ICANN

Moderator: Gisella Gruber-White
February 17, 2015
12:00 am CT

Coordinator: Recordings have started. Please go ahead.

Leon Sanchez: Thank you very much. Welcome everyone to our meeting number 13 of the CCWG on enhancing ICANN's accountability on February the 17th at 6:00 UTC.

So as usual our roll call will be left or stated as for the people present on the Adobe Connect room. Does anyone else that is present in our call and is not logged to the Adobe Connect, please kindly state your name now so we can add you to the roll call.

Cheryl Langdon-Orr: Cheryl Langdon-Orr, not in the Adobe Connect room. I'm good, but I can't actually drive and Adobe Connect at the same time.

Leon Sanchez: Thank you very much Cheryl. Anyone else that is not on the Adobe Connect with us on the audio bridge?

Man: Somebody needs to mute. There's an echo.

Leon Sanchez: There's an echo indeed. All right, so if there is no one else on the audio bridge that is not present on the Adobe Connect room, I will kindly remind you to update your SOI. We've been receiving many SOIs on the e-mail list for which we are thankful. And if anybody else is needing the update of their SOIs of course please feel free to contact staff in order to continue updating your SOIs.

And with no further delay, I would like to turn it to Thomas for our agenda point number two. So Thomas please, you have the floor.

Thomas Rickert: Thank you very much Leon and hello everybody. This is a very early time of the day for me, so it's a little bit difficult for me to speak. I know that others in other time zones have other challenges to meet.

But I think the good news after having returned from Singapore is that I'm still in very good spirits about the outcome of our Singapore meeting. We have heard a lot of very positive feedback in the public forum. Steve Crocker has mentioned that he's heartened by the fact that we're making good progress.

So there's been a lot of good feedback from our side, basically, very little criticisms. So I hope that this group can actually keep up the momentum. We are working against a very tight and aggressive deadline. We only have a couple of weeks - I should say five weeks - before we plan to have our next face-to-face meeting.

So I think what's key now is that we adequately organize our work to be able to work preferably in parallel and not sequentially so that we can place the burden, share the burden on many shoulders. You will remember that we were

struggling a bit with the demarcation between what we called WP1 and WP2 at the first working session we had in Singapore.

The co-chairs then stepped back and thought of ways to facilitate the demarcation and also come up with a proposal how we can best structure our work to be able to deliver without creating any overlap. And that resulted in the cookbook analogy with the cartoons that you will remember.

So basically we have proposed to the group that we would use four ingredients out of which accountability mechanisms and escalation procedures could be created.

You will remember that these were principles that empowered communities, the board, and some sort of independent abuse mechanism and that we would compose accountability mechanisms out of these which would fall into two groups - i.e. triggered and non-triggered accountability mechanisms -- and that for each of those accountability mechanisms we would work on a standard template that we'll get to in a minute.

While this sounds all nice and easy to write up a cookbook that would encompass all the accountability mechanisms but actually the devil is on the details. And we have corresponded with our able (repertoires) Jordan and Becky on how we could best slice the work so that we can come up with results timely. And so I would like to turn it over to either Jordan or Becky or both to share their views on that with us.

Jordan Carter: Well I don't know if Becky is here, so I think that leaves me. This is Jordan here. Can everyone hear me?

Thomas Rickert: We can hear you all right.

Jordan Carter: Okay thanks. Look (Thomas) the logic that you set out in terms of - the word sort of escapes me - the two categories that you put out of triggered versus non-triggered powers or mechanisms.

And from our conversation in Singapore Becky and I think that we should basically try to make that work, that there is a kind of conceptual distinction between things that happen as part of normal ICANN processes like being able to approve or disapprove a budget -- or things along that nature on the one hand as a kind of non-triggered mechanism -- and things that get triggered by the community or some part of the community because of an action of ICANN or because of a lack of an action by ICANN, the things like removing board members of the board or instigating an independent appeals panel process.

So we think that the starting point would be to work through those divisions and if it doesn't work out, if it doesn't make sense to people, then we can readjust later. But we think it's probably going to be workable at this point.

And the pledge that we've made it that we'll keep in very regular contact, more than weekly. Probably we'll try to attend or at least pay attention to the meetings that each of the working parties has. And if there's overlap we'll make sure we shuffle things back into only one of our working parties working on them. And we'll try and pursue the same deadlines.

And by the time we come to our face-to-face meeting, the idea would be that there's a full menu of these powers and mechanisms as per the template that's been circulated and is for discussion in the next item. So that's all that I have. I don't know whether Becky is going to be here or not.

And if you want me to say any more about any aspect or if there are any questions I'd be happy to deal with that.

Thomas Rickert: Thanks Jordan. I guess the question that I would have is whether you are okay with the number of volunteers that have joined your group or shall we ask for more volunteers to join to share the burden?

Jordan Carter: Thank you for that question Thomas. The last time I looked at the list on the wiki there were about, there were around about 40 people on it or so. And I'm just trying - the reason I sound like I'm speaking very slowly - just trying to find the current list again. And it looks still like there are a good 30 to 40 people on it.

I don't think we've got any problem with the number of volunteers on these groups. And the distinction between triggered mechanisms, which would be Becky's working party -- Working Party 2 -- and non-triggered ones or planned ones - which would be Working Party 1 - is largely consistent with the way that the topics had already been distributed.

So we think it's likely that most participants will still feel like they're already in the right place and that there are plenty of volunteers in both working parties. But I should say again I haven't specifically discussed that sufficiency of resource issue with Becky.

Thomas Rickert: Okay, thanks. There has been a question in the chat regarding definitions of members, participants, observers, and now volunteers. The distinction between members and participants and observers relates to the joining of the CCWG as such, so that has nothing to do with volunteers now joining these subgroups.

So both members as well as participants are welcome to join the subgroups - WP1, WP2 - to work with them. The spaces of observers remains unaltered, so these are more than - they are more than welcome to join and listen in, but they can't actively participate.

Jordan I guess my final question to you then would be to share with the group the time and date for the planned call, which if memory doesn't fail me is planned to take place this Thursday.

Also as a reminder for the whole group, you will remember that we also use the analogy of developing this in an agile mode. So we will have - it would be the best use of our resources if we had smaller teams working on individual items in parallel and then actually check the interim work results on a regular basis so that we know that we are fully aligned on the outcome and that we can adjust if need be on a very (unintelligible) basis.

So with that, I think we can move to the accountability mechanism template. Those that have attended the Singapore session on Thursday either in Singapore or remotely will remember that we presented to you a template that can be used to work through to sort of set out the basic parameters for accountability mechanisms.

So this is basically the form that will be used both by those working in WP1 as well as WP2 to further define the accountability mechanisms that need to be defined that can be existing accountability mechanisms that have to be altered or the accountability mechanisms that we will recommend to set up.

Since you've seen some of these questions on a slide, during the Singapore session we have refined this a little bit more. And the goal of today's call or one of the goals of today's call is to get the feedback on the questions or the

categories of questions from this group so that we have an agreed version of the template that we will use as the basis for further work.

Now this is not - some might say okay we're talking process again. I think this is not process but this is substance. In fact this is the (straw man) that we use to have a standardized approach to working on accountability mechanisms.

So this form - and actually you have scroll control so you can go through the document by yourself - is grouped into various categories. So we have the description of accountability mechanisms first. So you would adjust in the name of the accountability mechanism that you're working on, the quick description.

You would categorize it because as you will remember we have checks and balances. We have review and address so you would identify into which of these buckets the various accountability mechanism would fall. You would also specify whether it's triggered or non-triggered.

You would speak to the potential outcomes of the accountability mechanism. Is the outcome to approve something? Are you asking for the board let's say to redo a decision or to amend a decision? So what is the ultimate goal if you use the accountability mechanism and question?

Then there is a second area relating to standing. So who can actually invoke that procedure? Who has standing? For what can you get standing? We discussed the question of, you know, board - sorry, staff decisions at a quite low level, and that these should not be challenged with a big stick accountability mechanism let's say to whom you support.

So that's something that needs to be given some thought. Then we would have to work on the standard of review. So we would need to talk about process, principles, other standards, what purpose of accountability the mechanisms contributes to.

You will remember that we added a big why to our work process or to our thinking so that we are in a constant feedback route so to speak to ensure that we are always cognizant of the purpose that the accountability mechanism serves in the overall accountability architecture.

Then we would need to talk about the composition of a decision-making body. You will remember that we were quite clear in Frankfurt that there shouldn't be a one-size-fits-all decision-making body because we have different areas of expertise that are required for different areas of decision.

So we would need to speak to the question of skill set for the decision makers. Do you want the decision makers to come from different geographic regions or from different stakeholder groups? What interest should be reflected there? There should be general balance of some sort that would also need to go in here.

And if you add the number of persons or the number of representatives or delegates per organization that can send somebody to this decision-making body, then, you know, you can form a decision-making body. You would also need to speak to the question of whether independent of the decision makers with the required - we could think of certain decisions where it is a good thing to have let's say the decision makers be delegates from - accounted from certain SOs and ACs in the ICANN ecosystem.

Let's say when it comes to budget approval it would be good to have people from the community and not necessarily people from completely outside. In that regard you could even have binding votes by the delegates based on instructions by their respective organizations.

So while in other cases it may be desirable that we have complete independence and that there are no interests reflected in the decision-making body.

And also how should this body make decisions? What would be a voting threshold? Would you need 100% of the vote, 75%, 60/40 -- whatever the voting mechanism might be.

Then we can move on to the last item in this category, which is recall. That's basically to ensure that the decision makers themselves are accountable so that we need to think of mechanisms to recall decision makers in case they don't work adequately.

Then it comes to decision making. I think I spoke to that already, just double checking. Yes.

And accessibility, that would be cost. That would be time so that people can actually rely on the process not to be delayed for many, many years so that it can get access to affordable accountability mechanisms that they can get results in a foreseeable time span and also that we need to think about inclusiveness in terms of languages, so what languages should be available to use accountability mechanisms.

And we also need to speak to the question of implementation measures. So for example if we spoke about the ICANN bylaws or ICANN policies as one

vehicle for accountability mechanisms, then there's certain time spans that need to be factored into the process.

So we would need to specify what times that they needed to drop new language for the bylaws and then to ultimately get that decided upon by the ICANN board and then actually entered into the public register in Germany would be the commercial register.

But I'm sure that there is an equivalent in the U.S. where we would need to have that entered into, and that would also take time. And that point I think is particularly crucial, always been on our radar in terms of project management to factor in implementation times.

Now that we're in a phase of actually operationalizing or designing accountability mechanisms, so this is the time to come up with complete time spans for that. And for those that have attended the Singapore sessions during the GAC session with CWG, Larry Strickling made it very clear that he wants to have information on implementation.

So we shouldn't underestimate that. That definitely needs to be part of the package. So with that, I'd like to open it up for questions from the group. As said, ideally we would use this template at least as a talking point to base our work on.

Jordan rightly pointed out that we might need to tweak this a little bit based on the work in progress, but nothing's cast in stone as of yet, so we are flexible as we move along. But we want to ensure that we have agreement on what we have now. I see two hands raised in the chat. And the first to speak is Steve.

Steve DelBianco: Steve DelBianco with the CSG. I have a comment and a question on this cookbook template. The last item is implementation, and my comment is that ought to place we indicate which aspects of implementation should be done prior to the IANA transition versus those that can wait until after the transition.

We've often described this as Work Stream 1and Work Stream 2, and you could use those terms at the risk of confusing people. But this would be a good place to address how much of the implementation - if any - has to be finished before IANA transition. Any feedback on that? And then I'll move to my question.

Thomas Rickert: Yes I guess Steve my immediate answer to that would be that what you're asking for is a value judgment as to whether it should go into Work Stream 1 or Work Stream 2.

I think I would leave that value judgment to a later stage because we may as well be in a position where we see okay this is a Work Stream 1 related item, but the implementation time is going to be so long that we can't do anything more than just committing ICANN to implementing it rather than having it fully implemented.

Steve DelBianco: And it might well be that the part of implementation that is Work Stream 1 could be the part that it gives us the power to force acceptance of a bylaws change if it's supported from a bottom-up consensus.

So let me move to the question. If you scroll up a little bit in the documents at the section on the decision-making composition, it says composition. You talk there about the composition of the decision-making body. And I wanted to

point out that a number of our mechanisms can be invoked by the community itself.

So in that case, the community makes a decision to trigger a referral to an independent review panel. In that instance, it's the community that we have to talk about its composition. Is it going to be a cross-community working group, members and delegates or some sort of a structure?

And then separately, the independent review panel to whom the decision is referred has issues of composition. So when I saw your block of composition I'm wondering whether you're thinking of the body that we refer the decision to or the body that makes the initial decision.

And there are instances where a decision like whether to approve a bylaws change or an annual budget, they don't go to an independent review panel. So in those instances, the composition is the community, however we constitute the community. Go ahead.

Thomas Rickert: Yes I guess for let's say budget approval you would need to think about how the community makes itself heard. I think, you know, that could be by means of a standing or ad hoc cross-community working group. So you would use the template in that sense.

When it comes to areas where the independent review mechanism is invoked, then I would place that in the standing section where you would need to define what group of SO/AC representatives or community representatives can actually have standing.

So then it would not be the decision-making body for independent appeals or review mechanisms. You would need to think about the decision-making body

and its composition in that (unintelligible) section but the composition and how the community actually gets to get this mechanism triggered would go into the standing section.

This is me thinking out loud here. You're certainly right that in these two phase processes, one might be able to use another type of template, but I think that the way I describe it would confuse the template and stick to it. Does that answer the question Steve?

Steve DelBianco: It does Thomas, but I am endeavoring to try to keep things simple, especially after what we saw in Singapore in regards to CWG. And there are a number of triggered mechanisms like bylaws and budgets where we thought that to make things simple, bylaws and budgets affect the entire community.

So whatever we come up with as the quote/unquote "community" would be deemed to be composed properly because we work awfully hard at defining who our community is. And we needn't then address any of these questions in the cookbook about the community or skill sets or anything else.

Community has a bylaws change that the community - by whatever super-majority or majority (special) we determined - then that community is deemed to have competence in understanding whether a bylaws change is appropriate or that a budget is appropriate.

Thomas Rickert: By all means. I want to put that into the standing section for the very reason of keeping things standardized and simple. But nonetheless the answer to the standing questions can be a little bit more wordy than in other areas.

So you can specify the group of community representatives and how it is composed to have standing to approve a budget or request by-law changes in that regard.

I think at the moment we should try to stick to a standardized form to work on these questions, but nonetheless the question of the community representation, how it is composed, who delegates who to this committee is an important one that at least in our report I guess will need a lot of explanation. So we - I guess what we...

Steve DelBianco: (Unintelligible) me too.

Thomas Rickert: Excuse me? Say that again. We were cross-talking.

Steve DelBianco: Yes I'm sorry. I wanted to wrap up and move on, but I see in the chat that Jordan Carter suggested he has an answer for the questions I'm raising and Jordan runs this work party, so I'm happy to defer to Jordan on that. And I realize that some of these questions can't be answered right now.

Thomas Rickert: Thanks Steve. We will get to Jordan; he's in the queue already, but let's first go to James.

James Bladel: Thanks (Thomas). (James) speaking. Can you hear me?

Thomas Rickert: We can hear you all right.

James Bladel: Thank you, and thanks for your overview, and thanks Jordan for putting this together. So I have a growing sort of unease with one part of this that I wanted to share, and I think we can fix it fairly simply.

But just generally while I'm in favor of a variety of robust accountability mechanisms, as a business interest, I'm concerned that there are - that we may be inadvertently creating an environment of uncertainty for business-related decisions.

So for example, I think of the specific TLD were determined to be delegated and then there would be accountability mechanism one would be invoked to undelegated a TLD and then another accountability mechanism went to appeal the reversal, etcetera, and it could drag things out for months or years.

So what I'd like to see at some point here in the template - and perhaps it belongs in the first box under Standing - is some explicit review of the limitations or exclusivity of accountability mechanisms so that it would not be used to perpetually revisit or view existing decisions.

So, you know, I don't know if that's something that we can put into this first box here of where it says type of decision being challenged, whether or not other accountability mechanisms have already run their course, whether there's some sort of statute of limitations for employing an accountability mechanism or whether a certain mechanism would be off limits to address certain types of decisions that were already impacting products or businesses that were already launched.

So I don't know if this is making sense, but I really feel like there's a certain point we need to foster an environment where there's some predictability and certainty so that, you know, businesses can go ahead and proceed with a product launch or TLD launch or something of that nature without concern that there would be years and years of appeals revisiting those decisions.

Thomas Rickert: Thanks (James). Actually this is a point that we tried to reflect obviously too superficially in the Conditions of Standing section, which conditions of standing - i.e., last resort, type of decision being challenged. So that is the section where these categories of limitations should be into. I think the (unintelligible).

James Bladel: And (Thomas) that's exactly where I was thinking this needs to be as well, so I think we're thinking on the same page here. That's exactly the box I was looking at.

Thomas Rickert: So I - what I would suggest (James) - I guess this - it might ease the pain of others with this form is that we work with the rapporteurs and ensure that we have one test case as we did with the stress tests to see how this form works, evaluate that with the whole group and amend as needed.

And we will pay special attention to the point that you raised, i.e., to ensure that we have the correct remit and the limitations of the accountability mechanism reflected in the conditions of standing. Next is Alan.

Alan Greenberg: Thank you very much. My question is I - is quite close to Steve's but perhaps a slightly different flavor. As - (Thomas) as you were going over the list of possible compositions I started fearing that, you know, we might end up with a different group or a different composition for each different accountability mechanism.

And I think we really want to try to keep this as simple as possible. External appeal panels may be composed differently based on the subject matter. But I would hope that the internal decisions all come down to one thing, whether it's members or representatives or whatever of the community and not try to,

you know, try to tailor everything to each particular mechanism to the state possible.

That being said I would really like - and maybe I'm jumping ahead of the game right now but I would really like to see to the extent possible that whatever the community mechanism/community composition is that it not be a body that's a quasi-board but actually reverts to the communities themselves to make the decisions.

Otherwise we, you know, we're going to have to end up with an accountability mechanism for - to check the accountability of this new community group and, you know, that's a never ending tale.

And my last comment is you used the term maybe this group is a CCW - a standing CCWG. I would really caution against using that expression. The CCWG has a very - has a meaning within ICANN, you know, which includes among other things typically open composition and open participation.

And I think we want to be careful and I would suggest we adopt some different word so that it doesn't sound like it's a CCWG type mechanism. Thank you.

Thomas Rickert: Thanks Alan. And very brief responses to your last point. I was just picking up one of the ideas that have been voiced to implement accountability mechanisms.

And we have delegates, membership organization and then also mentioning of a standing or ad hoc Cross-Community Working Group. So I was just using what the community or this group had previously suggested, but your point is well taken that this is a different term in the ICANN ecosystem.

And with respect to the first point we - we've heard that question before that the solution needs to be simple and that we were - that we should avoid fragmentation of different community groups for different types of questions and we surely agree with that.

However we are dependent and we as Co-Chairs have discussed this quite a bit that we need to go through the exercise of looking at the individual requirements first to then make sure that we have looked at it from all angles, right.

So ideally we would be able to come up with a one size fits all community representation of whatever shape or form, but we as a group need to write a report.

We need to explain to the outside world that we have given due consideration to the question of composition to respond to the various community empowerments that we have listed.

So I think we need to do the exercise of specifying the need for the various community asks and basically it's that - what we're working on. And then hopefully we're going to be able to marry that all into one consistent body, maybe with different voting thresholds for different types of activities.

But the idea is to boil that down to one solution as we move on. Jordan is next.

Jordan Carter: Thank you (Thomas). And I think we could all agree that if we end up with different bodies with different rules and different compositions and using

different standards for each of the three or ten or whatever community powers that we decide or needed, we're going to be creating an absolute nightmare.

We'll be creating a mess, a system that the community can't understand that won't hold ICANN accountable so it will make everything worse. So I think that was the logic with respect about that previous division of the working parties that you should separate the power you are trying to give to the community from the mechanisms that would implement them.

But there's also, you know, there are numerous ways that you can slice and dice these issues. So I think we should proceed as we are and I think what will happen is that the first part of the templates in terms of the description of what the power is is going to be the most important because we need to very carefully specify that.

And I hope that we can get to a single institutional mechanism that is embodying the community as Steve said. And then I hope that other things that we do will be amending or using existing bodies or processes with a common set of standards or principles on which this is all based a la Becky's first draft.

So I guess I would just caution us and hopefully we all agree that where we're going to get to is simple, but the process of getting to it is going to be and look messy and there's no way to avoid that if we're going to be able to show the community that we've done an appropriate level of due diligence on all of these questions. That's all.

Thomas Rickert: Thanks Jordan. And David and then Eberhard and I'd like to close the two afterwards so that we can move to the next agenda item. (David).

David McAuley: Thank you Thomas. Can you hear me?

Thomas Rickert: Yes we can hear you all right.

David McAuley: Thank you very much. I would like to since working on this template to mention up in description the possible outcomes, and my comments are along the lines of James and some of what Jordan was saying and it has to do with limitations.

And I think that ironically to keep the process simple this document, this mechanism may actually have to become a bit more verbose. What I'm getting at here is we should specify probably in this section or somewhere else potential remedies and limitations on remedies.

And in that respect let me just mention I'm happy that Bruce is on the line because I'd like to mention a conversation I had with Bruce in Singapore on the Sunday just after the Sunday meeting.

Bruce said that the Board had discussed the - these mechanisms and had some receptivity to spilling the Board and pulling the AoC into the bylaws with certain, you know, but the devil was in the details.

And afterwards I asked Bruce if the Board had also discussed the ability for panels to address questions of substance and whether decisions could be binding. And he said and Bruce can correct me if I've got any of this wrong that they had with exceptions and they were open to it with exceptions. And I asked for some examples and he gave me two.

And he said, "If a panel issued a decision that said ICANN had to take certain action that would violate applicable law, they simply wouldn't do it." That seemed reasonable. And secondly he said, "If the panel issued a $1 billion

award they wouldn't do it." That seemed reasonable. But it opens the question to remedies and I - I'm certainly happy to work on this.

I'm on the WP2 but I think we should get more detailed about remedies and limitations on remedies, and I think the detail will help us make the whole process simple in the end. Thank you.

Thomas Rickert: Thanks (David) and I guess that point should go into the possible outcomes, which are approval we do and matters of decisions. And I guess we will take your point to heart and ensure that for each of the mechanisms that we discuss we have a very clear vision on what the remedies should be. Next is Eberhard.

Eberhard Lisse: Good morning. Can you hear me?

Thomas Rickert: Yes we can.

Eberhard Lisse: Okay thanks. As I have said already in Singapore and I find this is all getting too complicated for me, we're - I think we're going about this the wrong way.

If something is wrong with the ICANN Board we should fix the ICANN Board. And creating additional layers will only create additional layers of bureaucracy and additional layers of accountability issues and then we have got more layers and more layers.

So that part of my concern seems to have been heard but I think we are - I'm looking at this in a too small way. We should go for the larger picture and go for a bigger reform of ICANN and the ICANN Board.

Thomas Rickert: Thanks Eberhard. And as you will remember the - this group has not been chartered to review the ICANN Board but to look at things from a more holistic point of view.

I know that you made this point in Singapore and in other for a. It is well noted and I think it's a reminder for us that we need to pay special attention not to create additional complexities unless they are inevitably needed.

I think what we should be doing now is hear oppositions as we just heard from Abd and, you know, otherwise I would take your non-objection as your consent to move on working on the basis of this template.

We would also make sure that we have one test case ready as soon as we can so that we can evaluate the usefulness of this template and adjust if need be. And with that I would say we move to the next point is - which is the expected results.

And as you will remember I said at the outset that we have something in the area of five weeks before we plan to reconvene in a face-to-face meeting. So we should make sure that we work within this timeframe to get all the bits written up and to even review and hopefully approve on some of these - some results before we get there.

So I guess that when it comes to the expected outcomes I would like to turn to Jordan again. Jordan I know that Becky is not on the call so I don't want to put you on the spot but have you given feasibility some thought?

Jordan Carter: Yes I have and I think that we've got about five weeks, right, and we'll want to get materials to ourselves in time to be able to read and think about them before that, so we need to close off the documents four weeks away.

In terms of my working party I think that what we've got to do is get the five or six mechanisms, the five or six powers that we're after down pat and then to work at - the templates through.

And to answer Avri's question from before my assumption and if I'm wrong someone should tell me is that it's down to each working party to structure its work as it sees fit to fill those out.

And in the ideal world what we'll see at the face-to-face meeting is a series of these templates/documents filled out, one for each name of mechanism. And there'll be a set from my working party that are about non-triggers or planned powers and there'll be a set from Becky's working party that are about the triggered ones.

And as we review those we should realize that there'll be some similarities in the things like the composition of the deciding bodies and so on, and we'll be able to hopefully refer to a much smaller list of bodies like that.

But in terms of developing the content of those templates I'm pretty confident that we'll be able to do that and get to either a good level of consensus or good clarity about the divisions in the working party in time for that meeting in Frankfurt.

And the reason I'm confident about that is that I know that if I was just going to write these myself I'd be able to in half a day or so to get some drafts ready for people to discuss.

And if I can do that then a working party of more than me can do it even better, so I think we're going to be fine.

((Crosstalk))

Jordan Carter: And I was just, you know, Avri asking - the rest will still get involved until review. Obviously everyone is able to participate in those working parties. I'm sure that the documents will be made available transparently in ways that encourage comments. So from my point of view we will be open as we can.

Thomas Rickert: Well that's very good news Jordan. Thank you so much for that. And with that I think we can close this agenda item and I'd like to turn it over to Mathieu.

Mathieu Weill: Thank you (Thomas). Maybe just a - I heard the last question for Jordan that making sure - I think it'd be great if we can have regular sneaks into the progress you're making in the working parties within the whole group so that we get familiar with these templates being filled on a regular basis, and have some discussions so that there's no surprise effect when you - when we come into the face-to-face.

                  But rather than in the face-to-face we can focus on the outstanding issues such as the one we discussed, the simplicity of the community mechanisms, which should certainly be in line with each other or any difficult topic that would come up where we wouldn't get consensus right away.

                  So my - I would hope that we can on each of our calls for instance have, I don't know, one - just like we're reviewing the stress tests, review one of the interim work product from the working parties within this template, and if that's possible then it's certainly going to help us - educate us as well as help us identify the key issues we have to solve. Jordan do you think that's feasible?

Jordan Carter: I think not only is it feasible but it's absolutely essential. And my - if - I don't know if we're planning weekly meetings of this group or not, but my plan is to keep WP1 meeting after the meetings with this group to get some work done on agreed deadlines, and then to render that all available through documents that accept comments and so on, and then to circulate a brief note to the CCWG list just identifying what's been done and including links so that people can easily follow at each point.

And I think Mathieu's suggestion about working through some of the substance on these calls is also good, particularly if we start with ones that are likely to be more tricky or controversial to give people enough time to think about those ones.

Mathieu Weill: Thanks Jordan. And that's cool. That for me is - it's a closing of this item regarding Work Party 1 and 2. Many thanks to Jordan, Becky and all the volunteers who are going to work on this.

And now we're moving to the stress tests group. I know Cheryl is driving and Steve is here. So you will remember that on Thursday in Singapore we started reviewing - we did three stress tests to ensure we had a form of agreement on the assessments that were proposed by the working party.

And so you have the document which is now on screen which you can follow. So the first stage would be -- and I will hand over to Steve or Cheryl -- to ensure that we are still in agreement on the interim assessments we've made of whether the stress tests were adequately covered by existing accountability measures or by our so far not completely defined proposed accountability measures.

And then I will suggest we go through the remaining two or three stress tests to do the same exercise as well. Steve or Cheryl would you take us through Number - very, I mean, or maybe I can do the ones that have already been reviewed.

I can just call for any last minute vote on Number - so the Number 14 was the termination of affirmation commitment. And we said the existing measures were inadequate and the proposed accountability measures would be adequate.

And if there are - Jordan I guess it's an old hand - if there are any last minute vote on this. So I'm moving a bit to Stress Test Number 16. I suggest you have control over the scrolling bar on your document.

Sixteen is ICANN engaging in programs not necessarily to achieve its limited technical mission. There have been some, I mean, Steve and Cheryl have very kindly taken into account the feedback that we had on this on the wording in this stress test.

And their current assessment is that the existing measures are inadequate and that the proposed measures in combination may be adequate. So we would have to obviously review that because there's a need for a combination of mechanisms to cover this.

Any other comments on this one since Thursday? No? So I'm moving to Number 18. Number 18 wasn't discussed last time, right?

Cheryl Langdon-Orr: That's over to Steve then. It's Cheryl here. I'll go back on mute.

Mathieu Weill: Yes.

Cheryl Langdon-Orr: There is things I have little control over. My mind - well I've doubted the best advance but due to anesthetics this time. If you could take us through 18 and the other two if possible and we start them. Thanks Steve, over to you.

Mathieu Weill: Yes. Just before turning to Steve I think we have discussed the Number 5, which is a little below -- I think it's on Page 4 -- during our meeting on Thursday, the one regarding the financial crisis or was it - which one was the third one? Steve maybe you can help me out here.

Steve DelBianco: Yes I believe we tackled Number 22.

Mathieu Weill: Twenty-two. So it's a failure to comply with bylaws or refusal to accept a decision of a redress mechanism. And there were - there has been some - this one we did not really close the discussion on, right?

Steve DelBianco: We were pretty close because Roloff if you recall suggested that the very bottom corner of Number 22 that...

Mathieu Weill: Yes.

Steve DelBianco: ...the proposed measures are adequate because the community still has the power to spill the Board, the so-called nuclear option. So this reflects the discussion that occurred Thursday morning in Singapore.

Mathieu Weill: Yes. Exactly. So maybe we can try and close this one and then move to the other ones. So this one has existing measures are inadequate and the proposed accountability measures - the proposition by Roloff was the proposed measures in combination are adequate because the community has power to spill the Board.

And we would remove the initial wording from - which was relying on the fact that the Board takes seriously the threat of being recalled. Is there any comments/objection on this? Yes.

Cheryl Langdon-Orr: Mathieu it's Cheryl here. Just because of how we did not actually make a call to the room to actually get that as a yay or nay, I would suggest you take today's meeting as a first reading and pick up your second reading at your next meeting, okay?

Mathieu Weill: Okay. So 22 is first reading and with the new wording which is at the bottom of the - at the bottom right corner. And does this reading raise any concern or objection?

Okay so we will consider 22 to be agreed at first reading and we'll review it on our next meeting. Azumi has a question. Please Azumi. Azumi are you on mute? Azumi we cannot hear you. I see now you're trying to come to Azumi's help. So Azumi has a problem with her microphone. (Athena) you're next on the line while Azumi types the - her question. Athina?

Oh we definitely have problems with the mics. No Athina we cannot hear you either and I promise we're not trying to sensor the ASO here. I can hear something now.

And it's - so the question from Azumi is what exactly we are agreeing at this stage? So the question - the - what we are agreeing on is on an assessment of whether the existing measures do cover the contingency, so whether they're adequate or not, and whether at this point the - yet not fully defined proposed accountability measures would be an appropriate response to the contingency.

So we are not confirming agreement on specific measures. We're just basing our assessment on the idea of community powers, the ones we identified in a mind map and the review and redress mechanisms as discussed in the mind map out of the Frankfurt meeting.

So that's in order to ensure that, one, whether our requirements would improve the contingency management; and second, whether we would still have some remaining gaps to fill before we are confident we have proposals that are adequate to be proposed to the community and the Board and then the NTIA.

I hope that covers your question Azumi. Apparently yes if I'm reading the chat correctly. Avri you have a question.

Avri Doria: Yes thank you. Avri speaking assuming I can be heard. Yes I guess I - I'm having trouble and I had the same question I think as these but maybe not because she was satisfied with the answer.

In others we have - it's very speculative into these - the proposals and they haven't gone into depth. So I'm wondering in terms of agreeing with the analysis to what degree are we actually agreeing that they have the solution correct?

Or are we just - and that's the part that I'm very fuzzy on because I'm fine agreeing that something, you know, not that I - and, you know, that something is an issue and perhaps even to a preliminary analysis that the existing measures are adequate or inadequate.

But I have more difficulty with the proposed accountability measures at this degree of specificity so I - I'm not sure. Thanks.

Mathieu Weill: This is a very good point Avri. I think this - it's extremely clear that our assessment of the impact of the proposed accountability measures is still very dependent on how it's going - they're going to be defined and just the global idea that we would have would need to be confirmed.

Therefore everything on this - on the right hand columns are going to be - have to be reviewed after we have just really defined our proposals.

Avri Doria: Excellent.

Mathieu Weill: But the added value of this process and I'm very aware that we're talking process again but I think it's an accessory so we are comfortable with it.

The added value is that as I said number one, this is going to help us identify some missing parts where the ideas we came up with in Frankfurt are not yet covering the contingencies or mitigating the contingencies we identified. That's number one.

And number two, it's also going to help us stress exactly what's the requirements we identified. How they will actually improve ICANN's accountability.

If I take number 22 we're discussing right now it's clear that this, now that this enables us to say basically why we need this because they are necessary to ensure that the board complies with the by-laws or accepts decisions from the different redress mechanisms.

So we are - it's not a final agreement, it's definitely not going to be the final word but reviewing this is a very helpful exercise and especially has a lot of relationship with work party one and two.

As we will see later we are - we will have some very valuable input from going through this but it's not final in terms of - of course as long as we haven't specifically defined the account we can measure it cannot be held to be final.

Alan you wanted to add something?

Alan Greenberg: Yes thank you, it's Alan speaking. My question was very close to Avri's but I'll state it not as a question but as my view of this. What I think we should be doing right now is looking at this essentially as a sanity check thing. Is there anything wrong with the logic that has been proposed here number one?

Are there any - and when we finish it are there any accountability measures that we decided to implement but haven't used. And obviously if we find in any given stress test that we're not, can't fix the problem can we fix it by adding a new accountability measure.

But I don't see the need to sort of formally say we all agree on this. I think we should just be going through this noting any problems with it and because we're going to have to do the really detailed review once we actually have (an event) on the accountability mechanisms.

((Crosstalk))

Cheryl Langdon-Orr: Cheryl here.

Alan Greenberg: (Unintelligible).

Cheryl Langdon-Orr: Cheryl here.

Mathieu Weill: Cheryl did you want to reply?

Cheryl Langdon-Orr: Thank you, yes, yes I do and I'm just going to mention briefly I'm actually in my driveway now so if I do can you get me to call and be back on the landline?

I see this thing (unintelligible) comments agreement (unintelligible) the current state of the (unintelligible). So what we're doing is taking it through a set of (unintelligible).

It tells everything to an extent but rest assured we have to go through every single one of the (unintelligible) not finding stuff that we have gone through at this early and provisional stage.

This a provisional exercise, anything you're agreeing with is an apparent state of (text) versus the current situation and absolutely (unintelligible). So once (unintelligible) there and with and it all subtracted (unintelligible) then of course the whole lot at least as far as those outcomes, those bottom boxes have to be gone through again.

And to help people understand that I will do something in terms of color on the Wiki space to make sure people know that this is still highly provisional outcome, thank you.

Mathieu Weill: Thanks Cheryl. I hope everyone could catch that. I think so this one part of the confusion that would come from the fact that the column is labeled what

CCWG accountability measures and it was why it's really the stress test against the proposed accountability measures.

And we're really not trying to get into too much detail into defining these. I mean we're all fully aware we'll have to review this after we have specified so what we should definitely be doing through this exercise is assessing whether we all agree on whether or not additional actions need to be taken or whether or not the accountability measures as we are now looking at them are actually helping with a specific contingency.

So I mean no problem in being maybe a little lightweight on the agreements (call) so that it remains flexible but I think it's worth review in this. It seems to me (Carlos) I don't know if you can - if you have a voice or only chat but you raised on the chat that you wanted to add something regarding one of the other (charters) we reviewed.

Okay so you can comment later if you're able to. My suggestion is I think we've been discussing 22 sufficiently now. I would now turn to probably Steve I guess to lead us through the other stress test we have in the document and then anything we've been discussing so far.

So which one would you like to start with Steve because you added recently number 18?

Steve DelBianco: That's right we'll go to 18, it's new we put it in today and it might be worthwhile. The rest of them we have all talked about at least once. And again this is only 6 of the 24 or 25 that we have to put together.

So if you scroll in the document to the item reading stress test 18, this is with respect to the GAC advice to ICANN's board. This stress test came originally

from the BC and it was in response to so much concern by critics of the transition worried that governments would get too much power in a future ICANN absent the NTIA's tether through the IANA contract.

The stress test scenario is that the GAC would amend their own operating procedures so that their advice could be arrived at by simple majority or super majority as opposed to consensus, which is what they use today.

And again that is an operating procedure, Number 47 operating principle Number 47 it is within the GAC's complete control. Neither ICANN Corporation or the community (have) anything to say about the GAC's internal operating principles and they can change them with a simple majority vote that they take over two successive meetings.

This stress test predicted consequences that could be rather dire if a simple majority of governments in the GAC at any given meeting were sufficient to approve consensus advice you can well imagine some very different outcomes than the advice we've been seeing so far.

I mean at a few GAC gatherings there have been as few as 60 or 70 government present. So a majority would be as few as say 34 or 35 GAC members. If they all agreed on something that was sufficiently important to governments it could actually put a severe restriction on free expression or some other form of valued ICANN principles.

So when I look at the existing accountability mechanisms the ICANN by-laws give due deference to GAC advice giving it due consideration including a commitment to try and find a mutually acceptable solution. So it is not a requirement that ICANN board accept GAC advice but it does give due deference to advice on the assumption I think than its consensus advice.

Now today GAC (unintelligible) formal advice according to its own operating principle 47 and the consensus is understood to be the practice of adopting - I can't read it now it certainly got smaller. (Grace) or (Al) are you controlling the zooming or do we have independent control of the zoom? Thank you.

So consensus is understood I mean the practice of adopting decisions by general agreement in the absence of any formal objection. And under that principle we're probably okay.

And as I said before the GAC at any time can change its procedures to some other form of threshold or lower threshold but what constitutes advice. Folks I do want to remind you this is about the by-laws this isn't about the (application) guidebook for the new gTLD program.

The new gTLD guidebook specifies things for which GAC advice could be given and it had procedures for how ICANN's board reacted to that advice but that was advice specifically targeted to certain applications that were coming through the new gTLD program. Right now we're discussing the general provisions in ICANN by-laws under Section 11.

So now turning to the third column, the proposed accountability measures. Well one of them we discussed many times to give the community standing to veto a board decision.

So that if a board acquiesced the GAC advice to the decision on that and it was not supported by GAC consensus to community veto they're unable to reverse some of that decision.

And to Avri and Alan we're using at this preliminary stage we're using words like community standing to veto a decision. We are deliberately trying to use

community empowerment requirements at a very high level such as we've
discussed in Frankfurt.

We ae not trying to use very specific words to describe the mechanisms that
Jordan and Becky are putting together right now. As all of you understand this
is a first look at the high level empowerment, high level review and redress
and not a detailed one. We'll have to go back and do that later.

So I added one in here that comes from the inventory that was prepared seven
weeks ago out of comments that came about seven months ago. And there was
another proposed measure to amend ICANN's by-laws, to give due deference
only to the GAC consensus advice and add a definition of consensus.

By doing so that measure would ensure that if GAC were to change its
operating principle to switch to majority voting that that wouldn't carry the
kind of due deference the consensus would.

So this is an element of a defense maneuver I guess I would say because we're
defending the ICANN process from being captured by a simple majority of
governments in the GAC by saying ahead of time that the only advice from
the GAC, which is given the deference that we have today is that which comes
as a result of consensus.

So happy to start there Mathieu and take questions. This will have some
implication since Jordan's work party would need to dust off that by-laws
provision and bring it into the list of items for either work stream one or two,
thank you.

Mathieu Weill: Thank you Steve. I think that's where we're going into, yes substantial
discussion because what you are, what the exercise is suggesting and needing
you to suggest is to add another requirement into our work stream one

package, which is - may not - is one that we haven't discussed in terms of consensus in Frankfurt.

(James) you had a question and if there are any I'm particularly interested in GAC reactions to this because obviously it's very much related to the GAC as well. (James).

James Bladel: Thanks Mathieu, James speaking and thanks Steve for teeing this up. I think this is possibly I don't know if it's the most important stress test but it certainly ranks very highly in my priorities.

So my question and I posted it in the chat is, if we amend the by-laws that only consensus advice needs to be considered by the board then isn't the GAC free to determine what mechanisms it uses for establishing consensus amongst its members?

Could it just simply say that a simple majority 50% plus one of, you know, of attending GAC members constitute consensus or would they be accepting of an external definition of consensus to mean a super majority or no objections or something along that line.

I'm just concerned that - I mean I think we're on the right track here but I'm concerned that we're leaving some loopholes in place.

Steve DelBianco: James this is Steve. If you take a minute to read it in the Adobe you'll see that the way we designed the stress test is exactly the situation that you just described.

You described the fact that the GAC can change its operating principle, which currently requires consensus. But they can change it themselves without any input from the community and they can change it to a majority voting.

And that is why the proposed measure of amending ICANN's by-laws says that whatever the GAC does if the GAC advice is not consensus advice then it's not given the due deference and a promise to find a mutually acceptable solution.

So this is inoculating the ICANN by-laws against the possibility that the GAC might change its own operating principles in the way you just (feared).

James Bladel: So Steve and maybe I'm just not getting my head around this but if we were to put this in there and say something along those lines that this is the board only considers consensus advice from the GAC and then the GAC would say...

Steve DelBianco: Well this is - I'm sorry. Yes the part of the by-laws that I'm referring to is Section 10, sorry Section 11 with the by-laws for ICANN. And in there it describes GAC advice as carrying over the obligation of the ICANN board to give a due consideration and to try and find a mutually acceptable solution and that is what I mean by due deference.

I think that ICANN's board can consider GAC advice anytime it wants but this formal obligation to give it due consideration and try to find a mutually acceptable solution that is the deference level that I think we should reserve for only the advice, which comes from the GAC as a consensus as opposed to any other form of GAC advice.

They may well lob advice - go ahead.

James Bladel: I don't disagree with you I just - I am concerned that as long as the GAC gets to set the threshold for determining what is and what is not consensus advice that this still leaves the ball, you know, in their court.

And then unless it's codified explicitly in the by-laws the consensus is super majority or greater let's say...

Steve DelBianco: Exactly.

James Bladel: ...that this is still kind of a floating target.

Steve DelBianco: You're exactly right and that's why the solution is that this stress test identifies a whole in our current set of solutions and that whole gets plugged if you reach back into our inventory from the summer and change the ICANN by-laws now.

So we changed the by-laws so that whatever GAC decides is consensus won't matter because the ICANN by-laws only give due deference when the GAC advice has arrived at through the consensus as we define it.

And I would put that definition in the by-laws, I would use the same definition that the GAC uses today where consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. How's that sound?

James Bladel: Yes I like it.

Steve DelBianco: Thanks got it, thank you.

James Bladel: I think the important thing is to take the definition external from the GAC and I like that.

Steve DelBianco: Yes and that's exactly what's on the Adobe. I don't you think you have visibility of the Adobe because that's what's in there.

Mathieu Weill: I have Alan on the line and I know some of the discussions on the chat regarding options on the one side but also whether how it would be appropriate or not to specify very much in detail some of the items regarding the GAC. Alan did you lower your hand or are you still on?

Alan Greenberg: No I'm still on but I waive it I think we're going to need to discuss some of these concepts about unilaterally setting what the GAC considers consensus but now is probably...

((Crosstalk))

Steve DelBianco: Well Alan and Mathieu I think you bring up a great point but let's keep in mind that we're not, you know, trying to impact on how the GAC does their business.

                  But we're going to say to them that if you arrive at the advice through consensus we're going to give it the special due deference that's baked into Section 11 of our by-laws.

                  Today we don't specify that it's only consensus advice against that due deference. So we change our by-laws, which is an incentive for the GAC that if they really want to get the due deference that they want they had better try to find advice that contract the consensus of the government.

We're not telling them what to do we're just telling them that if they do it in a certain way we've give more consideration to their advice.

Alan Greenberg: Yes and my point was deciding what the GAC treats as consensus and, you know, right now if you look at the ccNSO and GNSO they have different definitions of consensus and we honor them. My point is that we may not be in a position...

((Crosstalk))

Alan Greenberg: ...to decide that for the GAC but I don't think that's today's conversation.

Steve DelBianco: Right but keep in mind that the definition that we use in the operating principle of the GAC is the GAC's own definition of consensus today, that's their definition not ours. And I believe they got it from the United Nations so it comes from good stock.

Mathieu Weill: I think we must be aware there is a lot of discussion within the GAC about what consensus should be and it's not uniform.

Steve DelBianco: All the more reason for us to define the kind of consensus that deserves to override the bottom (unintelligible).

Mathieu Weill: That's my concern right now is that our proposals have to be approved by all chartering organization and be consensus. And I think we're touching here something that's very sensitive to many within the GAC and outside the GAC.

And I think that the point you're raising is extremely important because this stress test is designed because there is a requirement that the transition could not happen if an organization would be in the hands of several governments.

That's the deciding point of this contingency so we need to find a way to address this but I think this is - and we'll certainly have to look at whether we have agreement within our group to add something around the measure you are suggesting into our work stream one package.

Yet I don't think we are fully ready to do that yet because we haven't had much feedback from the GAC and we should certainly highlight this early on to the GAC members that this is a question that's coming into the table. I see that (Thomas) wants to add something.

Thomas Rickert: Yes and that's just to say that we have a lot of GAC members in this group and I think we should tap on their expertise. I think we are all here in order to make ICANN a better organization and that everybody including GAC members wants to ensure that we preserve what we would likely call the basic principles for ICANN including openness and avoiding takeover by individual stakeholders.

So I think we should try to get insight from inside the GAC and I would encourage the colleagues on the call and in this group from the GAC to work with Steve on this very topic so that we can, so that we ensure that we don't create a we against them situation.
But it's actually again trying to safeguard the organization against contingencies as unlikely as they might be.

Mathieu Weill: Yes the action item I would along those lines I would take from this discussion is we should definitely reach out on the list but specifically to the GAC members to point towards this stress test conclusion, ask for their input and then review on our next call have a substantial discussion on this on our

next call so that we can consider a decision whether or not to include this into our work stream one package based on these inputs.

So we should definitely take that one step further, engage with the GAC and then review the decision that is being suggested by Steve and (unintelligible). Would that be okay for you Steve I see you have your hand raised?

Steve DelBianco: Yes thank you, one final comment on this. If were to decide that it's too on the nose to add a bylaws provision requiring our definition of consensus and I would point you to the very top corner on item 18 and that is the fact that all of us have felt that the community needed to be empowered to override a board decision.

So frankly if the board received non consensus advice from the GAC and acted on it we have already agreed that we wanted to have a community detail on that board decision.

So that general power is already there, there's already an opportunity to stop the board from acquiescing to a piece of GAC advice. That's what the community would be able to do.

Now the GAC is a voting member of the community but it certainly doesn't constitute a majority and doesn't have a veto of its own. So our endeavor here is both belts and suspenders as opposed to a general veto by the community.

It's belts and suspenders to also propose a bylaws measure that most people would probably think makes sense in that the deference that the bylaws give to GAC advice should describe the kind of GAC advice it was thinking of.

If everybody assumes it was consensus because that's what it's always been well then go ahead and lock that in so that the GAC can't change from consensus to something else.

And I do want to remind everyone that an excessive influence by government was one of the chief fears behind many in Washington about the IANA transition.

So it's better for us to take this head on and work out a solution that our GAC colleagues will agree is sensible. If we were to ignore this one and (Eric) and a few others have said, we ignore it at (unintelligible) because I don't think the transition would proceed without an answer to this stress test, thank you.

Mathieu Weill: Thanks Steve I think you are right to remind us that that's the point of the whole contingency and the discussion. So next let's go to what I suggested is I think for the - what we can do in relation to with you Steve and Cheryl is engage with the GAC members, maybe inform (Thomas Snyder) as well in order to ensure there is as much information circulated that we have the discussion, that we were having this discussion.

There are options and scenarios and we need some form of informal and non-committing input but at least some participation to this discussion so we meet the requirements set up front by the NTIA, no excessive influence of governments. And yet keep our - I mean come up with something that's going to be acceptable for everybody within ICANN, you know, to improve the system.

And I think there's been some ideas floated around in the chat as well as in your discussion that should certainly help us find some form of solution but we need to address this.

So action item is for probably to co-chair with Steve to engage with GAC members on this and then we come back at the next meeting as one of the discussions we need to keep (going). Is that okay?

All right, that was an important point of discussion and I think it stresses really well how this stress test exercise is valuable to our work right now. I am looking at the other stress tests in the group in the line with the (financial prices) with (unintelligible) already our meeting on the Monday in Singapore.

Steve would you like to take us through 19?

Steve DelBianco: We don't really have anything on 19 yet.

((Crosstalk))

Steve DelBianco: Wait a minute, wait a minute I'm sorry, I'm sorry we do and we probably haven't been through it yet. I do want to be cautious of the time and the other elements on your agenda, 19 will not be trivial.

((Crosstalk))

Mathieu Weill: I think we could have ten minutes on this.

Steve DelBianco: Whatever you want.

Mathieu Weill: On the first reading.

Steve DelBianco: Okay, all right folks scroll down to item 19. We have not discussed this publicly yet Cheryl but I circulated it on Saturday, the first Saturday in Singapore but hadn't discussed it publicly yet.

Nineteen is distinct from stress test 21, 21 specifically addressed the ccTLD revocation and assignment. This is about a gTLD. So the test stress is described as if ICANN were to attempt to re-delegate a new gTLD.

Let's say it's one of the new gTLD's and the registry operator was in breach of its contract and ICANN decided to re-delegate. Let's suppose that the registry operator challenged the action in court and got an injunction from the court someplace.

I think this presents a real dilemma for ICANN because the entity that's charged to do route zone maintenance, which today is VeriSign I don't know who it will be in the future, would be faced with the question of whether to follow the ICANN re-delegation instructions or to follow a court order.

Under the present agreement with the U.S. Government the entity that's performing route zone maintenance is doing it under contract to the U.S. Government and they're protected from lawsuits because it's publishing root per contract with the US government.

But at the end of the IANA stewardship transition it might result in the root zone maintainer whether it's Verisign or not that root zone maintainer might likely no longer be a party that's operating under a contract with the US government. And it therefore would lose that protection from lawsuits.

So ICANN I was reminded by (Samantha) is bound to follow appropriate court orders from courts of competent jurisdiction. And I acknowledge that.

But it seems to me that the existing measures are - may not be adequate to make it clear that the root zone maintainer is either following ICANN's instructions that has been arrived at through policy or it is doing so subject to court orders.

And I'm no lawyer but there are plenty of lawyers on this call and within the ICANN community that could probably have a field day with this one. And when I turn to the proposed accountability measures I don't think it would protect the root zone maintainer from lawsuits.

But one proposed solution is a community could challenge a management decision and refer it to an independent review panel with the power to issue a binding decision. So that if ICANN took action to redelegate the gTLD the community itself could invoke an IRP.

The registry operator could invoke an IRP. And the IRP from a standing panel could reverse that decision. And that is doing it without resorting to the courts.

Now the true question about court interference with ICANN processes probably has to wait until the CWG decides whether the counterparty that replaces NTIA for the naming functions contract would be an internal entity or an external entity and if so what kind of protections could it provide from lawsuits?

So we really can't answer this one just yet. But this contingency is rich with opportunity to explore the right solutions to make sure that a disgruntled applicant doesn't gum up ICANN's works but at the same time give registry operators adequate redress through the review and redress mechanisms like an IRP. So Mathieu I'll stop there and take questions.

Mathieu Weill: Thanks Steve. That's quite an interesting one. (Sam) do you have anything to add?

Samantha Eisner: I guess I have a question about this. I know we had a little bit of back and forth before this was published to the list among the smaller groups working on this.

But I have some larger questions about accountability mechanisms that are - I guess I don't understand is there a suggestion that the accountability mechanism would require ICANN or if ICANN was also the root maintainer position it required them to do something in violation of a court order? I'm really not clear where that accountability mechanism tie in with court action.

Mathieu Weill: No I think the point that Steve is making is that he wants the question is how can - what kind of accountability mechanisms or systems could be set up that would protect ICANN against a law a court decision being issued against.

Of course if a court decision is issued against ICANN then it's perfectly binding. There's no question about this. But that's probably not going to be the case...

Steve DelBianco: Yes.

Mathieu Weill: What is...

Steve DelBianco: This stress test is about a decision against the root zone maintainer which is currently a third party entity under contract with the US government. And that may change. We ought to look at that with both eyes.

Mathieu Weill: So (Carlos) wanted to raise a point. (Carlos) yes. We can't hear you. Maybe you're on mute. Maybe you have a problem with your mic.

You have maybe while you're fixing it I can move to Alan. And if you solve it then hopefully we can get back to you later. Alan.

Alan Greenberg: Thank you. I have a couple of concerns or maybe just confusions about this particular scenario. My understanding it was IANA that makes the changes and the root zone maintainer just follows those instructions. So I'm not sure that part of this is applicable.

But the larger part I have with this scenario is my recollection is and may (Samantha) I'm sure can correct me if I'm wrong that the registry contracts specify binding arbitration and I thought precluded court actions.

But I - that latter part I'm not sure about. But if that's indeed correct then this scenario doesn't apply. There may be other court injunction scenarios that apply but I don't think this one does.

Steve DelBianco: From the new gTLD program you're thinking. I believe that they have agreed to go to arbitration but that would be against ICANN.

In fact this scenario this stress test is about a party that is neither ICANN nor IANA. It's a third party which today is fulfilled by Verisign.

It's a zero cost contract where they act as the root zone maintainer under contract to the US government. But that's not ICANN and that's also not IANA.

Steve DelBianco: Steve Metalitz, I understand that. But I'm not sure the root zone maintainer has the ability to do that. But I'm not the expert on those functions.

Samantha Eisner: And this is (Sam) just to interject on that contract issue. We do have binding arbitration requirements. But I think that there is also a separate issue that there's always a possibility that someone who is not under contract with ICANN would - could come in with a suit challenging either the delegation are re-delegation of a G, or a ccTLD, or a legacy any TLD actually.

So I'm not sure that the contract referrals defining arbitration covers the whole possibility of where suits could or challenges could come from.

Steve DelBianco: Point taken.

Mathieu Weill: Okay. So now let's move to Avri.

Avri Doria: Yes thank you, quick question. I think Samantha brought out the beginning of my concern. For example in the new gTLDs if there was a state that wanted to challenge the delegation or what have you of a gTLD how would that be dealt with? Is there something that deals with international jurisdictional arbitration of some sort or how does one deal with that? Thanks.

Mathieu Weill: Thanks Avri. I think you're raising the point that (Chaldren) is also raising on the chat that we - the question is not only whether ICANN - there should be a court order within the jurisdiction ICANN are operating but also a conflict of jurisdictions in other I mean in other countries.

And I'm not sure what this exercise shows is we don't have full clarity about what kind of scenario we would be discussing and how it would play out. We

don't have full visibility about the actual risks and consequences or even the way to mitigate this risk.

We don't even know what will happen today actually if a court order in say any other country than the US would say that specifics - a specific action by ICANN would not be acceptable.

We don't know what the chances of this that the court would consider itself grant suspending and everything. My feeling is that we are in front of an international jurisdiction issue. And we would probably need to get some general view about that matter.

And what I'm actually leading to is we've engaged very recently with the latest advisors appointed by the Public Experts Group (Lee) the international experts (Lee Andrew).

And that's probably a question we could ask him to consider how it would play out whether the how he would phrase this contingency and maybe if there are any protections that can be (unintelligible). I think that's very much an international law aspect. Samantha you wanted to react to that.

Samantha Eisner: Yes thanks. There clearly is an international aspect to where a judgment might come from and how it could be enforced in a different place.

But I think that this is actually a far more fundamental question which is what are we trying to solve for because a court order assuming that it's enforceable what are the accountability measures that we are suggesting could be put in place that would address an issue around a court order and who is obligated to follow that?

I think that we need - I agree that maybe having the advisors look at this stress test to see if maybe they could help flush it out a little bit more might be helpful because I - when I look at this myself I don't necessarily see that there's a way to propose accountability measures that address a need to follow a court order.

Mathieu Weill: Thanks (Sam). I think that's the ideas I'm pointing to fleshing this out so we get more color. Steve.

Steve DelBianco: Yes thank you. Keep in mind that these were written by the BC back in May of 2014 prior to the separation of transition into two tracks the CWG and CCWG.

And this question probably as I indicated in the bottom right-hand corner is really one that needs to be looked at by the CWG as well because the CWG is deciding whether to do functional or structural separation, whether to have mechanisms for separability.

And if you separate the naming function from ICANN because they're not doing it well, well folks you have to understand you have to also separate the root zone maintainer role from ICANN as well. Those would probably both be considered what the CWG is planning.

And I fall back on the status quo. The status quo is not a question of international law at all because the entity that's doing the root zone maintainer role is doing it under contract to the US government and therefore it is not subject to being sued no matter what the international law is.

That immunity means that it is purely a technical execution function it can't be interfered with. However that if that's subject to change and that's why I

started the line with however the IANA stewardship transition might result in root zone maintainer not operating under US government contract. And if so how would you then provide the same level of protection from injunctions or lawsuits that a root zone maintainer role?

We can pretend this is not an issue. We can pretend it's not accountability issue and just punt it over the wall to the CWG. But I'm not at all confident that they're looking at it yet either. So it's been worth 15 or 20 minutes of our time to dive into it. But if folks are scared of going here well then maybe we won't. Thank you.

Mathieu Weill: Thanks Steve. I'm going to close the queue so we don't have to finalize discussion on this. It's good that we have this discussion because it's high ranking and very important aspect. (Sam) is it an old hand? Yes it was. Eberhard please go ahead.

Eberhart Lisse: Can you hear me?

Mathieu Weill: Yes we can.

Eberhart Lisse: First of all nobody is immune to lawsuit. If Verisign does this on a contract to the government then the government is the party that gets sued.

Secondly it's not a matter of international law. International law deals with multilateral agreements between countries and organizations that are established between by treaties between countries.

It deals exclusively with 253 or whatever national jurisdictions and legislations. Corrupt like can reach everybody they have court restriction of

about. It depends whether ICANN has whether a national court decides it has jurisdiction about ICANN.

And it - and courts like to decide whether they have jurisdiction is by way of whether they can reach somebody, whether they've got property, or whether they have got any other ways of so that judgments can be enforced.

If this is the case ICANN is subject to the national law of whatever country where this is the case. And we can discuss as much about immunity nobody is above the law.

If a court decides it has jurisdiction and it can enforce this jurisdiction it can - it will force ICANN to do whatever each whatever a court wants. And because in some countries jurisdictions are quite harsh I mean this is something very seriously to be considered for such stress testing.

Mathieu Weill: Thank you Eberhard. I think the distinction that's being drawn is between international law and cross volatile. And we're probably more into cross volatile. (Thomas) of final word and then we'll wrap up to the next items.

Thomas Rickert: Thanks Mathieu. And actually I think your suggestion was a wise one to place this question in front of the independent advisor.

One point I'd like to go on record with though is that at least in Germany (DELIG) has been given not immunity but legal privilege by courts because of the fact that the German government has recognized their role or the role that they're playing.

And if I'm - if memory doesn't fail me I think Ira Magazine also mentioned that part of the reason for ICANN is protected is because the US government has recognized ICANN's role.

So maybe we should as a placeholder put into the document that we need to work on two things. Number one clarifying with legal experts or independent advisers whether recognition by national government does help?

And if so how we can actually reach out to governments through the GAC or otherwise to ensure the ICANN in its new role get as much recognition by national governments as possible to get as broad protection as can be. Thank you.

Mathieu Weill: Thank you (Thomas). Very important point and will certainly have to include that into the investigations. (Albert) is that a last word you're requesting?

No it's an old hand okay. So conclusion interim conclusion on that item and once again we are seeing the value of the stress test is we'll try and engage with the external advisors so that we get some input about the stress this particular stress test, to cross (unintelligible) issues and how exactly we could get some way of mitigation of this contingency.

And I'm not speaking about immunity because it's technically probably impossible but how we can get mitigation of this this risk. Maybe including some recognition from governments if that's helpful and that something we wouldn't need to check.

Very interesting discussion on those items and I think we should encourage the third party on stress test to keep on pressuring these registrars because

they're obviously pointing us in two directions we have not been fully considering so far.

So it's very promising. And hopefully we can keep doing that in the next meetings. It's better to highlight these issues up front rather than find them out at the end of our work.

I am now going to turn to the next agenda item which is an update on the timeline. And I would turn to Berry for a very short update on this why it's being brought up. And of course that includes the key question of our next face to face meeting coming up. Berry.

Berry Cobb: Thank you Mathieu. This is Berry Cobb for the record. So I believe everyone here is familiar with this visual diagram that we have of the CCWGs timeline to deliver a draft proposal ready for public comment. And then of course review the public comments and prepare a final proposal to submit to the chartering organizations and ultimately to the ICANN board.

This particular visual hasn't changed much from what you may have seen at the Singapore meeting. However there are a couple of small light adjustments. And I'll just draw your attention over to the left-hand side. There's a few bullet points that we'll tease out our key deliverable dates.

As what was mentioned earlier by (Thomas) as well in the chat there is a face to face that is scheduled for the CCWG on 23rd March and 24th of March. The location is yet to be finalized. But we hope to have more information by the close of this week as to what the exact location will be as well as hotel information, et cetera.

Noting that the 23 March is the start of the face to face and as (Thomas) mentioned we basically have five working weeks to prepare content and ready for that face to face as well as pretty much as conclusion of this week it - we whittle down to four.

You'll also notice that in the month of March we do have what is listed as a blue circle item which is highlighted as a possible tentative high intensity session.

It's likely if this is needed it will probably be conducted remotely. So this is really just a TBD as we get closer across the two remaining work areas and two work parties as the work advances over time.

What this ultimately means though is that we have set a target date to launch a 30 day public comment period for 6 April. And this is the slight variation - in this diagram that you might be able to notice if you've memorized the previous one.

Originally we were scheduled for a one April launch of the public comment period. But as you'll also know that there is both the CWG and the CCWG are working on similar timelines to prepare their documents for public comment.

And at the close of the Singapore meeting all the chairs had met. And it was determined that post the public or post the face to face meetings that there will be additional time needed to ready those documents and finalize your preparation for the launch of the public comments.

So with that in mind basically at the conclusion of the face to face the CCWG will have 12 calendar days to ready that draft Work Stream 1 proposal to ready it for the public comment period.

And then of course after the public comment period of 30 days they will approximately have two weeks to review the public comments and in parallel three total weeks to finalize the Work Stream 1 proposal which is our most important date which is 20th of May.

And that's to submit the final Work Stream 1 proposal to the SOs and AC's that give them three weeks to approve that proposal to ready it for delivery to the ICANN board.

And do note that which I believe has been discussed some on the list as well as at Singapore is that it's still - there's still a question as to how the GAC may need time to approve the draft proposal as to whether they will look to do that in Buenos Aires or if possible in an intercessional might be a possibility as well. But that's yet to be determined. And we'll know more as we advance closer into March and April.

So I think all in all that's about the review of the timeline. I should also note that the 23rd and 24th is when the CCWG is meeting.

We're leveraging the same location for the CWG to meet at the end of the week as well. And then the Wednesday will be a transitional time frame in which the chairs of both groups will meet so that there's proper coordination going on.

And again just to reiterate that we don't have - we have a short list of locations. We don't have a precise one met yet. It is likely to be some European airline hub location. And we hope to have all of the details for the group by the end of the week. So with that I'll turn it back over to you Mathieu. Thank you.

Mathieu Weill: Thank you Berry. Are there any questions regarding timelines? Point taken regarding the conflict with IETF Avri I'm afraid given our timelines it's extremely difficult to adjust in any way. Okay so moving to the next item and obviously we'll be providing more details as soon as they emerge on these face to face meetings.

But I think key message is we're only less than five weeks away from our face to face meeting where we need to be converging on our proposals so everyone on deck. Definitely be good to get the work done in a very short timeframe before this meeting.

Last - next item is an update on the definitions and scoping document. It's a very short update. Don't be afraid.

This is just to mention that we have received feedback from several advisers and several of you actually on the definition and scoping document. And therefore we will circulate in the next few days a new version to be discussed.

Some of the feedback from the external advisors is rather favorable yet with a number of very interesting inputs. And so this is going to highlight a small number of questions we have to address.

So this is really a heads up. And another information that I want to provide the group is that (Jan Ault Shulter) who was in Singapore did suggest that we investigate really more on the accountability of the accountability mechanism themselves.

This is one of the items he put forward in the session on Sunday evening in Singapore. And we as co-chairs confirmed to him that it would be certainly an

interesting input for the group to consider if we could elaborate on the best practice in this regard that he has been encountering in his work.

So that's something to be expected in the next few weeks that will certainly help us adjust or finalize our proposals to avoid the - some comments being made that by adding new layers the new layers themselves would not be accountable. That's basically what he's suggesting we investigate.

So very good engagement with the advisors and very valuable contributions and please recall be aware we'll circulate a new version with some key discussions highlighted in the next few days.

Unless there are questions I'm - where on top of the hour. So I see no question. I will turn to Leon for the any other business and concluding remarks. Leon.

Leon Sanchez: Thank you very much Mathieu. Well this is our final talk for this meeting. And would like to call for any other businesses if there's anyone that has business that they'd like to raise at this moment this is the time.

Going once, going twice okay so there are no any other business. So would like to thank you all for this excellent meeting.

And we have very little time for our next to face meeting. And we have a lot of work to do ahead of us. So let's continue work and we'll talk to you next week. Thank you everyone.

Man: Thank you.

Woman: Bye all.

Man: Bye everyone.

Man: Bye.

Woman: Bye.

Man: Bye-bye.

                              END