

**ICANN**

**Moderator: Gisella Gruber-White  
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Grace Abuhamad: Okay just a reminder for everyone, please make sure you mute your computer speakers and that you speak close to the microphone when you're speaking and that you announce your name and affiliation before you start speaking. It helps people in the Adobe Connect room identifying who everyone is. And it also helps with the transcript. Thank you.

Thomas Rickert: Thanks, Grace. So we would like to continue the conversation that we had this morning. I think it was excellent of us to have worked on this chart and to have identified the items that we need to further work on. We will soon try to establish these working parties that we spoke about, and hopefully it's going to be fun to desert the main party and I'm sure it will be.

But before we do that, I think we should inform our discussion with a little more specificity on the perimeters that we need to think about. And one of the perimeters that I was thinking of and that I tried to introduce briefly before we broke for lunch is the question of independence of the delegates, if you wish, that would be on this uber committee. We were actually in preparation we're thinking of super duper, but uber is more catchy.

So because there might be issues of independence with the delegates on this group. To give you an example, we're looking at appeals mechanisms, redress review mechanisms, and if we're looking for independent review then that begs the question whether all the individual delegates on this group are potentially conflicted.

Also if they are bound by - to take a certain vote on specific instances, that might impact their neutrality if let's say our request were or if our understanding of independence were that the delegates should be there for the respective groups that they're in, but that still they would look at the substance of the merits of the case and then make a decision based on that consciousness.

So it's a question of how we envisage this concept to be implemented and what role we're going to give this uber committee. If it is meant to take certain action itself, i.e. would that group conduct reviews which are meant to be independent, or would the role be limited to requiring the ICANN board to kick off an independent review, and then just review the process and in an ideal case rubberstamp it.

But I think there's a lot of confusion about what the role of this board would be, or this committee would be, and I think we need to discuss a little bit more how we make sure that this is really a mechanism of last resort or where which community members or groups or the whole committee could kick off processes. Because as you will remember, one of the takeaway messages was that we don't want to establish a second executive board, right?

So we have to be very cautious not to duplicate what's already been done by the board in this other mechanism. And therefore I think we need to discuss a little bit the question of remit, the question of composition, which likely will

be part of the subgroup's work, and we also need to talk about escalation paths for individual matters of concerns. I was mentioning the issue of ICANN staff rejecting the application for travel funds. I think we don't want this body to be dealing with each and every decision that ICANN or ICANN staff has made.

So the escalation path, depending on the subject matter concern, must end before these mechanisms can be invoked for I would guess, in terms of numbers, most of the decisions made in the organization, but there should be some decisions inside the organization where if there's an unsatisfactory response by the board or a lack of response where this process can be invoked.

Now we see a queue forming, and the first is Chris.

Chris Disspain: Thank you, Thomas. Chris Disspain. A review conducted by this committee wouldn't be an independent review, it would be a community review.

Thomas Rickert: That was my point.

Chris Disspain: There may be a place for it but it wouldn't be independent, it would be a community review. And there would be an awful lot of challenges, I'd suggest, around conflicts and so on. So I had envisaged that in certain circumstances where decisions were mandated to be subject to an independent review, that would be an independent review and you would have some provider that would provide you with a panel that would do the independent review and that that - the results of that review would be binding. That's how I'd seen it when I was thinking about it. Thanks.

Thomas Rickert: Thanks, Chris. Very helpful. And I think that is one aspect of our discussion when talking about the role of this uber committee. Next in line is Steve.

Steve DelBianco: Steve DelBianco. In doing the repertoire work for work area two, in the inventory, right on Page one, these were indicated as alternates, what you just described. This notion as to whether the community acted itself as the review body or did the referrals to the IRP. We had more support for the referred to independent review panel than for the community itself to do it.

I would note that for those people that did say we ought to have the community make the decisions, the community group, the uber group, that they would only be able to refer back to the lowercase community bottom-up process, they wouldn't be able to edit it. So I would say on balance the last several weeks, the last nine months, the data we gathered, it favors what Chris Disspain just described, and it was the second flavor that you described, that a true IRP would handle it.

I should add one bit of color. This uber committee in all cases has only those powers that it's given in the bylaws -- only those powers. It doesn't have all powers except this one and that one, it has no power except those which are enumerated. The mind map up on the screen enumerates a few powers that it would have. Are you with me on that? All right.

And then I would say that one - if in fact it's an independent review panel, there was another item in our inventory that suggested that the uber group gets to designate the panel, the panelists who live on the IRP or more of a permanent panel, from which two or three or a time would come on board to a given independent review, something (Becky Burr) has discussed many times, the idea of a permanent panel with experts that have concern about precedent and they have a lot of experience.

I do believe this was something the ATRT had recommended. It just hasn't been implemented yet. That's helpful. That doesn't mean we don't have it on

our list, it means that people have been thinking about it and we ought to own it, and it ought to be easy to execute. Thank you.

Thomas Rickert: Thanks, Steve. Alan.

Alan Greenberg: Thank you. It's Alan Greenberg speaking. You may have seen a look of puzzlement on my face when you were talking if you looked in my direction.

Thomas Rickert: I see that so many times when you're looking at me.

Man: Narrow it down, Alan.

Woman: You walked into that one.

Alan Greenberg: That's fine. Because I really didn't relate to the group that I thought we were talking about and the kind of decisions you thought it was making. I see this group as doing relatively little. They make the decision to try to initiate something, typically backed up by their organization, so ask their organizations should they go ahead with it.

I can see them doing an actual vote for some of the low threshold things, you know, which are less onerous and don't change the world by them happening. But in general, I don't see them doing very much of the work other than the discussion among themselves about should they take some action, and if so, initiating it through their ACs or SOs or whatever their home organization is.

So I see it as a very I don't want to use the word lightweight but - because they're very heavyweight, but they're not going to do things very often. And again, if things are working well at ICANN they'll never do anything. And certainly they're not the ones doing the judging. I'm not even sure, Steve, if

they should be the ones picking the people on the panel since the people in this group may be heavily invested in their stakeholder areas and may not be the best one to find legal panelists.

Thomas Rickert: Thanks, Alan. Next is Kavouss.

Kavouss Arasteh: Kavouss speaking. Thank you, Chair. I think with respect to the independence or independent acts of these members, first of all (unintelligible) you have to find (unintelligible). You could not say committee party and say okay.

We could at least we need to spirit out these actions that for instance in the exercise of their duties the members of this whatever you call the group so on and so forth, shall serve not as representing their respective nations, affiliations, organizations, regions, entity, but as a custodian of international servant.

They should refrain from receiving instruction or giving instructions to a particular group. So this at least should be spelled out in the document. Having said that, neutrality and independence is very difficult to examine, very, very difficult. It's a subjective issue. However, in the intervention and performance and behavior, it could be quite easily verifiable that if this neutrality and independence I not respected. But we have to spirit out, we have to put something on the paper. Thank you.

Thomas Rickert: Thanks, Kavouss. I may be wrong but I think that you've read something that you've prepared so if you could...

Kavouss Arasteh: Share it.

Thomas Rickert: ...kindly share that with the group. I think that will need further discussion because I heard others say that let's say organizations were discussed with the delegates how they would vote, so that's up for further discussion but...

Kavouss Arasteh: E-mail. On the e-mail letter I'll put it but not now. Thank you.

Thomas Rickert: Please do send that. Next is Avri.

Avri Doria: Yes. I'm sitting at the back so you probably did not notice the confused look on my face, even though I always know there's one there. I do not understand what over panel, uber panel committee community thing we're talking about. I mean I know that there's the, you know, the independent review panel and some sort of standing committee for that. What I don't understand, there's certainly no ATRT recommendation for any sort of cross community super panel in either ATRT1 or 2.

And I thought this was things that we were talking about, you know, the community having methods of doing things about, but I did not realize that we had made any sort of movement towards any over committee that was empowered to do anything. So I'm really very confused.

Thomas Rickert: Thanks, Avri. Let me try to respond to that briefly before I go to the queue. I have to admit that I - it may be my fault because I couldn't resist the temptation of using the uber word.

Avri Doria: But I thought uber wasn't allowed in Germany.

Thomas Rickert: Strike. What mechanism is required to give the community the powers that we outlined this morning is yet to be determined. It may well be existing mechanisms, it may be that the lawyers get back to us and say we need a new

animal for that. That's not our call at the moment. You know, in terms of approach, we wanted to go from the specifications to the implementation at a later stage and let the invitation - the implementation be informed by expert opinion.

So, Avri, I'm sorry for confusing you. I think that might happen as often as I confuse Alan. But we have not invented something - a complete new mechanism, all right? So that was not the intention. We have - I saw (Jordan)'s hand up. Was that an instant reaction to that? Otherwise I would put you in the queue for... Is it? Would you like to make it? Yes.

Jordan Carter: I think I was going to say the same thing that you just said. I thought we were talking about this, whether it's membership or an oversight group that at first (unintelligible) approval of key decisions, one at the top of this tree, because there isn't currently a vehicle that allows that to happen.

Thomas Rickert: Thanks, (Jordan). Next in line is Sebastien.

Sebastien Bachollet: Thank you. I assume if you write the uber committee, we are talking the committee. And if you want to market uber, may I suggest that you call that uber process or uber mechanism as you want but not the committee. Thank you.

Thomas Rickert: Thanks, Sebastien. I think we will try to not use any term at all in order to avoid confusion but just talk of a mechanism. Next in line is Keith.

Keith Drazek: Thank you, Thomas. Keith Drazek. So, you know, to be clear I think there's been quite a bit of discussion in the Adobe Chat is that it's correct to say that we have not agreed to a membership structure or a membership body. But I think that is one of the possibilities that we may evolve to. And I know it's



premature to say that that is what we'll have but (Bruce) suggested I clarify - (Bruce) suggested in chat that I clarify that when we talk about a committee or a panel, one of the possibilities is that it could be a membership organization or a membership body, statutory members of ICANN in a sense, representing the community, based in the community, rooted in the community structures.

So I think that is one possible approach to dealing with the things that we have in work stream one, in effect giving the community the final say in certain areas an escalation point.

As we discussed earlier, not a new director body, not a new board, not a supervisory board, but an escalation mechanism where the community structures provide to individuals who become members of the organization who then have the ability to act in a very limited and narrow scope but with substantial power to review a deal with redress questions, refer to an independent judiciary possibly, to approve bylaw changes and to, you know, approve annual budgets or something like that.

You know, sort of a handful of very finite responsibilities that would really be an escalation point to be used on in the event that all of the other community mechanisms had failed. Thanks.

Thomas Rickert: Thanks, Keith. That's very helpful. Any further comments on this?

Mathieu Weill: I'd like to check something with you with your permission.

Thomas Rickert: You don't have to ask me for permission.

Mathieu Weill: What I'm hearing is actually two different avenues of work, one around the mechanisms to empower the community on a limited strictly enumerated last

resort powers that we have identified, and the other one, because we are speaking of different things, on strengthening the review and redress mechanisms independent and which are in the review and redress section here.

I have the feeling that those two avenues could be held in parallel because they have different requirements in terms of independence. They will have very different ways of operating, and therefore the details inside about how it works, how we achieve independence on the one side, how we are truly representative of a community consensus on the other side will be quite different.

And I'd like to check whether this is a perception that's shared that we could actually divide work a little bit on that. And that it could still grasp the various items that we have flagged on this map. Any comment, Malcolm Hutter?

Malcolm Hutter: Thank you yes. I would like to draw out the distinction between collective approaches and individual approaches. When we're talking about approval key decisions, we're clearly talking about the collective approval on behalf of the community as a whole. Review and redress mechanisms, though, are often directed towards individual affected parties, normally directed toward individual affected parties.

And I think there is within the proposals that gave rise to this there were things that actually were thinking not of a collective initiation of such a mechanism but an individual one.

So for example if I'm, I don't know, I'm a fisherman and suddenly ICANN decides that fisherman aren't allowed gTLDs, then I've been impacted by that and would want to have standing to have - to raise a mechanism about why are you setting policy that affects me so adversely in that way. So some

elements of what's referred to under that review and redress there was originally intended to refer to and should continue to work on improvements for individual parties rather than the community as a whole.

As well as that, it has been suggested that collective community entities should be able to initiate those on behalf of the community as a whole or a substantial section of it. And that's worth looking at it too, though I wouldn't want the suggestion of a new uber committee or any such collective mechanism to crowd out improvements that need to be made to benefit individual parties. Thank you.

Thomas Rickert: Thank you, Malcolm Hutto. That was - I think we're quite close. That was definitely the intent. Bear in mind that this review and redress mechanisms can be brought on from the collective upon request by the community between quotes. But that's perfectly right. I have Chris and then (Jordan).

Chris Disspain: Thank you. It's Chris Disspain. So I don't want to get too pedantic but I'm slightly concerned if we end up reading things into the record that we at least make sure we understand what we're saying. What I think I just heard Malcolm Hutto say would mean that there would be a facility to demand a review of policy decisions.

So I get that there would be a review board decisions and so on, but are we actually suggesting that a policy recommendation of the GNSO that is implemented by the board would be subject to a review mechanism? Because that's what I think I just heard Malcolm Hutto say.

Thomas Rickert: Well I don't know whether Malcolm Hutto is saying that.

Chris Disspain: If I could just...

Thomas Rickert: I think it would be premature to conclude on that aspect because it hasn't been discussed. That's I think I have no intention to be closing this discussion one way or another at this stage. But it's raising an important point that we need to make sure that we don't get into never-ending procedures but at the same time I wouldn't prematurely close this discussion. (Jordan) is next and then I have Kavouss Arasteh and Malcolm Hutty.

Jordan Carter: Thank you. Jordan (Unintelligible). Look, super board, uber committee, whatever you want to call it, the thing I'd like to draw a distinction between is and also southeastern Anglo-Saxon countries are about the difference in working in the business and working on the business. ICANN has a range of policymaking functions and there are various accountabilities and rules already set up about them.

What I think that we've been talking about in terms of improving the organization's accountability is giving the community, and I'll come back to that - what that means, the power to approve some key decisions. So for me that's powers like approve or reject the strategic plan, the business plan and budget, changes to the bylaws. And it might also mean giving the community the power to force the reconsideration of a board decision and/or to nullify a board decision, and it might also give them the power to recall one or all the members of the board.

So these are sort of things that are about ICANN, not about what ICANN does, if you like, or they're about the whole organization. And whether you do that through empowering existing SOs, ACs through some process that's written into the bylaws or whether you do it through the creation of a super board or an uber committee populated by whatever means or whether you do it by creating statutory members, which is easily available under California

nonprofit law, and empowering those members to do that small number of things isn't my concern. The point is that we don't lose the fact that what we're saying is that these are the sorts of things that it would do.

In my view you wouldn't use a group like that to start taking over other limbs of this mind map. You wouldn't involve it in general review and redress of what the normal business of ICANN is because there're already mechanisms to do that. You'd adjust, improve, review them, but you wouldn't use this for that. It would almost be focused on the big picture of the organization.

So focused on a relationship with keeping the board accountable for organization wide or strategic or directional or structural things that don't fall into the category of ICANN's day-to-day business. That's where I'm coming from with this. I explained membership as an option because it's one that most people are familiar with and it's one that the law of California easily provides for and it's one that was contemplated when ICANN was set up. So that's just one option, but it isn't the only one. Another one is the super committee, another one is SO/AC consultation and so on.

Thomas Rickert: Thanks, Jordan. Kavouss Arasteh.

Kavouss Arasteh: Yes. Kavouss Arasteh speaking. May I request you kindly to describe these two avenues you mentioned? What are the justification that we need two different avenues unless the scope of work and domain of activities are totally distinct or distinctive from each other? And you said that they should work in parallel. We have to also be conscious that the implementing entities might receive output or outcome for instruction from these two. At some point they might have some overlapping or some conflict and the implementing entity may be facing with the difficulties.

Perhaps I misunderstood your approach but would be very grateful if possibly we could put in a sort of written text that we know what you are talking about and the reason for parallelism and the reason that they should be totally distinctive and there would be no overlap or no conflict. Thank you.

Mathieu Weill: Thank you, Kavouss Arasteh. Just I have no illusion there will some overlap and some interactions between those two. What I'm just trying to achieve is some form of way to split works in two different work bodies, and I - and my suggestion, and I will come back to Malcolm Hutty's idea that on the one side there is the collective action of the community being empowered with very restrictive list of decisions to be made on a last resort basis.

So those other ones that are on top of the screen, approval of key decisions, prevention from acting outside of the mission and the ones we don't see below or removing board members, that kind of stuff. And on the other side we have the review and redress mechanisms which can be triggered by individual parties regarding -- or collective bodies -- regarding specific decisions.

We have to focus on the last resort layer and not try and address everything from travel support decisions to whatever, allocation of budget or procurement decisions, for instance. And we need to make sure this the case.

But it's a wider scope, and the demand for more independence is stronger because we are going to review actual interests of various parties. That is why I felt there was value in trying to organize our work around those two pillars and of course taking into account the interactions they might have and checking that is consistent and everything. And of course it's going to be in written fashion soon enough hopefully and it's not in our practice to make a final decision on the first meeting so we will have time to adjust the wording later on.

Next is Malcolm Hutter.

Malcolm Hutter: Thank you. I just wanted to answer the direct question that Chris posed me as to what I meant and was referring to when it came to individual review. And firstly I'll say that as Mathieu Weill just outlined a distinction here can be drawn that does not depend on giving individual standing to challenge policy. That distinction can be drawn without relying on that.

However since Chris asked me a question directly as to my intention, yes it is my contention that an individual affected party ought to be able to challenge policy on a review basis. That's obviously should not be on any grounds. It should not be on the ground that I don't like it. Community consensus policy should clearly stand against one person saying I don't like it.

But it should be capable of being challenged for example on the grounds that the process wasn't followed before it was adopted. And I would also content that the - an individual affected party should have the ability to challenge it on the basis that it's ultraviolet.

Mathieu Weill: Thank you. I have Steve, Thomas and then (Bruce). And we're going to try to close at that point this line.

Steve DelBianco: Steve DelBianco. Our charter did require us to review possible solutions for each work stream. And that's one of the reasons you had us create inventories of suggestions that came in over the last nine months. Those suggestions weren't framed as high level requirements, they were in most cases they were framed as actual implementable mechanism that involved, in some cases, new structures or entities that would exercise. So that's why so many of the ideas that have been out there are part of the inventory.

But to Avri I would say that no nothing has been agreed to at all at this point. But structures are sometimes appropriate, and when Chris asks would this mechanism be allowed to challenge the board's implementation of policy, the answer is yes. The example I gave in the pitch yesterday was an example where the board implemented a policy decision, a bottom up policy on string similarity.

And yet a whole segment of the community was very troubled by that implementation and yet had no standing to use any of the objection processes provided for in the guidebook. We had no standing to do a reconsideration or an independent review.

So we're not just trying to solve that problem with the structure. It's an example. The answer is yes, Chris, we would want this community uber entity to be able to have standing and a mechanism and a process available to challenge the board's implementation of an earlier derived policy decision.

Thomas Rickert: I guess it's my turn now. I think listening to what many of you said, we need to be careful not to mix up bottom-up consensus-based policy that has been crafted and challenging decisions that are based on implementation of that policy where the implementation might not have been part of the policy itself, all right?

So I think the examples that were given both by Malcolm Hutty as well as Steve were both new gTLD related but Malcolm Hutty was talking about an individual aggrieved party whereas Steve spoke about the community being dissatisfied with the implementation of the policy. And that I think is an important distinction to be drawn, because otherwise we would really



establish a mechanism that could reverse bottom-up consensus policy. And I think that is not the intention. That has been mentioned earlier.

So I think for this mechanism we - it is my sense there seems to be common ground that this should not be invoked by individuals but that the community as such can take action. While there should certainly be mechanisms for individual aggrieved parties but they might not, at least for most of the cases, not be able to invoke this overarching mechanism but rather have their escalation paths ended below that level.

Because you will remember these things that we have accumulated, this list that we've been working on is meant to replace the historic function of the U.S. government. And if you are an aggrieved party you would unlikely call the NTIA, right? So let's to use this analogy every now and then when we talk about replacing these mechanisms and the momentum that might be lost when the U.S. government might disappear. So I think we need to structure our discussion a little bit according to the needs of the individual cases, not corrupting what has been done by the community. I think (Bruce) is next.

Bruce Tonkin: Yes. I just wanted to point out a couple of things for the record. Just in response to Malcolm Hutty, the affected community members can actually use the existing reconsideration process to challenge a new policy approved by the board if it believes the process wasn't followed. So that's an existing accountability mechanism.

And then to respond to Steve, it is true that within the new gTLD dispute resolution process some parts of the community didn't have standing to use particular dispute process, but it's not true that they don't have standing in the reconsideration process. Using your specific example, affected community

members can use the reconsideration process to challenge whether or not the staff have followed the policy in that area.

Steve DelBianco: I thought you explained yesterday...

Mathieu Weill: Steve, just a point of order, let's not get into discussions about the past. That's not getting us anywhere. The question that is important to us now is what are the requirements we need to have. And there's going to be questions about standing ground, there's going to be questions about what kind of decisions can be challenged, and of course we'll need to properly assess what the existing systems can do.

And that I think where your contribution, (Bruce), was very valuable to remind us there is something in place and - but, I mean, the debate that we're having, the community's having about whether a certain decision was right or wrong, I think we should try and keep it for coffee breaks. Chris?

Chris Disspain: Thanks, Mathieu Weill. Just for Steve's benefit, Steve, I'm - I agree with you and I wasn't saying that board's - the board's implementation of policy shouldn't be subject to review, I was making what I thought was a very clear statement that I don't agree with the concept that the results of a policy development process, i.e. the recommendations of a GNSO or ccNSO if implemented by the board could be subject to review. I don't think it's appropriate that an individual should be able to say I don't like the policy of the GNSO, I think it should be reviewed. That's what I was concerned about, not reviewing the board's work. Thanks.

Mathieu Weill: Okay. I think it was worth spending a little more time on that question, independence, and move this a little bit further into how we could organize work. Okay? Do you want to...?

Thomas Rickert: I think Bruce asked for us to bring up the community...

Bruce Tonkin: It might be helpful because we're using community with a capital C in your conversation.

Mathieu Weill: Yes. But I think we've managed without it and I was struggling to exactly find the right one. I wouldn't want to introduce confusion. I think at this point our agenda item is how we structure work any further, right? And so that's why I was pointing to these two avenues.

And remember we have contingency work going on that was from yesterday. We have to deepen our cooperation with CWG. That's work area three, and that's still ongoing. We have the definition and scoping document, which I think hopefully can be circulated, will be circulated very shortly for your review.

And I was reviewing the edits yesterday -- or was this this morning? -- and I think I'm comfortable and I would suggest we do that our next meeting that we use this basis, which is solid enough, to send it for advise to the external advisors, including (Jan), whose contribution will be certainly very valuable, and that will also enable to get input from various participants and members.

I've had a few - there were some inputs yesterday from the European Commission, Denmark, and that I believe I have been capture and will be properly reflected. I think from this contribution from Kavouss Arasteh as well could be further integrated. But I think we are at stage where we can send this document for review by the advisors so we strengthen this. But we have a good basis. We're able to move forward with what we have, and I think it's already good progress.

And then we get into these discussions, the two avenues. So I'm not speaking about working party anywhere anymore. That's just two avenues. You can call them the (unintelligible) and whatever else. And these two avenues we need to make sure we understand what we're expecting from them at this point. You will remember the discussion we had yesterday about legal advice. It is clear that it would be of great help to get clarity - to have clarity at this point about what is feasible and not feasible.

Obviously that's not where we are. And so I think the most urgent task and we could task groups on each of these avenues to scope the questions that could be sent up for legal advice about what we want to achieve, so not speaking about groups, not speaking about committees, not even speaking about process, which is one way to achieve these things, and say okay in the context of California law and everything, how can we achieve something that enables the community to remove board members. How could that be made as legally feasible.

And we need to provide much more details into those questions, much more details. That I think should be the focus on each of these avenues. Working on that, coming back to the group to check whether we all are confident we have captured the variety of questions we have to ask or a dimension has been left out. And I think that's the task we should allocate to volunteers on each of these avenues at this point.

And I'm turning to my fellow co-chairs to see whether that captures our proposal at this stage. That would set an action item list of contingencies, CWG, document and scoping refinement to the advisers, avenue A, avenue B, and both avenues being tasked with scoping detailed questions for legal advice, hopefully on the way.

Is there any comments on this proposed way forward? There is a comment from (Jordan), and then I will have Malcolm Hutty and Thomas. And I see Kavouss Arasteh is disagreeing. No, mistake. And (Hubert). (Jordan)?

Jordan Carter: It's more a question of whether there's a missing step in the - before we get to specifying the questions for legal advice on the two avenues, do we need to be able to clearly articulate exactly what we mean by the avenues or does have to be a bit of time and effort spent on explaining, and then bringing that back to the CWG so that people have a shared and agreed understanding of what we mean by these things.

Even if - not to pre judge any of the design decisions or mechanisms, but just to say if avenue A is about the first limb on the tree which has vanished off the top, what does that mean to the ability to make decisions?

Mathieu Weill: Good point. A short scoping exercise is always useful before getting into the (unintelligible), and obviously there would be probably what's the scope of community empowerment and what's the scope of the review and legal and redress reinforcement, whatever we call it. Thanks, (Jordan), for that very relevant point. (Hubert)?

(Hubert): Thank you, Chair. A general remark. I think this is sounds to be a good way forward for the discussion. I would like to have or rather a question as to whether this is already integrated. We have noticed that there's two avenues on the table, and I just rather than having the answer, which is also important to (unintelligible), there's probably also the question about the surrounding conditions for participating.

What I mean is, for example, if we have a panel that makes a decision, what are the liabilities for the members who make the decisions, what are other questions these members may have and the relationships they may have. This is something I think would be interesting.

And on the other side if we have a member based process, I think for - this is the question but also what would be the surrounding conditions for being a member what is the conditions which is the liabilities of these members. This is something probably we need to discuss at home if I go to capital because this is something I cannot answer by raising my finger here in such a meeting and probably will not be able to do that in Singapore if it was on the table.  
Thank you.

Man: Thank you (Hubert). Thomas wanted to respond.

Thomas Rickert: Yes. Before we move on in the queue, a quick response to that refreshing our memory on an intervention that was made yesterday I think when somebody in this group mentioned that the question of a membership organization was discussed a few years back and that this model was not implemented because the members would be subject to liability.

And I think that in looking at the requirements, you know, I don't want to completely reopen this morning's discussion but it might be one requirement of our group to say that the solutions that they must avoid to the best possible extent that delegates are not subject to liability.

That's where one of the requests let's say by you (Hubert) because I think legal counsel would need to take those parameters into account as well when working on a solution. So if that were or if you knew any limiting factors for

participation of your respective groups in such concept, it would be good to know.

Man: Thanks Thomas. And so I have Kavouss Arasteh and then (Suzanne).

Kavouss Arasteh: Kavouss Arasteh is speaking. Thank you very much. I fully agree with what you have said. The only thing I ask the floor was I want to say that perhaps we need to assign or associate certain degree of priority in relation with interaction with CWG. That was all I want to say. Thank you.

Man: It is a very urgent issue we have to work on definitely. (Suzanne).

(Suzanne): Thank you. I guess I'd just like to follow on a little bit from what (Hubert) flagged as an issue. I know we all would have to consult government. So this is a government speaking with a very bureaucratic perspective here.

We would all - once we have a better sense of what this group is meant to do, what are the responsibilities that are potentially being assigned, then each GAC member is most likely going to have to get legal advice in capital as to the status of their participation and their ability to participate whether it's as a member - you see what I'm saying.

So I think to the extent that obviously this is not necessarily something that goes into the request for outside legal advice for this particular working group but it is something that those of us here can take back to the broader GAC membership as sort of maybe flagging as an issue because I think it would behoove us to alert our colleagues to these kinds of questions that this proposal as it evolves may trigger in national capital. Thank you.

Man: Thanks for flagging it. This is very, very important indeed. And I think it may even extend to other stakeholders including some companies who maybe also have to check the liabilities associated with this idea - these mechanisms whatever they are. And I know a number of companies who are very careful about that.

I have - Kavouss Arasteh, that's an old hand, right?

Kavouss Arasteh: Yes.

Man: Okay. Steve.

Steve DelBianco: Steve DelBianco. Just a quick observation. The way it was in the inventory was expressed was a permanent cross community working group - this entity. This was an echoing of what we do all the time at ICANN. We create cross community working groups who investigate and come up with ideas.

There's one in this room. And we're not worried about liability of the members when we do this. I know we're not members with a capital M but we kind of are members of the cross community working group. We have a charter. We have certain powers that we exercise. Generate recommendations for community public comment.

Another is the Affirmation of Commitments requires periodic reviews. Each of those review teams is just like a cross community working group. One of them convenes every two years to look at accountability and transparency.

So those metaphors and analogies were so easy for a lot of us non-lawyers to just say well of course, we're just talking about the same thing but it's more permanent in status.



It represents the very same entities. It's going to have a charter. And that permanent cross community working group quickly morphed into oh, we can do it easily as members or we can as (Roloff)'s indicated.

Yesterday maybe it's a super committee of some kind. But think of it from that standpoint. We do form cross community working groups and review teams. We don't worry about liability. And yet they are representative of the community and they have powers and then they go away. What we're talking about here is something that has more permanence and it can only exercise the powers that are on the mind map.

Man: I think Steve that's well understood. The game might change once this cross community group can direct the Board to do certain things. And I think at that point in time at least in certain legal regimes that group directing another body would assume responsibility for that.

But that's to be checked. You know, I'm not preempting the outcome of the legal assessment. But I think if there were limitations that we know of that should go into the scoping document that's going to be sent to the lawyers. But maybe it's an issue - you're shaking your head. Maybe it's not an issue.

Steve DelBianco: If I could just come back on that. We're going to come up with recommendations. The community will look at the recommendations. The Board will be among those who will consider them and so will NTIA.

The most this group - this group is not going to compel the Board of ICANN to do anything. We'll have recommendations and we'll hope that the leverage effect of the IANA transition - this group isn't going to dictate anything. So.

Man: That's - I mean that's definitely what we need to check with legal. But that's - we'll see. And I'm hopeful that that's the answer we might get. That's - want to add something?

Thomas Rickert: Yes. And I think that we should try to resolve that uncertainty or remove that uncertainty for this group to make its recommendations even if they are binding. I think that's not the issue.

What we're concerned about, and I think that (Hubert)'s question as well as (Suzanne)'s remark went that direction, once we have the mechanism of whatever shape or form in place, which will have the powers to overturn Board decisions, then there might be a legal situation where this group assumes liability of some sort, which will have to be assessed.

But if we - if let's say our group chose by consensus that one requirement for the implementation would be that there mustn't be any liability risk and I think we should have that in the scoping document to go to the lawyer.

Man: Okay. Alan, last word and then we'll move on.

Alan Greenberg: I would just like to ask for clarity when people use the expression this group that you're clear whether we're talking about this group or this group we're talking about there or just clarity.

Man: (Unintelligible).

Woman: (Unintelligible).

Man: The CCWG accountability. So I think we're converging on organizing work onto those two avenues. Next question is we would need (rapitor) and I was

shortly talking with my fellow co-Chairs that we would - it would be great to build on the dynamics that we have right now in this meeting to start at least identifying who would take this duty.

And we as co-Chairs I think I speak for my colleagues would welcome candidates that would also take the lead after and bring new faces also to the (rapitor) so we all share this work (flow) as well as providing as much increasing (unintelligible) as possible.

And so I wonder if there would be candidates in the room for taking the (rapitor) role on the community empowerment avenue. And a candidate for the (rapitor) role on the review and redress avenue.

(Akee) review and redress, right? Got it right. Any other candidates? Who wants to empower the community? I'm going to be sales pitching this stuff now. Steve.

Steve DelBianco: I'll volunteer to serve on that team but I don't want to also be (rapitor) having just been (rapitor) of Work Area 2. But I'm happy to work on it.

Man: Thanks so much Steve. Okay. (Jordan)'s happy to help on empowerment of the community.

Man: (Walt) did you raise your hand to volunteer or was it just - okay.

Man: Okay. So we'll look back into the (pitches). Anyone on the - yes. The Adobe Connect - the remote participants are very welcome to be candidates. Can we raise hands artificially in the room - in the Adobe Connect room?

Man: Volunteers to do what?

Man: To be (rapitor) of the avenue of work on the community empowerment. So we will have a coffee break later on. And we'll have to twist some arms, which must be achievable. But I - and just to be clear, we will circle on the mailing list a call for volunteers on both avenues obviously so that it's perfectly transparent and open and inclusive as we usually do. Before the coffee break, I don't remember what time is the...

Man: (Unintelligible).

Man: ...in 20 minutes. We would like to address one item of next steps, which is preparing for the Singapore meeting. I - we have the pleasure to announce that the schedule of the meeting - the global schedule of the meeting has been published by ICANN upon our request. It was just a last resort request.

Man: (Unintelligible).

Man: Yes. There are - you're right. Okay. So our group request was to have two, three hour sessions as a working group, this working group open to the community obviously; one engagement session and a Board - a moment to discuss with the Board.

So currently in the planning you will see a session on the Monday afternoon. Another - an engagement session on the Wednesday morning and another session on the Thursday morning starting at 7:00 am.

And I want to - I want to express my gratefulness for this task that's been coordinating this because obviously the planning for this specific meeting -- thank you very much -- for the specific meeting must have been quite a nightmare with all the high level interest sessions that it promises to be.

We do not yet have a timeslot for exchanging with the Board. And I'd really want to stress how important I think it is considering our avenue for community empowerment to have an extensive discussion with the Board in order to ensure there is no misunderstanding about our intents and - or about the way of course the Board is going to welcome and analyze and treat our proposal.

So we do not yet have an answer on that request. And (Bruce), would you think it would be useful in any way that we formally request that to Steve Crocker or to - what's the appropriate process to do that?

Bruce Tonkin: Oh, you just ask me?

Man: I did.

Bruce Tonkin: Yes. So just sort of the real issue is scheduling actually, not the fact of meeting. So yes, it's things just work out the time that works for both sides.

Man: So can I consider your response to be we (assume) doing our best and we'll provide some feedback shortly? Is that what I understand? I mean you're saying it's a scheduling issue?

Bruce Tonkin: This is for the - you're talking about a meeting with the Board?

Man: Yes.

Bruce Tonkin: Yes.

Man: That's right.

Bruce Tonkin: So now that you've asked I'll just (work) the staff just (strong). I'm sure we'll make it happen. Might be 6:00 in the morning, wherever we can get a room basically.

Man: Okay. Thanks. So that's what we're contemplating now for Singapore and it's great to have more clarity about when it's going to fit. So we all - obviously we'll be filling the work sessions.

There is also a very significant item of work for especially the members in this room to engage with their respective SO or AC and update about what we've been doing, get feedback about directions.

So I would strong - I will strongly encourage all members in this room to proactively engage with their counsels or equivalent and try and draft the right spot in their - in the time - in the agenda to ensure that we can after Singapore have a gathering of feedbacks whether on contingencies, on the relationship with the CWG on our various avenues and how they're shaping up so that we can adjust if needed.

We cannot afford at this point and we're not ready for any form of public comment. But the more we engage at this point with our respective communities and debrief, the better chances we have to actually be able to deliver on time our expected outcome.

In terms of agenda planning, I think that should be enough. But for Singapore the items we are considering and will be discussing in the next two weeks with you about what are the messages we want the - we will be delivering to the community and the items we'll want to engage about are the ones we've been covering and will still be working on.

Probably there's value in sharing the discussions at this stage on definitions if there's feedback. But probably it's not the main focus. The main focus should be in our opinion relationship with CWG and ensuring that everyone understands the difference scopes and the synchronizing timelines I think is going to be key - a key message.

A second one is getting feedback on the contingencies. Is there anything left out from the exercise? And of course trying to (pitch) test these avenues we've been discussing about, these requirements to check whether the community would feel comfortable if we managed to put that in place or committed to before the transition. Would that be enough? Is there something missing? Is that too much?

And that's really what we'll - so we'll need to elaborate on that some expansive messages that we can share each of us and then gather the feedback together after that. (Leon) or Thomas, would you like to add something on the road to Singapore? No? You're getting tired, right?

Man: (Unintelligible).

Man: Yes. (Leon), my suggestion would be to break for coffee now...

(Leon): Yes.

Man: ...and reconvene at 3:30 in order to discuss the (unintelligible) section where we could probably try and highlight the various items we would put into the Chair statement after this meeting. But that - first I would have a question by Tijani.

Tijani Ben Jemaa: Thank you much. Tijani speaking. I see that the three sessions in Singapore are open. One is called engagement and the others are working sessions. So I am asking for one question. Are those sessions intended to be for the public to attend and to perhaps ask questions, participate in the work, or are there one session for them and the two other sessions for the working group to advance to work?

Man: Excellent question Tijani. I think I suppose I never clarified this. So the intent - at this point the intent is to have an engagement session based on this is where we are; please provide us feedback. And the two working sessions are actual working sessions that the community can observe...

Man: (Unintelligible).

Man: ...thank you, but will be working. We might actually make progress. That would be great. But we'll be - we'll have an agenda and we'll make sure we try and keep the ball moving during those sessions. So that's the intent. Did that clarify your question? Right. Thanks for raising it. (Jordan), you're standing between us and coffee now.

(Jordan): Just a quick suggestion that we do like a one page where we're up to questions we want to hear from you about like notice of something and circulate around the ICANN community a week before the meeting to get people thinking and encourage useful feedback.

Man: You mean a short statement...

(Jordan): Statement, summary, flyer, something, yes.



Man: Yes. So we'll have - we'll be discussing after coffee a statement. And we can even elaborate on that later on within a dated one pager about the progress of the working group so far, the ideas of the working group so far to distribute during the opening ceremony and everything. Or it can be, you know, in terms of communications as well. Alan, you are now standing between us and coffee.

Alan Greenberg: That's fine. I'll be very slow. No. The working sessions in Singapore, this is a very large group and has the potential at an opening meeting of having a large number of people. Are we actually going to have a room that can handle that?

Man: I - from what I see on the planning, we're in the same room as the opening ceremony, which I take as rather good sign. And we are breaking for coffee and reconvene 3:30.

END