

ICANN

**Moderator: Gisella Gruber-White
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1:00 pm CT**

Leon Sanchez: Welcome everyone to this 14 call of the cross community working group (unintelligible) IANA accountability.

As usual, we'll do our role call with the persons present via Adobe Connect room and if there's anyone on the phone bridge that is not connected to the AC room could you please kindly state your name now so we can add you to the roll call?

Alice Munyua: Hello everyone, this is Alice Munyua, Kenya, African (unintelligible)...

Leon Sanchez: Thank you very much, Alice. Anyone else joining us on the phone bridge that is not connected to the Adobe Connect?

Alice Munyua: (Unintelligible), I'm afraid I'm only going to be able to be on this call for half an hour so please accept my apologies when I drop in half an hour, thank you very much.

Leon Sanchez: Apologies noted, thank you very much.

Alice Munyua: Thank you very much. Thank you.

Leon Sanchez: Okay, now so - now regular reminder, if you haven't filled your Statement of Interest so far I would kindly ask you to approach staff in order to have your wiki account created and upload your (unintelligible) or send it to the main mailing list as many people have done so.

So with no further delay I'd like to hand this call to Thomas Rickert for agenda item number two, the activity report from the working parties. So Thomas, please, you have the floor.

Thomas Rickert: Thank you very much, Leon, and hello everybody. Yes, today we're in a - we're in the unfortunate situation that we have to live with, 1.5 co-chairs. You will noticed that (unintelligible) is not with us today.

He's on well-deserved holidays and I'm down with flu so I might be a little slower or having issues with finding words during this call because I have some health issues so I'm down to 0.1 I would say. But Leon is in excellent shape so he might be able to help out as needed.

In this agenda item we're going to hear updates from the working parties and I'm not sure whether Jordan is already on the call, let me just check. Yes, he's there. So Jordan, why - would you like to kick it off and tell us a little bit about working party one?

Jordan Carter: Thank you, Thomas. Can you hear me on the call?

Thomas Rickert: We can hear you all right.

Jordan Carter: Okay, fantastic, thanks. I apologize if I am also a bit dozy. I flew to Japan yesterday and it's 4:00 am so if I start talking nonsense please interrupt.

I think it might be - so if I just update the call on the work plan that - working party one adopted at its first meeting and give a report on that meeting. Is that helpful Thomas as an approach to start?

Thomas Rickert: Yes.

Jordan Carter: Okay. So staff, I don't know if you've got access to the draft work plan but we've looked at that one first rather than the scope paper that you've popped up.

But anyway, we had our first working party meeting about 24 hours after the last meeting of this - the whole working group and at that meeting we went through a draft work plan. And we tried to think when we would need to have input ready for our meeting on the 23 and 24 of March.

And so we've got a weekly series of calls that are designed to deliver if you like some outputs from our group and (unintelligible) the whole working party to look at, hopefully around or after the 11 of March so a couple of weeks away.

We're taking that approach because we don't know until we do the work whether we're going to have fundamental disagreements or whether we're going to need to develop some new templates and so on.

So we thought a cracking start would be quite helpful and so we're doing that by means of volunteers participating through developing the templates that (unintelligible) to us all. And for each of the powers and probably each of the

mechanisms that were set out in our earlier papers (unintelligible) gone off the screen.

And so if you scroll down this document and to the work plan, if the staff can get its people on the call the ability to do their own scrolling because I'm not going to work through - thank you. I'm not going to work through this paper in any great details.

But the first point to that is that we do plan to do the work in the way that it's set out there. And like anything that is a volunteer basis - piece of work that will be (unintelligible) staff but I've set aside some time to pick up any gaps.

So once we've decided our kind of work structure, which is a little bit ambitious in terms of time turnaround which has already led to some work being done, we did spend some time asking what they wanted to volunteer to work on and the - I don't know if I'm (unintelligible) or not but if I scroll down just to the end of this paper and there's a volunteer list.

And as you can see a number of people have volunteered for a number of the work items that are on the list. There are a few gaps which we'll pick up. And a couple of (unintelligible) also volunteered to join me to review content, to help get it scrubbed up - ready for the working party to take.

So those were two important things we did. We agreed to an open working method where we would (unintelligible) as we could. And maybe ICANN staff would help us post these when they are available. And they are linking to the (unintelligible) and Word versions of documents on the working party one and section of the wiki and (unintelligible) and fed through.

And I think (unintelligible) in particular and (unintelligible) some drafting work there. I don't know if you (unintelligible) working party that he has so - I don't know if you searched the whole working group but he has (unintelligible) working party.

And the last thing that we did was to try and apply the new trigger versus non-triggered distinction to the items that we're in our paper. And we went through and did an initial list of allocation on the scope paper, which you can find the (unintelligible) version of it is a Google Doc.

And - yes, thank you. Alice has just posted in the chat the link to the working documents. I'm pretty sure there you can find the link to the Google Doc for scope mechanism and measures. Our scope has the mechanism.

And that paper has our initial allocation between the two working parties because we felt some of our - some of the things that we had been looking at were probably better suited to Becky's triggered working party. And we think probably that some of the things that are in her inventory are better suited to ours.

So we're waiting for her working party, working party two, to have its first meeting and we think they'll probably allocate us some tasks to do.

So that's the main progress report if you like. We've got a work plan. We've got volunteers working on content. We've got a method of distinguishing between what is our subject matter versus what we see transferred to the other working party.

And we're working with some quite aggressive deadlines in order to at least be sure that we will be able to deliver content in time for the working party,

whether it's content of the whole and working - (unintelligible) meeting in - wherever it is, (unintelligible), or not. And it's quite a different question but it feels good so far.

And the last thing I just note is that - because we've structured our initial inventory around the powers given to the community and then four or five mechanisms that would implement those powers, we've found something out the template - a little bit challenging.

So when we have our next call I think - which is due in about 36 hours or so, maybe 24 hours, I think we're going to talk through how the template works and may come up with some recommendations for a slightly different approach. And so far I'm pleased with the progress that we have been making. Let me just think whether - so that's the kind of process update. I'm sorry for taking so much time.

And as I said, (unintelligible) has done some substantive content work and I know that Steve DelBianco has been part of a team that's done some work on (unintelligible) putting the escalation of government into the bylaws.

And the question to you, Thomas, is whether you want us to use time in this call to show and start a discussion on any of the substantive work or whether you want us not to? So what do you think?

Thomas Rickert: First of all, thanks, Jordan, for such an excellent summary and congratulations to your whole group for making such great progress. And you know, talking so fluently at 4:00 in the morning is a great thing. So that's great.

I think it would be very valuable for our group to get a little bit of an update as to where you are in terms of substance since we have Roelof on the call and

since Roelof has worked on individual templates, maybe Roelof would feel comfortable to show us who - what he did or maybe you could do so, Jordan.

I guess the exercise could be somewhat similar to what we did with the stress test you shared with the overall group to see whether we're on the - we seem to be on the right track in approaching these things.

With respect to you or your group's issue to apply the trigger versus non-triggered categorization to the community empowerment as well as the mechanisms, I think that's not - that's not entirely surprising.

You know, what we try to do is come up with a format, with a template in which all the questions are asked that would be applicable to both buckets if you wish. Although we are certain that not all questions would have the same relevance for the two of them.

And certainly since this is work in progress we will need to review and adjust as we move on. So I think we shouldn't be afraid of voicing issues with the current approach and just as need be.

For example, it was quite interesting for me to see a communication on the mailing list only today and I think that had to do with some or further response to Becky's email regarding, you know, what the ingredients for standards should be. And actually those were touched upon in the questions that we had put into the templates.

So that gave me, you know, some reassurance that we're on the same track trying to capture as much as we could in this one template to come up with cohesive responses for all the items that we need to work on.

Now Jordan, back to the original question is it - would it be okay for you or for Roelof to maybe share some of the substantive outcome of your work with us?

Jordan Carter: I think that's a good idea. I would be much happier if the people who did the work are able to present it to people who might be into that role. If I haven't talked to you and if you are prepared to talk to the work that you've done with your templates let us know.

I know that Steve DelBianco is happy to talk through a different example, which is the question of how to bring the ATRT or affirmation (unintelligible) staff into the bylaws. So Roelof, you want to go first or second or not at all? Because I know Steve has volunteered already.

Roelof Meijer: Hi, Jordan, this is Roelof. Well, I'm happy to do that but I doubt - I'm wondering if it is really going to be worth our time because I can talk everybody through the templates that are filled in.

But it might be more efficient if everybody just goes through them offline, not during the call. But if you feel that it's useful I'll do it but the remarks that I had on the template while filling them in, I've put them in the template. I think the most important remark is that there's kind of a mixed approach. The title of the template is template for mechanisms.

But if - when I use it for the mechanism advisory board I found that certain questions are more relevant for powers. And when I filled it in for powers I found out that certain questions are more relevant for mechanisms.

A mechanism being a structure that gives the powers that we identified in one way or another to community representatives. So I'm not sure if it's really

worth our while if I talk everybody through the three different templates are filled in for powers and the one that I did for mechanism advisory board.

Thomas Rickert: Roelof, this is Thomas, I guess that's already valuable input and maybe the responses to that. I guess - you know, my reaction would be the - if we talk about community empowerment, that would - those would need to be (unintelligible), i.e. if we are talking about empowering the community to do certain things, to improve the budget. Then we would need to have some sort of procedure to support this.

Let's say we would need to determine who in the community it would be that can approve the budget, how many delegates of certain, you know, would - or how many individuals would be entitled to have the (unintelligible). Would that be a special committee? Would it be the SOs and ACs?

What would be the voting (unintelligible) for that? Does it need to be the consensus for consensus? And you know, all these points can be filled in here. So there's certainly an overlap between empowerment and mechanisms so that I think we can easily marry the two once we have a clearer view of the requirements for each of them.

Because, you know, so far we've spoken about certain community empowerments but we have not yet (unintelligible) in terms of who can exercise them, what the composition of the body is, what type of body we would envision for that to do, whether the delegates in that body if any would have binding votes versus non-binding votes from their respective communities.

And these would differ from power to power or from mechanism to mechanism, which is why we thought it would be helpful for this group to

work through each of them and then look for common factors so that we can combine them into the - or boil them down into the limited - the lowest possible number of accountability responses so to speak.

There's a queue forming. First one is (unintelligible).

((Crosstalk))

Man: Thomas, can I just...

Thomas Rickert: Sorry, there was (unintelligible).

Man: So can I react to you, Thomas?

Thomas Rickert: (Unintelligible), was your reaction immediate feedback to what I said or to what Roelof said?

Man: Can I talk or someone is - wish to talk? (Unintelligible).

Thomas Rickert: (Unintelligible), if I could ask you for your patience for a second, Roelof had some instant feedback.

Man: Okay, I will wait. (Unintelligible), okay.

Thomas Rickert: Great. Roelof?

Roelof Meijer: Okay, Thomas. So don't misunderstand me, I think that the approach of filing a template for powers and filling a template for mechanisms is a very good approach and I think the template that we're using at the moment is quite feasible. There's some fine-tuning to do but the basis is quite good.

Also I think that we should start at the powers and - because once we have filled in the template for all the powers I think from there it will be more clear which of the mechanisms will work and which won't. But it also will give us more information on how we should arrange a specific mechanism to be operable.

I think from - in my opinion, from filling in the three power - the template for the three powers that I did, the most interesting lesson to learn were the answers to the question, is the decision mandated or based on personal assessment?

And so (unintelligible) thus the representative for a specific community has to go back to his community before he can take a decision on behalf of the community or does he have a mandate and he takes a position from that mandate? I think this is an important kind of ingredient for us to determine.

And also the question is the decision made by consensus or if we have this structure where representatives of the community are - for instance, taking a decision to block a change in the bylaws that the board, the ICANN board wants to introduce, is that a consensus decision or is it a vote?

And I never really thought about the question but when I was thinking about the answer I think it was very clear that consensus will not work because it will immediately introduce the risk of capture.

Because once stakeholder group can ask the ICANN board to make a change in the bylaws and the ICANN board wants to change that, introduce it into the bylaws and this community structure wants to block it, and if it's a consensus

decision to block it, it will not work because the same stakeholder group representative will make sure that there is no consensus.

So in effect I think that was a very good part of the template because it makes the whole process more clear.

Thomas Rickert: Thanks, Roelof. I guess that's very helpful feedback. Let's no move to Kavouss.

Kavouss Arasteh: Say I cannot talk tonight because I am sick but we were talking - our community, talking of our - at some point of time we have to say what is a community and (unintelligible) should be changed (unintelligible) or not.

And there is the issue just discussed, I don't think this type of activity of consensus works. You must have voting but the important is to decide what type of majority are looking, super majority of two-thirds, of three-fourths, of four-fifths. That is important. But consensus doesn't work because it hasn't shown that it's not very effective. Thank you.

Thomas Rickert: Thank you, Kavouss. Roelof, I guess that's your hand? Roelof, is that your hand?

Roelof Meijer: No, it's not, sorry.

Thomas Rickert:(Jordan?

Jordan Carter: Thank you. I just wanted to say I thought (unintelligible) Roelof was very helpful in setting out what works and what doesn't and how the template helps.

And as I said in the chat, I think that what we need to do - what I see us doing in the end is being very clear about the powers (unintelligible) the community and then trying to either attach them to existing mechanisms if they're suitable or creating as few as possible in the mechanisms to do the job of imparting these powers to the communities.

So I think that's what we're trying to do here. And the other part was to offer - it's another example that Steve can work through next if you like, which is a little bit trickier where the template wasn't so helpful. But he can explain that as well to a different perspective if you like.

Thomas Rickert: (Jordan), thank you very much. And just to briefly follow up to what we had from Roelof and (unintelligible). It turns out that we need to go through this exercise of looking at every item individually to see what works and what doesn't work, which maybe we wouldn't if we looked at things in a more general way.

And I guess what this also shows is that we need to monitor the interim (unintelligible) of the work party very closely to see whether they've captured everything, you know, in a way that we could consent to or whether we would require changes to that so that we could subscribe to this.

Because at the end of the day, you know, this is going to be a big package of small bits and pieces that would go into the consensus building of this group and we need to make sure that everybody likes every detail of it.

So with that I'd like to give Steve DelBianco the opportunity to speak to the topic that he's worked on. Steve, is that okay with you?

Steve DelBianco: Thank you, Thomas. Steve DelBianco here and this was work done by Matthew Shears, Fiona Asonga, and myself after last Wednesday's work party one call. Jordan solicited volunteers to take on certain tasks and I think I can use five or eight minutes of this call to give you an example of a community empowerment task where we drafted a mechanism that didn't necessarily rely on the template or cookbook.

And since it's more of an existing mechanism where we're changing the form of how it is the community can access those powers. So while the template and cookbook were not helpful they were not an impediment either.

So this is in respect to the task of moving some of the reviews that are in the affirmation of commitments and moving them into the ICANN bylaws. This was first suggested as a community idea over the summer. It was part of the inventory that we gathered on the very first work party, which I guess we were calling it work teams at the time.

It was also indicated by stress test number 14. If you think back to Singapore on that late Monday night evening meeting, we brought up stress test 14, which said what if ICANN were to terminate the affirmation and if they did we wouldn't have the reviews in there anymore.

And if you recall one of the mechanisms that that stress test pointed to was the notion of having the affirmation reviews be part of ICANN's bylaws like the other reviews are instead of a bilateral agreement between ICANN and the US government.

So with all that said, what you have in front of you on the screen is draft bylaws which - for how we might propose, amending ICANN bylaws so that each of the reviews are in there. I'm only going to walk through one of them

and this is a rather easy one to do. It's the review from Paragraph 9.2 of the affirmation of commitments.

If you guys recall, this is the review of security, stability, resilience. We often call it the SSR review. So I used language from the affirmation and we married it with language that was already in the ICANN bylaws where there already are structured reviews, reviews of things like the GNSO, review of the NomCom, review of the ccNSO that occur every five years.

So there's some language in the ICANN bylaws we can leverage but for the most part we have import what the (unintelligible) required.

This would be a potentially new section. Article 4 of the bylaws - remember they already have structured reviews. Then we'd have periodic review of IANA execution of its key commitments.

The one you have on the screen in front of you requires the board have a periodic review, ICANN's execution on its commitment for SSR. And I used the exact paragraph from the affirmation about security, stability, and resiliency ensuring contingency planning and maintaining clear processes.

So that is a verbatim, that second paragraph under number one is verbatim from the affirmation of commitments.

The next paragraph is somewhat new because we've suggested the review will be conducted by a volunteer community review team comprised of representatives designated by each of the relevant advisory committees. That is different than the affirmation of commitments, which leaves it to the chairman of ICANN's board and the chair of the GAC to appoint representatives of the review team.

As you recall from the inventory we did - gathered from the summer, there were many in the community who suggested that the same folks who appoint cross community working groups, the AC and SO and SG leaders ought to be the ones who designate the people that are part of the review teams.

And I've not heard any resistance from ICANN management or board on that. They typically defer to the community to designate which of its representatives are on these review teams anyway.

Thomas and Leon, I'd be happy to take questions while we're going on. I'll just watch for open hands and feel free to interrupt. There's a hand up now from James Bladel. Go ahead, James.

James Bladel: Hi, Steve. Sorry, I was going to hold my questions until you said that so this is James for the transcript. You know, my only concern - I completely agree with you on that point by the way of removing the CEO and GAC chair from the sole position of structuring the composition of those review teams.

My only concern is that when we say things like supporting organization advisory committees and stakeholder groups, my first point is that stakeholder groups are subordinate structure to supporting organizations. So I wonder if that's actually necessary.

And then I wonder if you can get away with putting this in here without also specifying the number of representatives from each type. You know, I think you get into a little bit of trouble with the GNSO for example that always wants to put five people up, one for each stakeholder group and then, of course, it's open to the possibility that new stakeholder groups would be created in the future.

So I mean do you have any concerns about whether or not the bylaws would have to name the - name names and numbers as far as head count? And if so, you know, are we getting a little overly prescriptive with that or just what are your thoughts on that?

Steve DelBianco: Yes, it would be my preference that we'd be as general as possible so we're writing bylaws that will last for the next ten years. And the notion of including stakeholder groups and not just an SO is that GNSO is one SO or stakeholder organization and yet it has multiple diverse stakeholder groups within it.

And so inevitably, the stakeholder group level ends up being necessary. And that's what the ICANN board is using today, the SCG, the NCSG, registrars and registries are all different stakeholder groups. James, you'll note that I did not drill down to the level of constituencies, which are somewhat unique to the GNSO.

And I would have thought you would have been pleased at that. But leave it here at the stakeholder group level. And it's meant to be general enough. And I don't really know whether that means one each or two each. It may well be that we write the bylaws general enough that if a review team needed lots of extra people there could be two from each ASC, SO, and SG - two from the GAC, two from commercial stakeholders group. I don't really know, that's a function of how much work it is to do the reviews.

But I catch your point. In this case we were trying to import what the affirmation already had. All the affirmation of commitments had is that one from each AC and So. That is not been the way ICANN's board and the GAC chair have run the affirmation's commitment reviews.

They've allowed multiple from the GNSO at the SG level because of the recognition of just one from GNSO on a review that's entirely about the gTLD program didn't seem to make that much sense.

Other hands up, (Alan)?

James Bladel: If I can just respond really quickly? Thanks, Steve. James - and I'm just - thank you for that. It makes a lot of sense. And if we can just include some reference to balance while keeping it general I think that's - you're on the right course. Thanks.

Steve DelBianco: Got it.

Alan Greenberg: Am I up?

Steve DelBianco: Alan?

Thomas Rickert: Alan, please.

Alan Greenberg: My comments are somewhat related to James'. A couple of points, the balance of how many from each ACSO, and if it drills down to stakeholder groups has varied from review to review, and we may well need that flexibility.

It's not clear how that - how those decisions should be made. For instance, on the last ATRT there was just two GNSO, not for stakeholder group.

So that's probably - issue number one. Issue number two is we get tightened to nomenclature here. The GNSO has houses and stakeholder groups. The ALAC has (unintelligible), which are a similar designation, a similar drilling

down in the organization, and you know, the ALAC is made up representative from the five different regions, the five different (unintelligible).

And yet because we don't use the term stakeholder group we're disenfranchised in that case. You know, maybe we need to change our name and suddenly we get enfranchised. So I think we need to be very careful but not making decisions based on, you know, existing names and then they end up getting mangled as we go forward.

And the last point is - and I support the people being named by the individual groups. But I'll point out that we've had significant flack in the past when we do that. The ICG for instance, we originally was going to be people - the ACs and SOs suggesting people and then they be selected.

The community said no, we have to be able to specify who we want explicitly. But then once the group is convened we're saying it didn't balance, we don't have gender balance, we don't have regional balance, we don't have other things, which - and balance is something you get by having selectors.

So just be aware that there is a downside of that even though in my case I support what you're recommending. We may have to contend with those who don't, thank you.

Steve DelBianco: Good warning about regional, gender, and other kind of cultural balances. I don't really know how to solve that and I don't necessarily think we ought to bake it into the bylaws but good warning. Samantha?

Samantha Eisner: Hi, this is Sam Eisner from ICANN staff. I'm - I think that there have been some really good warnings around this discussion of the - putting into bylaws things that are too specific versus not specific enough.

And I think that we're having a really good discussion about the types of principles that we think are important to have embodied in these types of bylaws. And I encourage that level of discussion. I think it's really - it's a really good path.

But I want to also suggest that maybe for some of these issues there might be places where we think that specifics are very important. But it could also be that those specifics might change in the future.

And so I just wanted to suggest that maybe for some items within the bylaws that we have some very high level principles within the bylaws of how we see a review structure going. And maybe even a reference to an external document that we could put into place and put a very high threshold around the ability to change that document.

But that - maybe that document could house composition or those types of issues as we're talking about review teams so that we don't have to continuously go into and change the bylaws in order to reflect the current state of ICANN in ten years for example.

I think we do have some tools like that at our disposal so that we can stop using - and we find this in many places across the ICANN bylaws that we use the bylaws to set out a lot of very operational details of things. And that's why we get into the situation where we find ourselves changing our bylaws a lot.

And I think we'd all be served to having more stable bylaws that just have higher level principles with reference to external documents and situations like this.

Steve DelBianco: Sam, it's Steve. I did want to point out, if you look at ICANN's bylaws today you will see general references to the words supporting organization and advisory committees. They're all over the bylaws, dozens of places, without specificity of which ones they are. And that may be a generality that's on purpose.

So I echo that generality by using the same two words, advisory committee and supporting organization, but I added the layer of stakeholder groups since that's the only way to adequately penetrate the presentation of the GNSO, which is one of the SOs.

So we're already there, folks, in the ICANN bylaws at having reference to general structures like ACs and SOs. This is not something new in the bylaws.

Next up we had Sebastien?

Sebastien Bachollet: Yes, thank you very much. I think what someone just said is very important. I think that the current bylaws are going into much detail in many aspect and during my tenure of the board I tried to have this change but I didn't succeed.

Maybe it's time to have bylaw and some other documents - we talk about the election, the way it's done in each SO and ACs and for this purpose here not to go into too much detail because it's not because we are doing addition to the bylaws that we need to mimic the current bylaws in the detail.

Second point, and for me it's very important what (Alan) said, if we want to ensure diversity we need to find a way, a way to have the same people opposing people to be member of a review team and at the end deciding the composition. It's not the best way. We are not accountable either.

Then if you don't want the chair of the board and the chair of the GAC going that for the ATRT or the CEO and the chair of the GAC for the other review team, find somebody else but don't change this type of rules because it was a good way to ensure the balance Alan was talking about.

I think it's a very important aspect we need to take into account for all the composition of all the working group review team and so on and so forth. And also I don't think that we need to do the same for all the review - affirmation of commitment.

For example, you take the example - the one of the - preserving security stability and residency, I think it could go again and again, maybe we need to decide that it's not each three years or four years or five years but more lengthy time.

But for example, for the Whois, I am not sure that we need a review of the Whois as we are working to find another way to do it. And we may decide to have a review of the new type of (unintelligible) services.

But all the review of the affirmation of commitment must be - must not be taken at the same level of time and necessity. Thank you.

Steve DelBianco: Thank you, Sebastien. Kavouss, I think you're next. All right, so we only have three more paragraphs that I wanted to get through.

I mentioned earlier the composition at a high level, but it says here that the review team can also solicit and select independent experts to render advice as requested by the review team in which the review team may choose to select or reject in whole or in part.

That point says that if a review team convenes, and in this case it's on security, stability, and resiliency, they may solicit and select independent experts that...

Kavouss Arasteh: Do you hear me? Sorry, is it okay now?

Steve DelBianco: We do now. Go ahead, sorry.

Kavouss Arasteh: Okay, I was thinking that this is too early at this stage to decide. Don't put this in the bylaw or (unintelligible). Whatever comes to the mind of the colleagues, make at least of that whole inclusion in the bylaw and whatever (unintelligible) propose will (unintelligible) into the (unintelligible) and so on support.

(Unintelligible) situation, I think the bylaw should have three sections. One section would be fundamental and constitutional provision, one section would be functional and operational provision, and one section to be rules relating to the elections and so on and so forth.

So the constitutional part has more stable nature and the operational and (unintelligible) has less stable nature from the viewpoint of the GNSO. So we have to make this distinction.

We could not mix up the issue of the elections of a number, something will change with time so quickly, rapidly with another thing which have constitutional and fundamental and (unintelligible) all the more stable nature. So this is something that we have to do, thank you.

Steve DelBianco: I would assume that review went into that bylaws under your nomenclature it would be the second section, the (unintelligible) section. Okay, so the idea of independent experts came up. Are there any comments on the idea of allowing review teams to pick independent experts at their own discretion? All right, seeing none.

The next one is something that was also suggested by the community this summer. The idea of more transparency of internal ICANN documents when a review team is doing its review. So this paragraph is pretty simple.

It's two sentences that the team should have access to relevant internal documents but there's a qualifier that the review team shall not disclose or distribute internal documents that were provided under a legitimate duty of confidence. Any comments on that? Fantastic.

Next paragraph talks about the output of the review team is published for public comment and this is very similar to what we already have in the affirmation of commitments including the six months - the importance of the board taking action within six months.

Now this doesn't say the board must implement them all, it simply says take action. Taking action is this notion where the board reviews the recommendations and it may accept some or all the decisions the board has to reject certain of them. We have other community empowerment mechanisms that can challenge that.

And then finally rather than have this every three years, our drafting team said let's up this in no less frequently than every five years. I suppose it could be done very year if the community wanted it to but in this case five years instead of three was the change from the affirmation.

I'll stop there and go back to the chairs as to whether or not you want any more Q&A on this. And this is only a first draft, deep within a work party. And (Jordan) asked us to put it up here to give you an example of the kind of work we're trying to do in work party one. Thank you.

Thomas Rickert: Thanks, Steve, for excellent work again. I guess this is very helpful and I guess we need this interaction with the whole group to see whether we're moving to the right direction.

I think what you wrote personally makes an awful lot of sense, also introducing another interval five - instead of three years is a wise proposition. Certainly we're not going to make any decisions during this call but I guess as I mentioned, after we've heard what Roelof said, it's very important that we get feedback from the whole group as to whether we think this is something we like or whether this is something that we object to. So - and so in that sense I think this is most helpful.

Any further questions from the group? There seem to be none. And with that I'd like to thank (Jordan) and his team for outstanding contributions. And I would like to move it to - turn it over to Becky to give us a quick update on - I guess particularly the document that you circulated on work party two.

Becky Burr: Sure. We are - we have gotten off to a somewhat slower start than (Jordan) but I think that we've benefited from the work that WP1 has done. I recirculated a work - actually I recirculated a revised scoping document and we've got the work plan up here but I think the scoping document is more important.

What I tried to do in that is essentially modify the original draft to reflect the changes, what had come out of the work of work party one with respect to targeted and non-targeted items.

And so although I still think that (Jordan) and I will need to continue to coordinate closely because some - you know, we don't want to have us - use different mechanisms as possible but as many mechanisms as we need to accomplish our goals here.

So that has - that's been out and I think that the scoping documents per WP1 and WP2 are pretty much harmonized now. The - (Jordan) and I also discussed the sort of - where the standards work should be and we've agreed to talk about that in work party two.

I've also circulated a work plan and working methods, that is completely stolen from (Jordan)'s with the dates removed. So I violated (Jordan)'s copyright but I'm hoping we're having some kind of creative comments licensing here.

The - we have a doodle poll out and we've got many people have responded to it, not all of them. But hopefully that - hopefully everybody else will respond and we should have our first call in the next couple of days and set up the process.

I think that - the outline and the timeline that (Jordan)'s laid out here - we might be a week later but I think that clearly the goal is to get a first chunk of work done for the face to face meeting.

We've also already stated a pretty lively conversation online and so work is now underway.

Thomas Rickert: Thanks, Becky. I guess the (unintelligible) should be to catch up a little bit, maybe to have both groups (unintelligible) ready for discussion at the face to face meeting.

Becky Burr: Correct, and even if we're a week behind we should be - my goal is to sort of catch up by, you know, this - something like the 17th of March so that the documents are available for the face to face.

Thomas Rickert: Great, great, that's good news. Any questions for Becky? (Unintelligible), I guess that's an old hand from you. I never saw you lower it. So you might want to lower your hand, that would be great.

Okay, there don't seem to be any questions for Becky at this point. I'm sure that we will have much more discuss with her once the first results are there. And with that I'd like to turn it over to Steve again to give us an update on the stress testing.

Steve DelBianco: That would be Cheryl. Go ahead, Cheryl?

Cheryl Langdon -Orr: No, actually, Steve, I'm very happy for it to be you. Go ahead with 17.

Steve DelBianco: Okay, Cheryl, thank you. I know it's the middle of the night for you. We've been awfully busy with a lot of other things so the stress test team really only did one additional application of a stress test. (Adam Peak) had written earlier saying let's have one ready in case there's time to cover it on the call.

So if the chairs are on board I'll wrap up discussion we had about stress test 18 and then turn to the new one we introduce today, which was number 17.

On our last call we (unintelligible) stress test 18 - sorry, go ahead, Thomas?

Thomas Rickert: No, I was just encouraging you to do as you proposed.

Steve DelBianco: Okay, great, thank you. On the last call we had walked through stress test number 18 - and you can all scroll on your document if you wish to get to 18, they're in numerical order by category. The stress test 18 lives under category four of failure of accountability.

As we walk through it on the call we discussed the idea that this is not an endorsement or suggestion that the GAC change its operational procedures away from consensus and to majority. It's simply an acknowledgement that the GAC has the power to do that, anytime if it so wishes.

And if the GAC were to change what would be the reaction of ICANN the community and ICANN the organization to advice that originated from a GAC that was simply using a simple majority to generate the advice?

And the response to that stress test was to pick up on measures that had shown up in the inventory of accountability suggestions collected over the summer, which was the notion of modifying ICANN's bylaws so that the due deference given to GAC advice was reserved or that GAC advice which was truly the result of consensus.

And by that we didn't mean rough consensus, we meant the very same definition of consensus that the GAC uses today, and that is the practice of adopting decisions by general agreement in the absence of any formal objection. That is in the GAC operating principles and it's been there since 2011.

It's not exactly the same roll off of the rough consensus that is indicated in policy development processes. All right.

So this doesn't need a lot of discussion, we just wanted to make sure that people had a chance to understand what this was about and this stress test would suggest that existing measures are inadequate and that the proposed measures might be adequate to solve this stress test problem but only if we make amendments to the bylaws - to only give this sort of due deference when it's true consensus that's behind it.

I did note that there is one other mechanism we have and that would be that if the board took action on GAC advice that was not supported by consensus, well, the community - if it's empowered with the ability to challenge a board decision the community could challenge the board on its acceptance of all or part of GAC advice that didn't come over with consensus.

Now having said all that I did want to remind everyone that if the GAC were to send advice over at any time that wasn't supported by consensus, if it's really great advice that the community wants to act on there's nothing that stands in the way. This is merely a floor, not a ceiling for advice that the community supports and implements.

Take a quick queue on this and then we'll turn to the new stress test. Becky?

Becky Burr: Hi, I just wanted to note something that was circulated earlier today, which was a preliminary injunction essentially in an independent review process regarding delegation of .Persian Gulf. There was no GAC advice on it but a group of GAC members had gotten together and invoked the IRP.

I think as an interesting twist that I certainly had not anticipated and something that we may want to just think about.

Steve DelBianco: Thank you, Becky. So folks, now if I can get you to scroll up to Page 2 of the document that Alice was kind enough to post, you'll see a new stress test that's number 17 - sorry, it's not a new stress test.

It's just a new example of applying it to our draft mechanisms, number 17 on the second page. If any of you are not on the Adobe chat I sent an email to the entire accountability ccWG a couple of hours ago that has this.

This is a stress test under the category of failure to meet operational expectations. And it says, what if ICANN were to attempt to add a new TLD in spite of security and stability concerns expressed by the technical community or other stakeholder groups.

A lot of you will recognize this right away, this is in some respect a reflection of what the SSAC issued four different kinds of advice on security certificates and collisions with new TLDs like .Home and .Mail.

And it didn't seem as if ICANN management or board were adequately responding to those in terms of making sure that we were mitigating the effects of security certificates and collisions.

So under existing accountability mechanisms, I briefly suggest that while the community showed in 2013 and 14 that we showed that we - along with the SSAC or I should say following the SSAC we were able to elevate the volume on the SSAC's concerns.

And eventually that succeeded at prodding ICANN management to pay attention to those risks and to come up with a mitigation plan. As you recall, .Mail and .Home were taken off the list of potential new TLDs.

There was a collision mitigation plan that was put out and there was quite a bit of education with the security certificate providers to ensure that they would not be compromised by collisions with security certificates.

So that action resulted from the community exerting pressure, backing up the SSAC. So I want to recognize that may have been - that may be a good example where the community pressure did act as an accountability break on ICANN management.

Now the second paragraph there in the middle column, I'm not positive about this, but my sense is that NTIA today only really gives a clerical stamp to new delegations or redels and they do so by only two affirm what ICANN suggested, that they follow (unintelligible).

If that were the case could NTIA suggest that ICANN is about to delegate .Mail. It doesn't look like they followed all the processes because the SSAC has objected to it and has a concern and a recommendation. I honestly don't know whether NTIA today can or should give that kind of scrutiny to a delegation request. I suppose it's possible but it's not at all clear.

So I would evaluate existing measures are probably adequate to mitigate the risks of this scenario and the example of 2013 and 14 probably bears that out.

So turning to the proposed accountability mechanisms, there's really three of them. One measure was the community could force ICANN's board to

implement a recommendation coming out of an affirmation of commitment review.

And if you recall, just a few moments ago, we talked about the review 9.2, which is a review of security, stability, and resiliency. So if that review team had a recommendation addressing the security and stability of the DNS because of new TLDs and ICANN's board hadn't acted on it, well, then I suppose the community could force the board to act on an approved recommendation. We covered this about two weeks ago.

Another possibility is the community could force ICANN to respond to the recommendations from an advisory committee like an SSAC and I just invented that this afternoon. We haven't actually fleshed that out.

I put it here for your consideration but it's a different flavor on the first one in this column, this notion of can the community with a sufficient voting threshold actually force the board to take an action or not.

And if we go down that path we'd have to decide which kinds of action that were supported from a bottom up consensus, which kinds of actions could the community force the board to act upon.

And finally, something you've all seen before, this notion that the board took a decision - this kind of a non-triggered event when the board takes a decision - sorry, a triggered event where the board has done something that the community can then challenge either to an independent review panel, right, Becky, or to potentially veto the decision, to set it aside.

So it looks to me as if the proposed measures enhance existing accountability measures in terms of giving the community the power to mitigate the risks of the scenario.

So this is an example of scenario that doesn't test accountability per say. It's the scenario that gets to what ICANN's core mission is and says do we have measures in place to mitigate the risks of the scenario. So Thomas, Cheryl, I'm happy to stop there and see if there's any questions.

Thomas Rickert: Yes, this is Thomas. Apologies, Cheryl, I did not want to (unintelligible) in speaking to this so I should have been...

Cheryl Langdon -Orr: Thomas, no offense taken, I can assure you.

Kavouss Arasteh: Thomas, please before ending, I have one important comment to make.

Thomas Rickert: Please, Kavouss, go ahead.

Kavouss Arasteh: Hello? I don't believe that ccWG is entitled or power or mandated to go in this specific gTLD, .Africa, .Amazon, dot (unintelligible), dot (unintelligible). I totally disagree with this course of action. The information Becky giving was to you was wrong - was totally wrong and there was no (unintelligible) with the specific dot (unintelligible) goals.

This group of getting together (unintelligible) and .Islam (unintelligible). (Jack) has a clear advice in South Africa to ICANN that does not have any objection that ICANN go ahead with (unintelligible). So information Becky is providing is wrong and misleading.

Thomas Rickert: Kavouss, I guess that's something maybe for you to take offline with Becky to further clarify. I think with respect to this particular stress test I would like to open it up for questions and comments.

Kavouss Arasteh: But sorry, you didn't listen to me. I am saying that - not mandated to go the specific detail (unintelligible) .Africa or .Amazon or (unintelligible). These are outside our mandate.

Becky Burr: Kavouss our stress test doesn't. Our stress tests don't do that.

Thomas Rickert: The stress tests do not mention any of those Kavouss. The stress test does...

Kavouss Arasteh: She mentioned that there was a group of people. There was no group of people. It was wrong information, please.

Thomas Rickert: Kavouss. Yes, you went on record stating that. I have encouraged you to further clarify that with Becky and maybe the two of you could report back to the group with further information on that.

If you go through the stress test document it does not have any mentioning of specific examples and you're correct that our group is not tasked with evaluating or assessing specific cases. But we have to look at contingencies that we need to stress test to ensure that future accountability concepts safeguards ICANN against certain contingencies.

So we've just discussed stress test number 17 and I would like to open it up for questions with respect to this.

Steve DelBianco: Thomas, it's Steve. And Kavouss, Thomas is right. None of these stress tests get to that but I believe you were speaking to an aside that Becky gave just before we began to talk about the stress test.

And Becky has responded to you in the chat along the lines of what Thomas has just indicated.

Thomas Rickert: Yes, and I'm sure that Kavouss has seen Becky's comment in the chat but I think we should not get distracted by the particular cases or different readings of the document.

I think everybody in the group has now noticed that there are different views on this but I would like not to discuss this in this calling if (unintelligible). Jonathan? Jonathan, are you on mute? Yes, we can hear you.

Jonathan Zuck: Okay, good. I was on mute. I guess I don't want to throw a fly in the ointment but this stress test once again raises the question about our definition of success within the context of this test.

In other words, if the exercise here ultimately with stress test is to measure our accountability framework against the set of stress tests and make sure that we have sufficiently covered if you will those various stress tests with our accountability framework, then the - we wording of the lower right hand corner is going to always be a sticky wicket.

In other words, we have to define the degree to which, you know, the stress test was answered by the proposed accountability measures to decide whether or not we can paint a big green checkmark next to that stress test in the evaluation of our accountability framework.

And so I mean, absent a question of degrees, if we're trying to speak in absolutes then I feel like we need to redefine success to be about accountability of the board or staff to the community and not to outcomes that outside the control of the board or staff.

I mean that's - I hope that makes sense. Right now we've saying we've enhanced the community's power to mitigate the risk but does that mean that the stress test is in fact a pass or a fail?

Steve DelBianco: Jonathan, it's Steve. And you've brought this point up before and while I appreciate it I think it's off base. There isn't a pass/fail on stress test. There are not quantitative applications of the risks that a bank will fail. In this case, the stress tests are going to be measures of degrees and they are often just relative to the current situation.

We want to make things better than the current. But it is rare that we'll have a set of stress tests that will have a yes/no in a situation like this. So I don't think it's helpful or necessary to change the way we're doing these so that we could arrive at a simple green checkmark that isn't even the objective of the procedure.

Jonathan Zuck: Well, but at some point we are going to have to make a determination whether or not our accountability framework is sufficient or we need more, whether there needs to be additional aspects to that framework.

And I guess - I mean again, I look at the wording of stress tests, if ICANN attempts to add a new top level domain in spite of security and stability concerns expressed by the technical community and other stakeholder groups, it seems to me that the mechanisms we have in place are 100% sufficient to prevent that attempt and that that is in fact the stress test.

Steve DelBianco: Which is exactly what it says on the screen in front of you. We have made it somewhat better and easier than the process we used in 2013 and 2014 where the community didn't have a formal method at all of raising these concerns of the SSAC to such a level that management was compelled to respond.

We did it socially whereas we are attempting in the ccWG to design community empowerment mechanisms that are somewhat better than a social pressure. And those mechanisms are challenging a board decision or potentially forcing the board to act on a previously generated recommendation.

And that is an incremental improvement. Nothing will ever eliminate all the risks that a new TLD will cause unforeseen problems. So that is way too high a bar for the stress test. It's a question of whether the community has the power - can we give it greater power to force the board and the management to attend to risks that the community has identified?

Thomas Rickert: Steve and Jonathan, can I ask you to pause here for a moment. Eberhard has patiently waited in the queue so I'd like to hear Eberhard now.

But before giving Eberhard the floor can I ask Kavouss to please mute his microphone. I guess we can hear you typing your interventions in the chat and with respect to those, I think your point is well made.

I think that individual members of the group have been loud and clear that we have not made the attempt to take on the task of commenting on board being in charge of GAC advice.

The (unintelligible) has also made this clear so I would kindly ask you to put that point to rest and let's move on to the substantive discussion.

(Unintelligible), please.

Eberhard Lisse: Can you hear me?

Thomas Rickert: We can hear you all right.

Eberhard Lisse: Okay, I also wanted to say I find this (unintelligible) typing so disturbing that I can't really follow the thing and that was the main point I wanted to make. On the other hand, I don't care whether it's amended or not recommended on the GAC or interpret the GAC advice. If it fits (unintelligible) - if it affects accountability we'll do whatever it takes. I don't care who gets offended.

Thomas Rickert: Thanks, (Unintelligible). Jonathan, is that an old hand or a new hand?

Jonathan Zuck: Old.

Thomas Rickert: So we heard Eberhard and Kavouss is in the queue. Kavouss, you might be muted. So we can hear people typing so please can you mute your microphones when not speaking. Obviously we - we seem to (unintelligible) with (unintelligible) and he can come back in the queue.

We're back to the discussion that Jonathan and Steve just had. Jonathan, I could ask you, I think I was pretty fine with the approach that Steve and Cheryl have suggested. I think in order to settle this discussion once and for all, we would really need to get a suggestion as to how we should change the format.

I know, Jonathan, that you've made this point earlier so if I could ask you to maybe come up with a concrete proposal that the group can take a look at I'm more than willing to pick that up and have it discussed. And in the absence of that I would suggest that we move on and (unintelligible) what we have here.

The other point that I - or a question that I would have for Steve and Cheryl is that, you know, what I've been missing in terms of proposed accountability measures that it might do the trick to give advice from the security and stability advisory committee more weight than advice from other advisory committees.

If you will remember that we also had a contingency listed or it was discussed on the mailing list on how the ICANN board should deal with conflicting advice from advisory committee then - since security, stability, and resiliency of the DNS is likely to be one of the basic principles of ICANN, it would be a violation of the bylaws in case the board neglected security, stability advice.

Steve DelBianco: Thomas, it's Steve. If the community felt that the advice coming from SSAC or even from GAC or the advice coming from the IETF were very persuasive and compelling, well, the community has the empowerment to challenge a board decision that conflicts with the advice.

I don't think we should try to design extra weight into the mechanisms we're developing. How would you come up with a numerical way of weighting the SSAC over the GAC or over the IETF or GNSO? I don't think that would be a very productive path for us to pursue since we would almost never be able to agree on the specificity of that.

And it would have to be baked into bylaws, which make it fairly static. So let the community determine at the time whether the advice is particularly

compelling and should be followed. And we've already got a mechanism designed to give the community that kind of power.

Thomas Rickert: Yes, Steve, to continue on this, I guess the SSAC advice is somewhat different from other advice that the ICANN board gets. So I think it's at least worthwhile thinking of - giving that some sort of special treatment. That is not to say that it can't be tackled, right.

If the community feels that the SSAC advice is flawed then it might call upon them to (unintelligible) by technical expert group. But let's not dwell on this for longer. I heard your response and I wouldn't object to it but I think that, you know, my suggestion could be another facet of resolving this.

Okay, I think - unless there are further questions from the group we can then move to the next agenda item and that would be an update on the (unintelligible) work and with that I'd like to hand it over to Leon.

Leon Sanchez: Thank you very much, Thomas. So in the legal sub team part we've been working - many people to deliver this questions that are now on your screen.

First draft set of questions that, of course, is open for suggestions and we encourage all members and participants from the group to provide feedback on whether these questions are the right questions to ask to (unintelligible) legal advice or if you see some questions that are missing we would, of course, encourage you to step forward and provide us with those questions.

We are waiting to hear from the working party two and working party one with regards to any questions that they might have as to - in order to add them to these paper.

And (Robin) is also working on training these questions into a letter that can be delivered to the external (unintelligible) that will be selected shortly. And of course, this letter will consider some background and some context to put the lawyers up to speed as to what we are looking for and what kinds of goals we would be trying to achieve.

There have been some calls between the client meeting of the CWG and the potential law firms that are being considered in order to have a final decision on which law firm will be hired.

And I was added to the loop on this area. So this week we will be having four calls with the different - with the final list of law firms and of course we will update you as soon as we get to the final - to the final candidate that will be put forward for consideration in order to get hired by ICANN and provide this external legal advice.

I'd like to go through some of this questions. The vision of this questions is related mainly to three subjects so far. The first one is regarding corporate governance, ICANN corporate governance. The second one is related to jurisdictional matters. And the third one deals with potential antitrust and other lawsuits.

There is another point that I would like to consider in this questions and for this I'd like to hear from our ccTLD managers because I am aware that there is some concerns and of course, we need to address this in the case of ccTLD delegations and redelegations as to which remedies or which measures could be brought so that ccTLDs could have their voices heard. And of course, any potential dispute resolved.

So I'd like to hope the floor for comments. I sent this document earlier to the general managers. It was sent as a Google Doc link so anyone that wants to comment on document can do so. And was also attached as a PDF for those who have a - I mean for those who appreciate more convenient - having a PDF rather than a document link.

So now I would like to open the floor for questions or comments regarding these legal questions. I see (Jonathan)'s hand raised. Please, (Jonathan)?

Jonathan Zuck: Thank you. And it could be that it's a - it could be that it's covered, I'm just really - we just got this but I feel like to some extent we want the questions to be a list of powers and ask for the best mechanism to accomplish them as opposed to putting up our own mechanisms and asking them to poke holes in them.

I mean at some level - and that may be what you're asking in the first question. But it's sort of like here's the things - because it's a fairly finite list, here's the things we want the community to be able to do, what would be the best mechanism to allow them to do that.

Leon Sanchez: Okay, thanks, Jonathan, we will certainly look into it and refine the list. And I think Steve DelBianco's hand is also raised. Please, Steve.

Steve DelBianco: Hello, Leon. The six questions that the - our ccWG put to ICANN about four weeks ago were returned by (unintelligible) while we were all in Singapore. And if you recall, those six questions got to the notion of community empowerment over the budget, community empowerment over the spilling the board, etc.

We probably phrased them wrong because we started with yes/no questions, can the community, for instance, override a board decision? Can the community reject the budget?

We should have said how can the community be empowered to override a budget? How can the community be empowered to spill the board? Because then legal counsel then is obliged to provide answers or pathways to solve our problem as opposed to a simple yes/no answer.

So having said that, those six questions to me are even more relevant than all the questions you have on the page in front of you. And I'm wondering why we've thrown those questions to the side when those really are begging for the answers from independent council that will be treating us as the clients?

Thanks.

Leon Sanchez: Thank you, Steve. The questions weren't put aside. In some way the questions you see in this document address part of the questions that were originally put forward to the legal advice by (unintelligible).

And of course, I said this is an open list of questions in progress. It is not a closed list. And we will, of course, look into it and include any questions that might have been missing or that are not clearly stated as this list so far. So now I see (unintelligible)...

Steve DelBianco: Let me finish as a follow up. If I looked at your set of questions, the first block, number (5) where it says is it possible to have delegates, what I would ask is what are the possibilities? Is it possible we may get a yes or no? And we really do want an explanation of how.

And the same thing is true of question H and I. H and I should not be stated can something happen but how can, that way we don't fall into the same trap we did with (unintelligible) where they answered a yes/no question by saying no with a lot of explanation. We need instructions as to how to do something, not just a yes/no. Thank you.

Leon Sanchez: Thanks, Steve. We note that and we will further deepen the questions so we also have the how and not only the yes or no. so Thomas, could you please go ahead?

Thomas Rickert: Thanks, Leon. And I'd like to echo what (Jonathan) said. I guess what the lawyers would need to learn is what our requirement is, you know, the predicament that we're in, i.e. we want to give certain powers to the community.

I guess that's something they need to know. But we don't know what legal vehicles the community can use to get certain powers.

So how can this be implemented? And then if we wanted to keep things very simple, it's basically three topics that we've boiled down after the Frankfurt meeting. Can we get the community reverse board decisions? Can we call the board to action? And can we get board members dismissed?

And I guess that if we present them with this as an introduction basically we can have some more specific questions as underlined as what Steve has asked. Although I think that many of the questions that you have in the first and then the third section are really worthwhile asking.

The - I have some difficulties and Leon, you know because I mentioned it to you earlier, with the questions in the second section. Remember that we are

eager to get this finished and get input for work stream one, i.e. those accountability mechanisms that need to be implemented or committed to prior to the transition.

And if we ask external council to do basically global survey of beneficial jurisdictions that might take them ages and cost a fortune.

I cannot foresee that this group would - will agree to changing jurisdiction for ICANN because that will make the transition impossible. So I have huge difficulties with the jurisdictional section, at least I guess this group should decide whether it wants this question to be clarified for work stream one.

And I have a feeling that we would put ourselves in real trouble if we wanted to await an answer on that prior to the transition. Back to you, Leon.

Leon Sanchez: Thank you, Thomas. I agree with you. Maybe we have to take second look at the set of questions as it is a work in progress as to define which of them would fit into the work stream one definition and which would feed into work stream two or it could be addressed at a later time.

So yes, we would definitely as a sub team take a second look at this question and keep in mind if they are achievable with regards to our timeline in work stream one.

I see Markus Kummer hand up. Please (Marcus), go ahead. Do you have your line muted? We can't listen to you, (Marcus), but Avri is next in line. So Avri, could you please take the floor while we wait for (Marcus)?

Avri Doria: Sure, thanks, this is Avri speaking. Hopefully I can be heard. In terms of jurisdictional matters, I both agree with Thomas but think that we still need to

keep the jurisdictional issue open. I think the idea that we're going to move jurisdiction is problematic and, you know, does extend things.

But if we look at the needs for jurisdictional resolution of issues and we look at - for example, what would be a mechanism that would allow issues that had international issues, that had perhaps governments involved. And are there arbitration schemes and whatever or international panels, what have you, that one can go to for a resolution of the jurisdictional issues?

So I definitely don't think we need to go as far as moving the company to solve the jurisdictional issues. But we may want to look at is there a way to get a step in the direction of resolution with something simpler to begin with. And you know, thanks.

Leon Sanchez: Thank you very much, Avri. (Marcus), are you ready to speak?

Markus Kummer: Can you hear me now? Can you hear me now?

Leon Sanchez: Yes, we can hear you, (Marcus), thank you.

Markus Kummer: Okay, okay. I think that to a large extent I agree and let me make the point I'm speaking in my personal capacity, in no way on behalf of the board. I think this is a very impressive discussion and I'm very impressed with the general draft of the discussions.

And I agree to a large extent with what Thomas had said. I find the issues here - they go to a level of granularity which may think look more complicated than they may actually be. But one of my favorite sayings is the perfect is the enemy of the good.

And here we have to look at something which passes the test and I get Avri's point on the jurisdiction but it may be too complicated at this stage. And essentially Thomas mentioned two - or three issues, I would even make it more simple. I think it's essentially two issues, how to have an independent appeals mechanism and how to spill the board.

And there - I'm very uncomfortable with one of the sub items which relates to - is missing individual board members.

This is nothing personal but that's (unintelligible) democratic process and I stand to be corrected but I think most democratic governments have the possibility of having a non-confidence vote of the government, people - parliament doesn't like what the government is doing, and government is sacked and that's collective.

Then you establish a new government but to go and pinpoint individual members of the government or of a board to me seems a very unhealthy way of proceeding as it invites to witch hunt and creates a direct link also between board members and individual constituencies. This constituency may not like this or that board member so let's recall them.

Whereas if there's a collective decision that the community thinks is wrong then let's recall the board, let's reform the board, and ultimately we have the mechanisms in place that is not reelecting a board member you feel hasn't delivered.

So these are my - okay, the last point is maybe very granular as well but it's my overall recommendation will be, let's try and keep it as simple as possible and look at what we really need.

And there I think the possibility to recall the board and to have an independent appeal mechanism is key, that really (unintelligible). I think if you have these core issues in place then we go a long way into enhancing accountability.
Thanks.

Leon Sanchez: Thank you very much, Markus. We will definitely keep your comments in mind as we move forward with refining the document. Are there any other questions or comments with regards to the legal questions so far? No? Okay. So I'd like to move to the next agenda item, which is our face-to-face meeting in March.

And today earlier there was some emails sent to the general (unintelligible) announcing the fixed dates for our next face-to-face meeting, which will be on 23 and 24 of March. And it will take place in Istanbul at the (unintelligible) Istanbul Belmonte Hotel and Conference Center.

There have been different questions about our face-to-face meeting in May. We haven't had that discussion yet with the CWG co-chairs. As you were informed, this process has been running a long in coordination with the CWG chairs.

So we will have our next coordination call on Friday and as far as I can tell the May face to face meeting will be on our agenda to discuss. So as soon as we have more information on the dates or the venue with regards to the face-to-face meeting in May we will let you know.

We are aware that all of us need to coordinate our agendas. We also have work for a living so we are mindful of this information as - as soon as we have it we will hand it to you. So this meeting we're having in Istanbul will be back to back with the CWG meeting.

Many of the members and participants of the ccWG are also members or participants of the CWG. So the aim is to have this meeting back to back so we can iron out the details and are able to proceed in achieving our timelines in both the groups.

And we'll - I don't know if someone has any comments with regards to this face-to-face meeting. Of course there will be an agenda that will be circulated in time. And one of the objectives of this face-to-face meeting would be to have a first draft proposal from our side in order to open it to public comment.

So I'd like to open the floor for any questions or comments with regards to our face-to-face meeting.

Thomas Rickert: Leon, are you still there?

Leon Sanchez: Yes, I am here, Thomas. Can you hear me?

Thomas Rickert: Yes. There was just some - such a long silence. I was getting worried.

Leon Sanchez: Okay. So are there any questions or comments regarding our face-to-face meeting on the coming 23 and 24 of March in Istanbul? Okay, thanks. So there are no comments with regards to this agenda item.

So I'm mindful that we still have some time in this meeting. So I'd like to open the floor if anyone wants to raise for any other business. Yes, Thomas, can you please (unintelligible)?

Thomas Rickert: Yes, thank you, Leon. You know, I don't want to spend too much time on this but (Edward) has responded to Markus (unintelligible) regarding the dismissal

of the board as a whole versus individual board members. And I think that it might be worthwhile getting some more feedback on that.

The starting point of our discussion was that we always talked of the possibility to have individual board members removed in addition to have the opportunity to get - to have the whole board removed and certain very bad cases.

I have not heard that anyone else than Markus has asked for this power to be limited to removing the board as such. And I guess that's an important distinction. In my view, I think it should be possible for the organization - sending board members to the board to recall them according to their own procedures.

And that in itself would be a mechanism whereby individual board members can be removed. So this architecture would need to be revisited if the group felt that we - that we can work on the basis of allowing for the whole board to be spilled only versus the board and individual board members.

So maybe we can hear a few views on that while we're together? Markus, I'm not sure whether that's an old or a new hand. I gather it's a new hand.

Markus Kummer: Can I speak?

Thomas Rickert: Please do.

Markus Kummer: Yes, no, I mean I think there's a distinction between misdemeanor of individual board members and I think the current bylaws allow - you know, if board members behave in a way not respecting conflict of interest then the board can dismiss individual board members for demeanor.

But here we're talking about more political assessments of how a board member works and recalling individual board members.

And I may be - this is really my personal feeling and I find that might lead to a very unhealthy environment where you (unintelligible) and look and create a witch hunt for board members that do not vote or behave according to the behaviors or the expected behavior of the constituency that voted for them. But the ultimate sanction is not - reelection of a board member.

And if you feel as a community that the board member has really made a real mess in the decision making process and reflected badly on the board as a whole then you'll have to ultimately (unintelligible) by dismissing the entire board.

But as I said, I may be wrong, there may be (unintelligible) where they can dismiss individual members of a government, specific (unintelligible) as (Edward) said.

Okay, but would it really lead to a healthy relationship between the community and the board if each board member has to look over his or her shoulder, does my community like what I'm doing. This is something - I'm happy to pick it up on this. It's just something I'd like to flag and I think it's worthwhile considering.

And in my opinion, it would not necessarily enhance the overall accountability of the organization whereas dismissing the board - a vote of non-confidence, then you start again, have a caretaker board, and you elect the board. Then - you know, you don't vote in the members of the board you didn't like in any case.

The results would be more or less the same but I think the climate would be different, that's my take on that. But this is an individual contribution to the discussion as an individual board member, as I said, not at all consolidated among the board members. We have not discussed it as such.

I think the board accepts the fact that there is a dismissal mechanism in place however that should be. It's really up to the community to decide. This is just my personal input into the discussion.

Thomas Rickert: Thanks, Markus.

Bruce Tonkin: Thomas, it's Bruce (unintelligible) if I can comment when you're ready to...

Thomas Rickert: Yes, is that with immediate response to Markus' intervention here? Because I have a queue forming. I would otherwise put you in the queue.

Man: Thomas, I have two comments. Please allow me to make it so much.

Thomas Rickert: I would get back to you in a moment, (unintelligible). Bruce, can I put you into the line?

Bruce Tonkin: Yes, please, that'd be (unintelligible).

Thomas Rickert: Kavouss, it's your turn, please.

Kavouss Arasteh: Yes, the point (unintelligible), the consequence of any - let us put it in this way, in (unintelligible), inappropriate action of the board members should not have usually impact on the entire board.

ICANN board functions like many other boards in the world. There is a (unintelligible) of an individual member of - in any type of this activity but (unintelligible) unless that action have overall difficulty in that case you should consider whether or not appropriate to impact that action of individual or behavior of individuals to others.

So we should be careful as not penalize the entire board if one of the board members does not act improperly. This is number one.

Number two, I have to refer to the Durbin GAC communicate part of three. It says...

Man: (Unintelligible), excuse me, (unintelligible).

Kavouss Arasteh: I should say something in the minutes because something - people think that consensus so I don't want consensus.

Thomas Rickert: Let's please - you've made your point. We've - I've asked you to bring this question to an end. We've seen that you made reference to the communiqué and decisions in the chat. So that's well noted. Let's see...

Kavouss Arasteh: Okay, I take everything out from the discussions or (unintelligible) interventions (unintelligible). I want my intervention (unintelligible) as well. (Jack) decided under...

Thomas Rickert: Kavouss, let's not further discuss this. Let's please stick to the question that we're currently having on the agenda.

Kavouss Arasteh: Okay, then take (unintelligible) out of the discussions. If not you should put mine as well, okay? Thank you very much.

Thomas Rickert: I guess both of your interventions will stay on record so that everybody has the opportunity to...

Kavouss Arasteh: Mine is not (unintelligible).

Thomas Rickert: To make up their own mind.

Kavouss Arasteh: Mine is not (unintelligible). I'm quoting from the GAC communiqué (unintelligible) saying that (unintelligible).

Thomas Rickert: I think you've...

Kavouss Arasteh: GAC has finalized...

Thomas Rickert: (Unintelligible), your point is well noted.

Kavouss Arasteh: I will not object to them, does not object to them. So that object is correct. No, it doesn't.

Thomas Rickert: Kavouss, can I please ask you to stop this conversation at this point. Your points have been well noted. I - we acknowledged your points and I'd like to proceed now.

Kavouss Arasteh: Thank you very much. I apologize. I'm very sorry. Thank you very much for your kind words, thank you.

Thomas Rickert: Thank you, (unintelligible). Steve, please.

Steve DelBianco: Hi, Steve DelBianco. I wanted to react to Markus Kummer's observations, and I know they're personal, based on a limited experience on the board. And I would ask you, Markus, to take a far broader perspective.

You're addressing only this notion of changing the board members, whether it's through not reelecting one even though they were there for three years, it's not a very quick mechanism to wait three years to not reelect someone, the individual recall, which does not exist right now, and this notion of spilling the entire board.

Most of us look at the spilling of the entire board as a nuclear option. And when I use that word I mean almost no one can conceive of the disruption and confusion that would be caused if you were to spill the entire board. It is such a disruptive step that few of us believe it will ever be used.

And we're not even sure that the existential threat would be enough to motivate the board to follow what the community consensus is.

You have to understand that what we are seeking are incremental, implementable ways for the community to challenge a board decision or to assert its will on a board that is conflicted. When you took office as a board member you were given counsel on what the bylaws require you to do.

And your fiduciary duty is to the corporation. And I understand that completely, that's how it should be, that's your fiduciary duty. But the shareholders of ICANN, the community of ICANN, doesn't have anybody that official represents our interests.

So what we want to do is to have the ability to challenge a board decision to say, the way that you, Mr. Boardmember, the way that you interpreted your

fiduciary duty is at odds with the community and serving the community
ICANN was created to serve.

So we want to be able to override those decisions to say thank you very much
for your fiduciary duty but you're missing what the community wants to do.
It's much better to change that decision than it is to dump the entire board or
to wait for a reelect or to dump an individual.

There isn't a witch-hunt mentality. I don't believe we've ever had an intention
to going after an individual board member at all. It's really about collective
decisions that the board made in many cases unanimously. But it made those
decisions based on its fiduciary duty instead of on what the community
wanted it to do. Thank you.

Thomas Rickert: Thanks, Steve. (Alan)?

Alan Greenberg: Thank you. I thought someone else was in the queue before me but I guess
not. Several things, the board has - the bylaws give the board the ability to
dismiss individual board members and liaisons with the exception of the GAC
liaison.

So clearly those who drafted the bylaws felt that there are times when an
individual board member is causing enough problem for one reason or another
that you can't wait three years or up to three years.

I think we're looking at three different specific cases. One is the ACSO
withdrawing, recalling their own board member. (Larry) strictly used the term,
have lost faith in.

We appoint board members not to represent our organizations but because we believe they share a mindset. If there's strong evidence that they no longer share that mindset then there's good reason I believe to recall them.

So I think that is something that should be there. There's also the case of the NomCom members - NomCom appointed members who were not appointed by an ACSO and therefore there's no ability right now other than the board itself for removing them.

I strongly believe the community by community wide action should be able to remove any of those. And remember, we're talking about community action. We almost never agree on anything. To get a significant consensus among the ACs and SOs, it would require some pretty strong reason to do that.

And lastly is potentially the ability to remove the whole board, I think that's a completely different case. It's a rather onerous case because you then have to replace the board on an interim basis. And there's a whole sets of issues regarding capture and things like that there.

So I think that's a third case which maybe we'll want to, maybe we don't. but the other two cases I believe are unique and need to be addressed, thank you.

Thomas Rickert: Thanks, Alan. Par?

Par Brumark: Yes, do you hear me?

Thomas Rickert: Yes, we can hear you.

Par Brumark: Do you hear me? Thank you, I don't know - because my voice is crumbly like yours. I want to go back here a bit - back here to the legal sub team. The question was to the ccTLD operators and managers (unintelligible).

Well, I trust the legal sub team will continue to look at these issues because they are very crucial, the redelegation and delegation issues. And I didn't really follow where we can comment on that. There was supposed to be a mail sent out.

Thomas Rickert: Yes, an email with a scoping document has been sent to the list and there's a link to the...

Par Brumark: Do you have a date? Okay, great. Okay. So now that's the last thing so have a good evening, morning, or whatever.

Thomas Rickert: Thank you very much, Par. Next is Avri.

Par Brumark: Thank you.

Avri Doria: Hi, thank you. I tend to - in some sense - this is Avri speaking, agree with Alan that there are several cases. I tend to think we need mechanism for them all. I agree with needing a mechanism for spilling the entire board, for a vote of no confidence.

I don't think it's quite as disastrous as Steve does or quite as disruptive as long as there is a method predefined for how you deal with having done that. You enable such a scenario by having already defined as opposed to - oh my word, if we spill the whole board what are we going to do, help us, help us.

But we have a defined process that sort of says, you know, you have this caretaker and then you have elections for continuations - however. So if it's predefined and we know how it's going to do it's not quite as impossible.

In terms of the need for individual stakeholder groups or constituencies or, you know, whoever it is that's electing board members, I think that that is not a community decision to make. I think that, you know, there are examples that could be examples of a board member, you know, basically not paying attention to their job and never talking to the people that elected her.

And you know, I don't have an example in mind but that (unintelligible) happened. One has seen fragmentary examples like that. And that could be sufficient reason of a group of people, you know, that elected to do a recall and to, again, require defined recall mechanisms within each of the elector's - you know, each of us elects our board person differently. And therefore we would each need our own recall mechanism.

In terms of the Noncom's, which was also mentioned, you have an example in the IETF where their NomCom rules are basically NomCom rules both for placing and recalling an individual person from, you know, the IESG or the IEAB. And it isn't even the standing NomCom, a new NomCom is constituted when there is a sufficient community drive to remove a person.

So it isn't directly the community removing a NomCom appointee is the community causing a NomCom - a recall NomCom. I know that sounds sort of - but then again, our NomCom is an appointment committee anyway but basically a recall.

So again, if a process was defined - now I don't know that we need all of those in stream one. I think having the vote of no confidence on the board across board one might be sufficient.

I think to get all the other specific mechanisms in place, a NomCom mechanism to GNSO mechanisms and ALAC mechanism, a ccNSO, etc., mechanism for each of those board members will take a lot more time and such because each of them does have its own method.

So I don't think they all need to happen in stream one. But I think at least the vote of no confidence on the board or all of the other ones do need to be there. Thanks.

Thomas Rickert: Thanks, Avri. We'll move to (Markus). I have Bruce who is just on the audio who is next in the queue.

Markus Kummer: Okay, I'll try and be short. I think it's an important - a good discussion to have and nobody has the answer but it's an important discussion to have. And I think Avri said a lot of what I was going to say. I heard a lot of fear expressed of a recall of the board and then we have no board.

But you know, this happens in well-established democracies, there's a vote of non-confidence and as Avri said, you need to have a mechanism in place, there's a caretaker board and then you reassemble a new board. As long as there's a process in place, it's not as (unintelligible) as people may think.

And one thing we want is predictability and stability and there, again, my fear is that if board members get recalled individually willy-nilly we may actually undermine this aim of having predictability and stability.

One way of doing it, reduce the term of a board member and don't reelect the board member if the community feels the board member didn't represent the community. You know, the main aim should be to have a system in place that is predictable and not open to random feelings.

And in the chat we have this discussion, the current mechanisms are very limited for recall of a board member for very narrowly defined misconduct and the board can do that.

But it's not the community mechanism and here we're talking about the community mechanism of recalling individual board members, which is different. Again, let's have this discussion and I think we are having it with discussion. It's not an easy discussion but it's an important discussion.

Thomas Rickert: Thanks, Markus. Let's now move to Bruce who's been patiently waiting.

Bruce Tonkin: Yes, thank you. Thomas, just trying to pick upon a few things that are being said. So one, Steve DeIBianco has said at numerous times that a board member has a fiduciary responsibility and that's certainly correct.

But that's a very minor part of what a board member really faces on a daily basis. So fiduciary responsibility basically means that we're not putting the organization at financial risk by taking on an obligation that we - as a company or as an organization can't afford to meet and that - we're held accountable by the law basically on that topic so that's one minor part.

The dominant part of what a board member is doing is - 90% of every meeting that I've ever attended is actually considering things from a global public interest point of view.

And that's the bit I think that we want to make sure is right, that I think recalling an individual board member is appropriate when the board member is not acting in the global public interest. We've got to be careful I think is if we're recalling a board member because they're not acting in the interest of a particular segment of the community.

Now certainly I think - as I think Markus has pointed out, from a misdemeanor point of view, as an example, if an ALAC appointed a board member and I never turned up to any board meeting, to me that would be grounds for removing the board member.

But if ALAC wanted to recall a board member because they didn't get as much money as they wanted for a particular summit then that to me starts going more concerning because you're actually making the board member not acting in the global public interest but acting in the interest of a particular segment of the community so just something to be weary of.

I think most of us are (unintelligible) principle with recalling a board member when they're not acting in the global public interest. But much more concerned when particular parts of the community are effectively trying to capture a board member because that board member's not acting in that community's personal interests. So that's one thing.

Second thing, just as a general thing, is to think about some of these mechanisms. So in the working group - I'm not quite sure there's one but where Steve DelBianco's come up with a number of scenarios, a lot of the scenarios are about a board going rogue.

But ultimately one of the tests when we came up with our final mechanisms is can the community be captured or are these particular mechanism subject to capture?

And I think as Markus pointed out, I'm less concerned when there's an independent review, like, if the community is a threshold and then it goes to some independent tribunal of some sort to look at a scenario. I think that's good.

If the community can directly overturn a board decision without going through some independent tribunal then the stress test then needs to be can that community be captured?

If participation in ICANN dropped to low levels, if most of the decisions are made by a few people that have got the time to spend on ICANN can control the board, just some of those things to be wary of is to consider community capture and particular segments of the community as well in your stress test of your final solutions. That's all, thanks, Thomas.

Thomas Rickert: I was just kicked out of the audio line, trying to speak the Adobe Connect room now. I hope that I can be understood. Well, already two minutes past the hour so Alan, you're the last to speak. If you could keep it brief?

Alan Greenberg: I think I always try to keep it brief. A couple of things, first of all, Markus said board members can be removed by the board for misconduct, that's not correct. The bylaws say board members - board can remove board members period, they do not have to give any rationalization. And I believe that should be the case for ACs and SOs similarly.

One thing that I didn't say last time is the thing that we should not allow - and there's an echo, perhaps from you, Thomas, is one thing we should not allow is have the community remove an AC/SO member because then you can have one member, the ALAC member for instance, who's deemed to be annoying but to the rest of the community but is supported by the ALAC and removed by the rest of them.

And that I think is something that you absolutely never want to see happen because that quells dissent. But maybe Bruce is right, maybe some of us are so petty that if we didn't get enough money for one event we're going to remove our board member.

I would hope our board member would come and talk to us and explain why that is the situation and that no group in ICANN would be that petty, maybe I'm wrong. Thank you.

Thomas Rickert: Thank you very much, Alan. And with that I'd like to thank everybody for a very good and substantive discussion. And I won't recap any further note to hold up the train for you to do other things today.

With that I'd like to thank everybody, thank my dear co-chair and staff and talk to you soon and (unintelligible), bye-bye.

Avri Doria: Bye everybody.

END