athina had mentioned earlier that the numbering community,
                  the NRO and SO basically have put in their proposal that if the IANA function
                  is not managed to the standard it is supposed to as a last resort we will do
                  away with having that function run by IANA and look for a different entity to
                  run it.

                  And I think that should be the spirit of - if we ever have to consider taking out
                  the IANA function but I don't think it is something that has to be considered
                  before the transition because then like we're going to the transition with - oh,
                  we take it and we can kill it and still move on with whatever it is we want to
                  do.

Thomas Rickert: Thank you, Fiona. Malcolm.

Malcolm Hutty: Thank you, chair. As it's been a while I'm afraid I have several points but I'll
                  try to be as brief as possible. The first point is one item that's missing from the
                  mind map that appeared in the list of items that Steve produced that gave rise
                  to it and that's issues relating to clarifying the scope.

We spoke yesterday about how, if we consider redress or review mechanisms we must also speak to the standards by which those redress and review is applied. And the points in Steve's list about clarifying the scope and there's a specific point there on whether ICANN should have within its scope the ability to impose requirements on third parties.

So I would like to suggest that the option of this group reviewing the statements of scope of ICANN within the articles should be retained on the list of things that this group may consider is within the scope of this group as that will feed into the standard of review for review and redress mechanisms to be relevant later. That's the first point.

The second point, much more briefly, you say cost accessible for redress. I would delete the word "cost" there and say "accessible." There are other impediments to the accessibility of redress mechanisms that should be considered.

In particular I'm concerned about the fact that the independent review panel currently is your - not able to access that if your complaint is on the basis that ICANN has required third parties to interfere with - or to harm your concerns. That's a limitation on the accessibility of that mechanism that should be, in my view, removed and I think that that should be part of the discussion for this group.

My third point is - and I see that Alan is listed to speak immediately after me so no doubt he'll come against to disagree but I want to directly disagree with what Alan said earlier about saying that the - if we say that we have the power to direct the Board on governance changes that can cover all the rest of it and everything else can be moved off and some of the things to be addressed later.

I'm afraid, in my view, that amounts to saying well, we create the power now; to create the power later, to create the power later. And basically everything gets pushed off indefinitely into the future. If this group, in Work Stream 1, is to produce sufficiently clear recommendations with sufficient certainty that we can have confidence that IANA transition is ready to proceed we will need to create confidence that things are actually happening, not merely saying that we will one day create a mechanism, to create a mechanism, to create a mechanism as a forward. There has to come a point where you actually do something concrete.

We need to come up with something concrete now, not just push this indefinitely into the future. So for that reason I'm afraid I disagree with Alan on that point.

I'm afraid I'm also going to have to disagree with - respectfully disagree with Martin in that last point about the IANA functions. I think he was overstating it when he said that the IANA functions should only ever be considered for removal as a result of a failure in the delivery of the IANA functions.

In my view the IANA functions are the execution - sorry, the IANA functions with respect to naming functions with respect to - certainly with respect to generic names are the execution of ICANN's policy with respect to generic names.

And if there is a fundamental failure in that the ability to say no, ICANN, you're not longer in change of this, we're going to have it somewhere else, has to be one of the things that can be considered. So I think Martin there was slightly overstating that.

I would agree with him in general that saying that the IANA functions is a key accountability mechanism is placing too much weight on that and losing the more important thing to fix more specific issues. But it should be left on that and the statement that only operational failure can justify the removal, I can't agree with.

My final point relates to your mind map and how you express it and that's the references to ATRT and AOC reviews. This is a level of indirection. It says that - it's referring to implementing the - what's recommended in those reviews. But in order to know whether I agree with that I need to be much more familiar with the content of reviews than I am.

I strongly suspect that when in those reviews there are things that are appropriate for WS 2, not for WS 1. There may also be things that are relevant for WS 1 but they should be identified as such. So can we - can I ask that in the future we stop referring to ATRT and AOC reviews meaning the content of what they're recommending unless we're saying specifically for its insight.

If you're referring to specific items they should be listed as such so that we can all understand what's being suggested and (unintelligible). Thank you.

Thomas Rickert: Thank you very much. We have Alan and then Roelof.

Alan Greenberg: Thank you. And given the time I will be short. Going way, way, way back to Sebastian's comments that we can fix everything by rotating the Board out, I think that timeframe is far too long and that's not the methodology that we need.

The second thing I have to say is something that no one seems to have mentioned yet and I think is crucial. My fondest hope is that all the

accountability measures we put in place are - never need to be used because our Board has adapted and it has earned the trust of the community and we don't need to exercise these sometimes Draconian techniques.

So part of this whole process is to change the culture of the organization which includes the Board. And I hope that's what we're affecting, not just given us tools to continually wield. I think that's a philosophical issue that's really important.

And, lastly, with regard to Malcom's comments, I don't think I ever said put off forever and ever, amen. I said defer to the second work stream of this group. And I happen to have faith that this group is not going to disband and forget the second work stream and just go home. So I have no problem putting things off to Work Stream 2 if we have the tools in Work Stream 1 with which to affect them. I don't think that's defer forever. Thank you.

Thomas Rickert: Thanks, Alan. You'll pass? Great. So we had closed the queue. We will - we had one more request to speak, we'll get back to that after the break. We're still going to have our 20 minute break because I think we need it and you might also need it to recap a little bit and discuss.

I think the next step for us after the break will be to identify a sequence. Let's try to identify very few things that we can operationalize or that we need to operationalize for the transition and try to move as many points as can be to subsequent action that we just commit to, right, rather than having them implemented in order to ensure feasibility in terms of timing.

So with that let's have a good coffee break. Thank you.

END