ICANN

Moderator: Gisella Gruber-White
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6:00 am CT

Leon Sanchez: Hello everyone. Welcome to our call Number 15 from the CCWG on

Enhancing the ICANN Accountability on March 3, 2015. May I remind you to

please mute your lines if you are not speaking. As usual the roll call will be

the ones present on the Adobe Connect room. And also if we have anyone on

the phone bridge that is not connected to the AC room could you please state

your name at this moment so we can add you to the roll call list?

Cheryl Langdon-Orr: Cheryl Langdon-Orr, I'm still waiting to get into the AC room, but I'm in

the telephone bridge at the moment.

Becky Burr: Becky Burr, exactly the same.

Leon Sanchez: Thank you very much, Becky. Anyone else? Okay, a reminder to everyone

that has not filed their...

((Crosstalk))

Leon Sanchez: ...Statement of Interest as of this moment, please do so at your earliest

convenience and if you are having any kind of problems with accessing the

wiki please contact staff so they can help you to create your account or solve any access issues you may have.

With no further delay I like to hand the call to my co-chair, Thomas Rickert, for Agenda Item Number 2.

Thomas Rickert: Thank you very much, Leon and hello everybody. This is Thomas Rickert. And in this section of the call we're going to discuss updates from the various subgroups that we've performed. And we've heard that Jordan is going to join this call a little bit later which is why I would like to hand it over to Becky.

And Becky, I understand that you are group as well as Jordan's group have agreed on some modifications of the list of tasks that you're working on so maybe you can take that as a starting point, you know, which way you've read shape your missions and then maybe we can dive into substance.

Becky Burr: Okay. Generally we have stuck with that triggered versus untriggered framework. But some things didn't get started squarely or easily into that, so what we did is I had two calls with Working Group 2 and after the first one where we have sort of divided our work in two different work streams, Jordan and I did eight item by item comparison and we moved one item related to clarifying ICANN's limited scope into Working Group 2, as part of the mission and core values statement.

And I don't know if Keith Drasek is on the call but he was the person that was signed up for that in WP 1 so we will be formally inviting him to join that work task in WP 2.

Then we moved new mechanisms such as the community detail, the standing cross community working group and other items - scrolling down to the very

last page in the document, that's up here, New Mechanisms, which shows which items exactly we've moved to WP 1 which is changes to bylaws and articles of incorporation, adding powers for community representatives, the community - cross community working group, the recall mechanism, and the community veto.

In addition, on Page 3 of the document, had a view in the office of ombudsman. There was a - there are two provisions - suggestions for how the ombudsman is selected. And those things - although the ombudsman function and mechanism will remain in WP 2, the selection process will be in WP 1.

So we've now gone over both of our task mechanism - task items, work items, compared them and we're pretty sure we have everything allocated but only once.

So would you like me to just go through what WP 2 has done?

Thomas Rickert: Yeah, maybe we cause for a second and ask our colleagues on the call whether there are any questions with respect to the sharing of the burden. And I see Mathieu's hand is up. Mathieu, please.

Mathieu Weill: Thank you, Thomas. This is Mathieu speaking and hello everyone. I'm just relaying a question I've seen on the mailing list I think it was from Edward Morris regarding the document information disclosure process, the famous DIDP, to ensure it's captured somewhere. Is there any Work Party 1 or Work Party 2?

Becky Burr: It is Work Party 1.

Mathieu Weill: It is...

Becky Burr: All of it.

Mathieu Weill: Okay.

Becky Burr: Yeah, all of the transparency and accountability - the transparency processes are part of Work Party 1.

Mathieu Weill: Thanks, Becky.

Thomas Rickert: Becky, can you may be in one sentence summarize the main topics or the fundamental ideas on the basis of what you've now shared the work?

Becky Burr: Well, essentially Work Party 2 includes modifications enhancements, review of all of the existing triggered mechanisms, which is to say the ombudsman, reconsideration and independent review and all of that community's suggestions related to that.

And in addition it covers the start of compact with the community, the statement of ICANN's mission and the standards under which it carries out its mission along the lines of the straw man that we discussed in Singapore. So it's the three existing mechanisms plus the standard and the mission statement and core values or compact with the community.

Thomas Rickert: Okay, thank you. Unless there are more questions from the group I suggest that you maybe give us an overview of where you are now.

Becky Burr: Okay. As I said, we've had two meetings of WP 2. We first articulated a set of principles that would guide our work which is to say that, you know, our goal is to create or enhance existing mechanisms to ensure that ICANN's actions

relate to issues that are within its stated mission and require ICANN to act consistent with a set of clearly articulated principles.

You know, further elaboration, ensuring that the ICANN board can be held to its bylaws, in sure that I can carries out its mission statement in a manner that's consistent with the values and principles and prevent mission scope - mission creep through changes in the bylaws and for other mechanisms.

And so the - those are the principles that we have agreed on will be sort of the fundamental writing principles for our work. They are obviously not cast in concrete but we thought it was useful to have that so that we could look and when things come up understand whether it fits within this principle statement.

We have then broken the work into the four working groups that I mentioned, the compact with the community, ombudsman, reconsideration and independent review. And we have gotten initial volunteers for each of those groups. And obviously there are more people in WP 2 that may want to volunteer to be on a particular work party or people in WP 1 that have an interest in one of the particular work items in WP 2.

Those - the each individual group will be organizing and having working calls. We will be having a regular call each week to report in. And we have agreed to hold a face-to-face meeting on Sunday afternoon in Istanbul, obviously with remote participation, to ensure that we are ready to go on Monday morning and are caught up with WP 1.

So we are off and have organized our work and will be engaged in drafting this week.

Thomas Rickert: Great. Thanks, Becky. Any questions from the group? Kavouss.

Kavouss Arasteh: Good afternoon to all or good morning to all. Just a comment, it's not a question. Last night we discussed there seems to be a small difference between reconsideration of something and redressing of something. And Becky was kindly taken some comments.

And perhaps it might be good that we describe the differences in 2, somebody said that reconsideration is a lightweight process where redress it is something that was more serious than the reconsideration. Both of them will arise from the review of something. You review and action, either you ask for reconsideration or ask for - it is not quite clear at what stage we ask only reconsideration, lightweight and do what stage we ask for the redress. This is one point.

The other point, not for Becky, but for all of us is still we have to define what we mean by community, empowering community and so on so forth. So at some time we have to embark on that. Last night (unintelligible) perhaps some preliminary reviews which was expressed in ICG could be helpful as a starting point at what are those communities. And I thank you.

Thomas Rickert: Thank you very much, Kavouss. With respect to your first point, review versus of redress, it is my view that we will certainly have definitions of those in the report that we are about to write. And I do recall we had a discussion on that when we met in Frankfurt.

And what I took away from the Frankfurt meeting is that we defined review as a process whereby the decision making party revisits a decision it has made and potentially rectifies it should the decision-making body deem appropriate while redress would require the decision-making body to review the decision.

So that would be started by or imposed by a third-party while review would be the decision-making body itself looking at what it has done.

But the point is well noted. I think we need to be crystal clear on the decisions and the demarcation between review and redress. With respect to your second point, you will recall that we are working on the basis of the template to define accountability mechanisms. And there are questions in that template, for example, with respect to standing but also with respect to the decision-making bodies.

And if the community has standing to take certain measures then certainly in this template you will find information on what constitutes the community, who represented and what shape the community in that regard takes in order to have standing. Same goes for decision-making powers.

So example if we are asking as a community empowerment for budget for having the power to approve budgets through that community then certainly we need a definition of who is the community and who can chime in on that approval from the community. So both points are well noted and on the radar as we proceed with our work.

Let me see whether there is anybody else in the queue. Becky, I'm not sure whether you would like to add to my initial feedback to Kavouss and if so please do so.

Becky Burr: No I think...

Thomas Rickert: If not - sorry, go ahead.

Becky Burr: I think you covered all the bases.

Thomas Rickert: Great. Now, Becky, you mentioned that you're looking or that you have some volunteers that you are looking for more volunteers. You have split into subgroups. I think what we as a group should may be briefly discussed is how we best go about with the work to ensure that it's finished in a timely fashion. So maybe you can elaborate a little bit on how you would like the individual drafting team, so to speak, to function.

Becky Burr: Well the individual drafting teams will be convening this week to get started to identify a leader for each of the groups. I will be participating in all of the working groups to make sure that they are moving along and we will, you know, be drafting immediately. So, you know, at this point they're relatively small working groups. Obviously we will let everybody know when they are meeting.

But, you know, we're just going to get started right away drafting and circulating. And I will be circulating a sort of work timeline in the next day or two once I speak with all of the groups.

Thomas Rickert: Okay. Before we move to Jordan who has his hand raised, just a follow-up question or a concern. I think we should be cautious not to have too many layers of administration with this project. So when you are saying you are planning to designate leaders for this I would hope that these would not be rapporteurs again so that we basically have three...

Becky Burr: No...

((Crosstalk))

Thomas Rickert: ...but it's those that are responsible for holding the pen and making sure that everything is done in a timely fashion, is that correct?

Becky Burr: Correct. Correct.

Thomas Rickert: Great. Jordan.

Jordan Carter: Hi, and sorry I was late. I was going to say the same thing so I don't need to repeat it. We, in our Work Party 1 we got quite a lot done just by letting the volunteers self organize, organize their own rapporteurs. Quite a lot of stuff has been written which has been great. So light touch is good and it sounds like where you are going.

Becky Burr: Absolutely.

Thomas Rickert: Sorry, I was cutting across you, Becky. Go ahead.

Becky Burr: No I said exactly.

Thomas Rickert: Great. So I see Kavouss's hand is raised again. Kavouss.

Kavouss Arasteh: Yeah, I'm sorry, Thomas. You misunderstood me or I was not clear. I did not ask the difference between review and redress, I asked difference between reconsideration and redress. Thank you.

Thomas Rickert: Thanks, Kavouss. I would suggest that we leave that for Becky and team to respond to. We take note of your question but since time has progressed I would suggest that we take this off-line to the work party level. So your party is well understood. Thank you.

So unless there are more questions for Becky, I would suggest that we go to - yeah, shall we go to Jordan now that he has joined, Mathieu, or would you like to do the - would you like to do the stress test now?

Mathieu Weill: This is Mathieu speaking. I think we should have Work Area 1 first.

Thomas Rickert: Okay, great. Jordan, we had foreseen to maybe put you after the stress test but now that you're on the call would you be okay with giving us a brief recap of where you are?

Jordan Carter: Absolutely, yes. So just a brief update of where Work Party 1 is at, not to deal with any substantial content at this point, but just to let you know. We had - is that right, Thomas?

Thomas Rickert: Yes.

Jordan Carter: Yeah, okay. So we had a good meeting last Thursday. We set the meeting about 36 hours after that CCWG. And we had some good discussions about aspects that may come up here later on in this call in terms of the sort of (unintelligible) and the - what was the other one, the defining GAC consensus issue. And I see there's been discussion of both of those on the list.

We are currently in a situation where for our areas of work, the powers that we had on our list, we've got draft of the template available for most of them. And where we haven't, we are either transferring into Work Party 2 or they are now sort of under creation and with Keith having rejoined the stream of work.

So in terms of the powers that we are working on I'm pretty happy with where we're at. I don't know if Becky briefed on this earlier but we are sort of

looking to do also in Working Party 1, some more questioning of the mechanisms that are involved in making these powers work.

So in terms of looking at whether a permanent CCWG or the issues of statutory delegates or the issue of statutory members or the supervisory board that we discussed on our last call are the best way to give the community the powers that we've been discussing. We recognize we need to do some more work on that. But overall I think we've got quite a lot done so far. And I'm pretty pleased with the progress that we're making.

And the next thing that we need to know, which I suggested on the agenda, is what do we need to produce for the Istanbul (unintelligible). So that's about it for me.

Thomas Rickert: Jordan, thank you for that. Would you like to show us through at least one of the documents that we've prepared so that the group sees how you've been working and can ask me any questions?

Jordan Carter: Yes, I can do that. I don't quite know which one to do. As Steve DelBianco has just mentioned in the chat, there's been quite a lot of work done in terms of how to bring the Affirmation of Commitments review of the bylaws. And I was prepared two templates on the removal of ICANN Directors or on the - I keep (unintelligible) - the defining GAC consensus.

And we could talk through those but if we do it's important to recognize that the working party actually hasn't discussed them yet. So I'm in your hands, co-chairs. We can talk about the incorporation of the AOC stuff which Steve can speak on, or I can talk about the removal of directors and the other point I just mentioned.

Thomas Rickert: Jordan, we have the removal of directors uploaded in the Adobe so why don't you start with that one and then we go to the AOC one.

Jordan Carter: Okay, that works for me. Eberhard has just asked whether people can have individual scroll control? Staff, could you just clarify that is the case or whether I'm commanding the screen for everyone?

Thomas Rickert: Well actually you do have arrows up and down in the lower part of the middle section of your screen so you don't have - you do have scroll control.

Jordan Carter: Yeah, the question is whether I'm going to force everyone else to see what I'm seeing or not. I don't want that by the way, so if everyone is managing their own screen that's fine. So we're talking about the removal of ICANN Directors suggestion.

This was meant to be drafted in a way that suggested that one, two, three any number or all of the directors of the ICANN board could be removed. And the assumption that I made to start with especially was fat the body that would control this is whatever we create in terms of a cross community group.

So if we work through that, I don't really know about the category, but I think it's a check and balance in the system because, you know, directors didn't get removed unless there was a reason to do so and that reason probably would relate to their action or inaction. And that makes it truly a triggered one as well. That because it's a new mechanism Becky and I have agreed it should stay with Work Party 1.

The outcomes are little bit self-explanatory in the sense that if a director is removed we need to appoint a new one. If they are not then (unintelligible) continues.

If you could scroll down a little bit to The standard of decision - the standard of review, I think this is an important point to highlight. Generally speaking the removal, kind of recall process is a political one and so objective standards are often not specified.

(Unintelligible) input from our board liaison, Bruce Tonkin, on the email list in the last day or two that suggested that he would preferred that the process was (unintelligible) at least to similar standard of the current powers for the ICANN Board itself to remove directors which relates to the public interest.

The standards that apply for board removal our standards, that I have to say, I have not examined. And that sparked off a lively debate on the list. And I will say right up front, I don't think that this is one of the issues that we will be able to resolve before our face-to-face meeting. And I am monitoring all the feedback on the list and plan to present and expanded draft of this document to the WP 1 meeting on Thursday.

In terms of what purposes of accountability it contributes to us or that it contributed to all of them, because it provides a threshold that - or provide an understanding for board members if you like that if they aren't being accountable in any of these dimensions the ultimate possibility is that they will no longer be members of the board and no longer responsible or accountable for any of these issues.

So the just changes the temperature of the mix, if you like, (unintelligible) that they are perhaps more aware of their community - perhaps, I think that's the idea.

If you look at the composition matter, most of that is in duplicable because what we've suggested is that whatever mechanism we create to generally exercise these community powers would be the one that was responsible.

And related to that of course is that that body would need to have a super majority probably to remove a director and all of the (unintelligible) many points for debate which I'll come to in the end. (Unintelligible) the timeframe will be worked out but it has to be done before - I think before the stewardship transition and the way to implement this is simply in terms of being a board - a bylaws amendment.

I think the couple of big issues that this (unintelligible) to (unintelligible) whether it is an open standard or whether there seem to be some objective standards set out in the bylaws or somewhere else, which would need to (unintelligible) the possibility of a director removal came onto the table.

Another thing to think about is whether a director or the board that is appointed by a particular community so, you know, I note that there are two directors that are appointed from the ccNSO, whether A, that electing organization should be the only organization that can remove them; or, B, a different question whether they should not be able to be removed by any broader mechanism without the assent or at least the lack of objection of that SO or AC.

And the third kind of question that we need to tackle on this is - actually temporarily escaped me. But the removal of directors does give rise to a bunch of questions. And what I tried to do with this draft is just get down some of the basic issues to start the discussion. So if there's any feedback here what we'll do - we don't need to make any decisions obviously tonight, we'll take

that feedback back to the WP 1 meeting on Thursday morning and go from there. So I think that's all I had, Thomas, in terms of presenting this one.

Thomas Rickert: Thanks, Jordan. That's excellent. Much appreciated. I see Alan's hand is up. Alan.

Alan Greenberg: Thank you very much. Just two quick comments. Jordan said that what Bruce said was the current board process to remove directors uses standards; it does not. It identified some standards which could trigger removal but the removal process does not refer to those standards. What he said was he would be willing to change the bylaws to hold the board to such standards but right now there are no standards explicitly associated with it.

And the second thing is you may want to note it says if we remove a director we triggered the mechanism to replace them. For the NomComm appointed directors, that process could take a very long time depending on when the removal occurs. So that may have to be tweaked and we may need some modification of that process, not just the normal one, to replace those directors. Thank you.

Thomas Rickert: Thanks, Alan. There is a queue forming. Next is Steve.

Steve DelBianco: Thank you, Thomas. Jordan, I wonder if this might be a sign that we asked some of our independent experts, those who are experts in international law, to just give us some - something for comparison and that is in corporations around the world, in various legal regimes, how did the owners, which is to say the shareholders, how do the shareholders exercise their right to spill the board of Directors?

Is that an analogy for the powers we want the community to have? Since ICANN doesn't have shareholders in that sense, ICANN's owners are the community it serves. And we might learn something from the way the spill the board option can be exercised in various legal regimes.

I don't know whether super majority is always a requirement but I believe it should be for us. And I do think for the most part they spill them all for some pro rata share according to their ownership. So there may not be a direct linkage but it wouldn't hurt to give our experts a little something to chew on that they can get back to us quickly. Thank you.

Thomas Rickert: Thanks, Steve. We will note that as an action item for the co-chairs to reach out to the independent advisers and asked them for device in that regard. And it's not only international, we also have an expert in corporate governance who might have some ideas how to best deal with this. Tijani.

Tijani Ben Jemaa: Tijani speaking. Thank you Thomas. As for the point raised by Alan just now for the replacement of the board members who is recalled, I think that we don't need to have empty seats on the board at any time. That's why I propose perhaps to change the rules and bylaws perhaps to appoint two persons instead of one; one member and one replacement in case of any problems such as recalling the member or perhaps a problem with the member himself. Thank you.

Thomas Rickert: Thanks, Tijani. So I'm sure that Jordan will take good note of that suggestion. Mathieu.

Mathieu Weill: Thank you, Thomas. And thank you Jordan and Work Party 1 members for providing us with the ability to discuss this. I am following up on the issue about the standard - the standard of review for removal.

And I am wondering if we could consider to rely on the broad principles that were one of the four pillars in our graphical layout and it may be that refers to the compact that is being worked on by Work Party 2 as the reference for standard of review to engage in this process. Maybe that's a way to investigate further in order to be quite specific about what kind of infringement could actually trigger this process. So that's a suggestion for reconsideration.

Thomas Rickert: Thanks, Mathieu. And I also have a few remarks. Jordan, I think the point that Mathieu raised to invoke this process potentially is there are violations of the compound helps further clarify that dismissal of board members is a matter of last resort. So I think that this is something that would be worthwhile clarifying.

The other point that I would make is actually twofold. In the standings section as well as in the composition section you referred to whatever mechanism is designed by the CCWG, or in this case Becky's group. I think it would be very valuable for the interaction between the two work parties if you or your colleagues as they fill out these forms could share some initial thoughts on both standing as well as composition to inform Becky's group.

I mean, the original idea of working through this template for everything basically was to give special attention to questions such as standing composition and decision-making for each of the areas concerned because there might be - or I'm sure there's no one size fits all solution.

And I think Becky's group working on that on a theoretical level would much appreciate if you could say okay, we would like representatives from one SO, one AC or we would even require a permanent cross community working group to have standing to invoke this process; right?

So because we are talking about different community powers all of which might have different starting points to invoke a mechanism. I'm not sure whether I'm making myself entirely clear here but I hope that you get the idea. And Jordan, you've raised your hand and please speak.

Jordan Carter: Yeah, thank you Thomas. I think you are making yourself clear. I think that with each power there will be probably different triggers to starting to use that and we do need to consider the mechanisms that are being used to do it. The thing that we've had in mind throughout is the discussion that has been in the community about simplicity.

And so I think that because as I've reported on the progress, we've got these templates so that most of the powers, if you like, that we're working on, and we (unintelligible) focus the mechanism. My ideal is that we will be able to attach all of these powers either to already existing mechanisms or to one shared body or group that presents the community, if you like.

I think if we end up creating five or six different groups to implement different powers like this that have different compositions and so on, we're going to run into some of the same negative feedback that the CWG has been running into.

And so I'm not saying that we won't necessarily end up there and I'm not saying it wouldn't be useful for people who are doing the drafting for us to think about the question. I'm just saying that I think where we're going to try and land as a working party is (unintelligible) simple as possible solution that's (unintelligible) actually making these powers a possibility.

So it's like a sausage making factory or a legislation, you don't want to see the inside; it's looking a bit messy at the moment but I think in the next week or so we will get a lot more clarity about how to make these powers stick. But your feedback is helpful. Thank you.

Thomas Rickert: Thanks, Jordan. Before we moved to Steve, I'm not suggesting we should make things complicated but since the individual or the individuals working through this table are putting a lot of thought into this I think it would be worthwhile just sharing your ideas with the whole group. And hopefully this can all be boiled down to a very simple policy responses, right, but nonetheless I think it would be valuable feedback. Steve.

Steve DelBianco: Thank you. Steve DelBianco with the CSG. I went back to the inventory that we first assembled at the first work team of accountability suggestions that came from the community over the last several months. The BC - the Business Constituency was the first to come up with this notion of spill the board and it was the entire board. There was no discussion there of singling out individual members.

There were three or four other groups who made similar suggestions to spill the board or recall the board. The sentiment there was for a simple mechanism that would be extreme and probably very difficult to trigger. And so this group has begun looking at ways to recall the entire board with a difficult threshold like super majority. And there is an understanding that this so-called nuclear option would hardly ever be used. Its mere threat of use would be sufficient I think for having the board really pay attention to what looked like a strong consensus of the community.

Having said that, we are falling prey to the temptation to make a simple concept incredibly complex. We've wandered into the notion of picking off

single directors. I think we have no business doing that. We've wandered into the idea that there should be a subjective standard to the community when in fact the super majority is all that should be required for the community to exercise its will.

And I believe that we are at risk of taking a really strong concept and making it so complex that we will be unable to achieve consensus in the CCWG. Many people, including Secretary Strickling, members of the board when we met in Singapore, the kind of get their heads around the idea of spill the board. Because it seems simple, extreme, it would have to be triggered by a significant majority of the community. And everyone knows that it's a threat more than an existential tactic.

Why not embrace that and put some meat on those bones so that we have a spill the board constant that we can describe? I actually fear we have put at risk that simplicity by trying to come up with so many different flavors and standards to do so. Thanks.

Thomas Rickert: Thanks, Steve. Alan.

Alan Greenberg: Thank you very much. I acknowledge that removal of individual directors was not part of the original Business Constituency request for suggestions. I don't think it's any less valid because of that. And I don't agree with the moving from simple to complex; I believe these are two different mechanisms. And we can completely outlined the simple spill the whole board at the same time as having different procedures in place for individual members.

So I don't believe it makes the spill the board concept any more complex, it simply says there are multiple different mechanisms related to removing board members. And I think that simplifies that part of the process. Certainly some

of us among this group do feel strongly that this is one accountability measure that should be there. Thank you.

Thomas Rickert: Thanks, Alan. And next is Jordan. And I'd like to close the queue after Jordan so that we can move to the next mechanism. Jordan.

Jordan Carter: Thank you. No this is very helpful feedback so I appreciate it. I think clearly we need to distinguish between the spilling the board option and the ability as appointing bodies to remove, and maybe that's just the to removing a number directors would indeed be odd.

But we also have to be aware of is the (unintelligible) about this. And I think over all of our work as the CCWG we need to think about an array of accountability mechanisms that (unintelligible) problems of different severity. But we definitely do not want to end up with, I think, is a situation where there is likely no effective accountability mechanisms aside from very low key ones.

And all of a sudden you have to escalate to removing the entire board. And so I'm not saying that (unintelligible) to the idea that we shouldn't have one or all removal (unintelligible) I think unentangling those, dealing with them separately is a good idea, and we will do that.

I'm just saying that we have to be really careful we don't get politically boxed in to people saying - as many people are saying, oh look everything is going to be fine if you can spill the board. I definitely don't agree with that, I doubt many of you do. But I just wanted to put that on the record. Thank you.

Thomas Rickert: Thanks Jordan. Before we move to the next mechanism I would like to share a thought with you, in a sense Keith Drasek has read my mind when typing his

suggestion into the chat that basically what we need is three things. Just to refine this a little bit further, I think the starting point for our work should be what we called the big stick, what's required for Work Stream Number 1.

And maybe we should focus on the removal of the whole board as the biggest stick we can come up with and work on that for Work Stream Number 1. And leave the dismissal of individual board members to Work Stream Number 2 and that would be twofold.

Number 1, the creation of a recall mechanisms for individual SOs and ACs, and the second being tweaking the Nominating Committee's rules so that the Nominating Committee or some other community representative can spill individual board members that have been put on the board by the NomComm and replace them in a timely and efficient manner.

So maybe that's something - maybe that's something for us to consider. I see a queue forming. If it's (unintelligible) back to this I would like to ask you to keep it brief so that we can move to the next accountability mechanism that Jordan and his team are going to present. Jordan was that a new hand or an old hand? So that's gone. Roelof.

Roelof Meijer: Yeah, thank you. I'm not sure that I understand why we would need a community power to remove individual board members. The board can do that already. And we have the possibility to remove the entire board if they are not removing an individual board member that should be removed in the opinion of the community.

But there is also a power that we are considering and it is to force the board to action if it has decided on inaction. That could also work in this area. So but my main point is the board already has the power to remove an individual

board member. I am not sure that we should give that to the community, if the community has the power to remove the entire board.

Thomas Rickert: Thanks, Roelof. Alan.

Alan Greenberg: Thank you. I did not think we were going to be having a substantial discussion on the issue. I thought we were presenting the template and saying a subgroup is going to work further on this. So I'm a little perturbed that we're going into the debate of the substantive issues here. Maybe that was intended but I didn't think it was.

With regard, however since we are doing it, I believe the two issues are very different. The removal of a board member by the appointing community is a very different issue than spilling the entire board. I cannot see saying we are going to spill the whole board if you don't remove Joe. That's just not - doesn't make sense. You know, and it would never happen. so I think they are different things.

But I really didn't think we were having a substantive discussion in a community as a whole, or that was the intent. Thank you.

Thomas Rickert: Thanks, Alan. And actually you might recall that Jordan welcomes feedback from the group to further help with his filling out of the form. I think we should leave it there. I'm sure Jordan will take these comments from the group to heart and further discuss with his sub team.

With that I'd like to hand it back over to Jordan to show us through the next template.

Jordan Carter: Thank you, Thomas. Thanks for that discussion, folks. This next one is kind of - I don't even know whether there's a mechanism but the discussion came up about the fact that today the bylaws require us - require the ICANN board to take special consideration of GAC advice that's derived by consensus. Bylaws don't vary by consensus, (unintelligible) an operating approach by the GAC as a considerable period of time as we're calling the operating principle 47 that they will adopt this kind of advice to give to the board by consensus.

And the GAC of course says, as quite right, regulates its own procedures, they set out their own operating principles and so on. And at some point the GAC could choose in the future to make it more difficult to give consensus advice. They could say we're not going to give advice to the ICANN board unless every government in the GAC, you know, promises to abide by this advice themselves in their national (unintelligible) or something hypothetical like that.

Or they could lower the threshold. They could say actually we determined that consensus advice is something that majority of GAC members vote for. And the notion of the due consideration, the fact that unlike other advice from other advisory committees, ICANN has to take special account and try to come to an agreement with the advisory committee, the GAC, and if it doesn't agree with its advise is based on the status quo. It's based on the current understanding of consensus.

And so the question is has nothing to do with the decision making of other SO and ACs, it's just an issue that has come up in respective GAC given its ability to regulate its own procedures. The advice for policy (unintelligible) whether SOs, particularly as I understand it, is contained in the bylaws already but this particular point is not.

So the suggestion is that we should have an incorporation of the current wording of the GAC operating principles and the bylaws and saying that it's about consensus advice needs to trigger this reconciliation.

The GAC would be entirely entitled to continue to advise the ICANN board or anyone else about any matter on any basis that it chose but all it's saying is that we would include in the bylaws the requirement that if the ICANN board was going to treat the advice in a way that required a reconciliation as is set out, the currently existing, at the time of transition, standard would apply.

And then the key point there (unintelligible) the GAC did change its operating procedures it would be (unintelligible) the community as a whole in changing the ICANN bylaws not just the GAC to agree whether a different standard of consensus on advice was appropriate to have the same kind of dealings in the ICANN board.

So in essence what this says is changes - it keeps the status quo and it makes it a matter for the whole ICANN community, not just for the GAC, if the whole of ICANN needs to deal with advice from the GAC in a particular way.

Now I understand this is going to be obviously sensitive to GAC members and so on. And I did think about not presenting this to anyone but instead approaching Thomas Schneider and asking for some input there. But I felt that that was beyond my remit. So this draft is just here for some initial comments. And I think we need to think about if we're going to pursue this how to discuss and engage the GAC with it if we need to go beyond this (unintelligible) CCWG. So those are my introductory comments, Thomas.

Thomas Rickert: Thanks very much, Jordan. I think that both Roelof's and Alan's hands have not been lowered in the meantime so I would assume that those are old hands so we can move to Steve.

Alan Greenberg: No that is a new one, that is a new hand.

Thomas Rickert: Is it new? Sorry Alan, go ahead.

Alan Greenberg: Roelof's couldn't go down. I couldn't get around him in the queue just because...

Thomas Rickert: Okay, the floor is yours.

Alan Greenberg: Thank you. And now I've managed to forget what I was going to say. I think it's an interesting question. The bylaws are very explicit as to what threshold that GNSO needs to take different action. And the board can take different action depending on whether the GNSO passes something and it's a super majority or just the majority.

It is right now silent on how the GAC defines consensus. And as we know, virtually every group and I can defines consensus a different way. For better or worse it does. And the GAC is another unique way. I think we need to consider very carefully whether we want to be prescriptive like we are in the GNSO or indeed the GAC should have that prerogative itself. I think it's an interesting discussion to have but it's - it certainly moves us in a very different direction for the GAC. Thank you.

Thomas Rickert: Thanks, Alan. Steve.

Steve DelBianco: Thank you. Steve DelBianco. I think Jordan did an outstanding job of describing this. And, Alan, on the other hand, misinterpreted it. Alan, there's nothing about Jordan's proposal that would tell the GAC how to define consensus. The GAC can define itself consensus and its rules in any way it wishes.

All this says is the ICANN, the entity ICANN, not the GAC, but ICANN has to give special deference to GAC advice if it meets a certain standard or threshold. It doesn't change what the GAC does, it just changes what ICANN does when the character of GAC advice comes over the transom.

And where Jordan's proposal should be easy to understand is that it simply codifies in ICANN's bylaws what is the status quo in the GAC operating principles. So it may well be that we're all operating under the assumption, the due deference, to GAC advice only occurs when it's consensus in the GAC. And by putting that into ICANN's bylaws we let the GAC do whatever it wishes but make it clear that only consensus advice is defined in the ICANN bylaws and will be given that due deference. Thanks .

Thomas Rickert: Thanks, Steve. We have Rafael now. And I'd like to close the queue after Cheryl please. Rafael. Rafael, we can't hear you. Maybe you're on mute? Rafael, can we - can I suggest we go to Alan first and then go back to you, there seems to be a technical difficulty. So, Alan, please.

Alan Greenberg: Thank you. Just for the record I did not misunderstand at all. I understood exactly what we are talking about is specifying a level of consensus or a type of consensus at which the board would take certain actions and other kinds of consensus or levels of consensus which it wouldn't. I believe I accurately characterized that. Thank you.

Thomas Rickert: Thanks, Alan. Rafael. Can we try to get to you now? Rafael? I heard a - I heard some noises on the audio bridge but we can't hear - we can't hear you. Sorry, Rafael. Let's go to Cheryl and then I will try to get back to you again.

Cheryl Langdon-Orr: Thank you, Thomas. Cheryl Langdon-Orr for the record. And perhaps he will have a dial out organized by the time that I finish, but mine is a very brief intervention.

I just wanted to, for the purpose of this group, put a little bit of context on how useful and important this particular accountability mechanism discussion is and agree with many in the chat and on today's call about how useful this proposal is and why the exercise of going through it is important. And I agree with that.

And that is to take you back very briefly to discussions that were held very early on in the original ATRT, that's ATRT 1, which gave birth to a number of very important and I believe still continuing discussions between GAC and the board, and to some extent I'd like to thank also set the scene for other discussions GAC are having with SOs such as the GNSO at the moment.

But it was clear right back at those very early discussions when we were focusing on how the board and GAC interact that there was a huge difference in both parties understanding of what constituted what. And I think this type of proposal, the work of going through this type of proposal, will help us future-proof that sort of fairly large gap.

And I just wanted to put my hand up here now to support and endorse going through this, this accountability mechanism and see what the work party comes up with and undoubtedly that will involve close engagement and interaction with the GAC and its representatives.

But also just to put some context historically unquiet this type of exercise is so important. Thank you.

Thomas Rickert: Thank you very much, Cheryl. And Rafael has since posted something in the chat. And since we couldn't hear that intervention on the audio bridge I would like to take the liberty to read it out so that he's on equal footing with those that can make themselves heard.

"While understanding the need to avoid capture, no proposal should preempt the way in which the committee makes decisions which is what this idea would mean in practice by compelling the GAC to stick to the consensus rule if it wants the board to duly take into account its advice. This proposal goes beyond the scope of the CCWG unless we engage in discussion of procedures in all relevant SOs and ACs as well. At any rate such a proposal would strongly affect the GAC role and should request explicit consent from the GAC prior to its inclusion in the report."

I think that's a very good and valuable point to make. And you will remember that when we discussed this subject last week I encouraged all colleagues from the GAC to chime in on this one because I think we shouldn't be doing this in isolation.

I think in terms of time we need to move to the next item. But let me just try to recap on this point by emphasizing again that it is my understanding that this group has no intention what ever to influence the way the GAC or any other group comes to its decisions. The direction is just the other way around, namely, we are dealing with the question of how the ICANN Board has to take advice coming from other groups into account.

And a recommendation here is to safeguard ICANN against one of the contingencies i.e. undue influence by a subset of stakeholders which could be the case in case the GAC changed its decision-making processes which could be - which could equally to capture by a subgroup of the GAC members.

So I think this is the starting point. It's not to try to influence the GAC nor it is to impose decision-making in a certain way on the GAC but it's the aim to ensure that what comes out of the GAC is consistent with ICANN's overall understanding of consensus.

Are we good to go for - Jordan, I'm not sure whether you had planned to present a third document? I think in terms of time we could maybe do that very briefly. And if not I would like to hand it over to Mathieu to lead on the section dealing with the stress test. So Jordan, do you have a third one that you would like to briefly touch upon or shall we go to the stress tests?

Jordan Carter: My apologies, I had to step away from the call for a moment so if I wasn't answering that is why. The question really, Thomas, is as Steve has just said in the chat, last time we did one of the four reviews in the Affirmation of Commitments. There are three more available in the draft, like the two we've just discussed, we haven't discussed in the working party yet. So it's up to you as co-chairs to manage the time. I'm sure that Steve will be happy to present one, two or three of them. Over to you.

Thomas Rickert: Okay then I suggest in the essence of - in order to stay on time we move it to the stress test section of the call and for that I'd like to hand over to Mathieu.

Mathieu Weill: Thank you very much, Thomas. And this is going to be going back to Cheryl and Steve because they have introduced four new stress tests. And I think we can - we are now, I mean, used to looking at them and discussing them on

substance so I wouldn't waste any more time and just hand over to Cheryl or Steve to introduce them may be starting with stress test Number 1 and 2 which you currently merged into one single item because they were consistent enough for that. Is that Steve or Cheryl?

Cheryl Langdon-Orr: I'll just jump in and hand over to Steve. Very briefly, Cheryl Langdon-Orr for the transcript record. Thank you, Mathieu. And the intent as you have all seen from the email out to the list about nine hours or so a go - probably 10 now - is to look at four of these in today's call; 1 and 2 in combination, 24 and 15.

Just wanted to, before I hand it to Steve to take you through in greater detail with what's on your screen, to remind you all as well that we have had - and thank you all - for the very brief discussion starting on a few of these on the list. Last time I looked we have had some input from Mathieu from Bruce Tonkin and from Roelof so thanks for those discussions, that's really important and helps us frame and reframe what we are doing.

And also just mention, and Steve will deal with some of this as well, a little piece of administrativia, particularly to give a heads up to those of you who put your names forward as being part of this particular work party and that is I'm going to be working with Brenda to organize a Doodle for about a 90 minute - I think that will probably due to start with perhaps 90 minutes with a 30 minute extension option in your calendars for a teleconference that hopefully will run next week in preparation for making sure we have a large amount of work done before we had to our face to face meeting.

And with that heads up on administration, I'm going to hand across to you, Steve, over to you.

Steve DelBianco: Thank Cheryl. Steve DelBianco here for the stress test work team. An item on context, when we apply a stress test we are supposed to apply it against the package of proposed accountability measures. We don't have a package of proposed accountability measures. In fact we spent all our time designing and discussing and debating what that looks like. So it's little premature to apply the stress tests.

But many folks have concluded that it's productive to apply a stress test, even to a draft set of accountability measures and visit identified gaps in the measures we are designing and also gives us confidence whether we are plugging all the holes and being able to answer all 25 of the stress tests. That's the context.

The origin of Number 1 and 2, which you can scroll to on your screen, it's on the second page of the document that Alice put up, and apologies for the 10 point font, but if you increase the zoom at the bottom of your Adobe you will see it much more clearly. This was also sent to everyone last night so you'll have an opportunity to pull it off of my email if you wish.

Number 1 and 2 I'm not actually sure where they came from. I believe that Eric Bruner Williams, when he had the initial contingency team, probably gleaned them from the number of community inputs.

And let me talk about scope, of the 25 stress tests, several of them, perhaps 1/3 our stress tests that really are applied to CWG transition accountability mechanisms since they reference the IANA functions such as naming and root zone management.

It does though behoove us to keep all stress tests in one place and just simply wait on the CWG to propose its mechanisms and then to work with the CWG

at applying the stress tests since that something that's the CCWG is developing some experience with.

I think that essential because, as Secretary Strickling and NTIA have said, don't send us just the CWG or a CCWG proposal. Make sure they come over together and that they are stress tested. And in that respect let's keep stress tests in here that refer to the IANA function but understand that we really can't apply the stress tests fully until the CWG's recommendations are developed.

So I will watch for hands in the queue and to the chairs, I could probably get through this very quickly, one. And two, our stress tests that had to do with the IANA root zone function, change authority, so these are both naming not numbering or protocol, so change authority and delegation authority ceases to function.

And I don't know what that means. To Roelof's email, I don't have to understand what that means. The idea of a stress test is to come up with a plausible scenario and ask whether the proposed mechanisms, how well they would measure up to it.

The chairs have asked us in every stress test to add this middle column where we run the stress test against existing accountability measures. And that's an academic exercise. It's not really essential here since we are not evaluating existing accountability mechanisms, we are evaluating the proposed ones.

That being said, I think under the existing accountability measures we almost always cite the facts of life that NTIA has leverage or discipline over ICANN and that NTIA can withhold the IANA contract from ICANN. And as long as NTIA held the contract NTIA then - NTIA is subject to pressure that the community and search on NTIA to say that ICANN is not listening to the

community, use the leverage, use the discipline of the IANA contract and get them to listen.

There has been a completely public acknowledgment of that soft discipline factor, it started with NTIA but it really accelerated when the community realized that we needed a separate track of accountability over ICANN at large because once the NTIA IANA discipline were gone there was no way for the community to hold ICANN accountable to the community itself. That is why we created the whole second track, the CCWG track.

So having said all that, I'm trying to respond to Bruce Tonkin and others in the chat, sorry, on the email list last night, who seemed to question the reasonableness of assuming that NTIA would use the IANA contract as discipline. I believe that horse has left the barn; that's an assumption underlying the entire CCWG track. So I don't think we need to debate it.

And it isn't even constructive to predict whether NTIA would do so since NTIA is stepping away from the IANA contract. Our job is to design new mechanisms in Column 3.

So I've concluded in this draft that the existing measures would be inadequate because NTIA could not exert the discipline to pool the naming functions or to discipline ICANN to perform them properly.

Under proposed accountability mechanisms I think that my read of what the CWG is planning, they have talked about mechanisms and structures that enabled them to separate the IANA functions from ICANN and that they could revoke and reassign them to some other entity.

And I understand, there are many intermediate steps where the naming Contract Co or the trust that is set up for naming could exert pressure and do reviews and disciplinary actions against ICANN's execution of the naming function long before it would actually revoke and reassign.

I added one paragraph they are because I heard about it in Singapore, that it's potential that the CWG might propose some sort of emergency backup provider in case there was a failure of the IANA functions, the delegation and re-delegation, because this stress test might out and exogenous shock to the system, maybe the system gets hacked; it might not actually be operational incompetence. So a backup provider might make sense.

So we are unable to conclude whether the proposed mechanisms will work because I don't know enough about what the CWG will propose. I will stop there and get the chairs want to manage the queue we'd be happy to answer some questions and take input.

Mathieu Weill: Thanks, Steve. I think it's actually very valuable exercise to see that there is need to engage with the CWG on that. Maybe even on the definition of the stress test - the stress tests themselves but also to ensure that they are covering it at the end.

So my first suggestion would be that we add this item to our regular coordination calls with the CWG co-chairs, and to ensure that we are in line on this.

Martin, you have your hands raised. Please. Martin, are you on mute? Martin? You are apparently muted. Okay, Martin, you may have a mic issue maybe. And that might be another of these browser issues with Chrome. Would you like to type it or put it later off-line? Martin is typing. Maybe - I think we have

enough on this stress test. It is good to see that it's one of the items I'm
suggesting the action to link with the CWG co-chairs on that and suggest that
Steve move on to the next stress test which is Number 24. I don't know if you
have 24 or 15 first?

Steve DelBianco: Twenty-four is better. going in order. It's on the bottom of page 6 on the
document that Alice loaded.

Mathieu Weill: Thank you, Steve. So 24, a little bit of a mission creep. Go ahead.

Steve DelBianco: That's right. I think you characterized it right. This came in, again, this was -
I'm not sure of the origin of this but it's written with that kind of precision and
(unintelligible) inclusions that Malcolm Hutty often uses so I hope I can credit
this one to Malcolm.

Where he suggests that an incoming ICANN CEO does a bit of top down
strategic assessment and it extends or expand ICANN's mission with the
board's full blessing and without community consensus. Notice that the author
of this stress test didn't say that it was in spite of or against community
consensus, it just simply says lack of community consensus.

The consequence that the author describes for the stress test gets to the notion
of causing the community to lose confidence in ICANN since it expands its
mission beyond technical capabilities and leaving the community to question
ICANN's ability to actually run the technical functions.

In our existing, the middle column, again I echoed the thought that since
NTIA controls the IANA contract, that ICANN would be somewhat reticent to
expand its mission very aggressively since NTIA could exert that discipline
factor on the next renewal of the ICANN IANA contract.

And then I said that if the CEOs expansion plan was explicitly contained in the strat plan or the annual budget then there would be an opportunity, it's only once a year I realized that, but if it occurred at the right time of the year the community has an opportunity to have input on the strat plan and the budget.

That input isn't binding, it's not a vote, it simply just comments that we submit that we hope will inform the staff and management and board on what the budget should be. But that would be an opportunity.

And then Samantha Eisner, ICANN's legal staff, had added this point that California's attorney general has jurisdiction if the organization operates outside its bylaws or articles. This came up in an earlier stress test. And I would love to learn more about this. Not on today's call but I'm happy to be educated, as a practical matter what is it that the California attorney general would really do on this? What powers do they have? What standard do they have? And how does one invoke it?

Because this becomes important to us both under the existing accountability mechanisms and propose because if ICANN remains a California nonprofit corporation whatever accountability powers the California attorney general can't exert on behalf of the community would still be with us in a post-transition environment.

So maybe to the chairs I would ask that we ask our - maybe our independent legal expert or even the legal experts that ICANN appointed to see whether they can help us understand more about what the California AG can do.

All right so turning to the far right-hand column under our proposed measures, one of the ones we've discussed many times is the community veto so that if in fact the annual budget were proposed that community might, under a super majority or majority, decide not to approve the budget because it contained proposals to expand ICANN's scope and mission beyond what the community is supporting. That would be an opportunity for the community to exert its will and block the budget that would give rise to this stress test.

The second one would be that if it happened midyear and the board were voting to approve that CEOs expansion plan, well, there's this notion of giving the community standing to veto a board decision with super majority. And then finally there is the notion of the community having standing to challenge a board decision and reap correct to an independent review panel.

I asked in brackets, though, I wonder what would be the standard for that review because unless we articulate a standard about exceeding the bylaws or exceeding the limited mission, I don't know what an independent review panel would do if the community said we don't think the board should have approved this expansion of scope. So a preliminary conclusion is that existing measures are inadequate and the proposed measures taken together are probably adequate.

I will stop there and take a queue.

Becky Burr: This is Becky. Could I get in the queue please?

Mathieu Weill: Sure. And, Becky, I think you're first. Go ahead.

Becky Burr: Okay, Steve, this is very helpful but there is one assumption in this that worries me which is the notion that scope creep could occur so long as there

was community consensus. And that - I'm entering that from the notion that - you discussed it as the board decides to act outside of its mission, excuse me, without the consensus of the community.

Our assumption in WP 2, and I think fundamental to this is that even community consensus could not support scope creep. So I just wanted to put that on the table.

Steve DelBianco: Becky, this is Steve. If you scroll up to Page 4, stress test Number 16, that was the stress test to do with ICANN engaging in programs outside of its limited technical mission. I'll give you folks a chance to scroll. This is Page 4, stress test 16. and look at the third item down in the right-hand column where there was a proposed measure to amend ICANN bylaws to prevent the organization from expanding its scope beyond what is needed for SSR and the DNS.

So that particular measure, if that were adopted, would probably address your concern and would contribute additionally as a brake on ICANN's expansion of mission.

I'm not positive that - well I guess it would be in this covenant that Work Party 1 is looking out, is that right? Jordan, you're still on the call. Would Work Party 1 be looking at the covenant that would include enshrining in the bylaws ICANN's limited technical mission?

Becky Burr: I think that's part of - certainly part of the compact that WP 2 is working on.

((Crosstalk))

Steve DelBianco: Got it. So, Becky...

Becky Burr: Okay, thanks.

Steve DelBianco: ...I did want to refer you to Number 16. and if you wish I could copy and paste
                   that...

((Crosstalk))

Becky Burr: No, that's fine. Thank you very much.

Steve DelBianco: All right.

Mathieu Weill: Just to make sure I'm understanding correctly this debate right here, it's about
                   saying that some of the mission scope of ICANN could not be changed even
                   with community consensus. I think we need to be careful here that if we are
                   looking 25 years ahead that might become an issue because we don't know
                   what the Internet (unintelligible).

((Crosstalk))

Steve DelBianco: Mathieu, this is Steve. And this issue was discussed in Frankfurt and like you
                   I feel that building and ICANN that lasts forever might require some
                   flexibility, but there are many who believe we ought to enshrine a golden
                   bylaw or something in the articles that defines forever what the limited scope
                   would be. And it's really important for this CCWG to come to some consensus
                   on how strongly we want to build those walls around the limited technical
                   mission.

Mathieu Weill: But even golden bylaws can be changed; right?

Steve DelBianco: I think the impression of golden bylaw is that it could not be changed. I thought that was the point of a golden bylaw or that it had to be unanimous or something.

((Crosstalk))

Steve DelBianco: Might have to be unanimous consent.

Becky Burr: Some extraordinary measure would be required to change it. I agree, this is a critical debate. And I'm not saying, you know, the mission could never change under any circumstances but if there is, you know, and ability to change the mission with consensus we definitely have a, you know, sort of a potentially massive scope creep issue. And I for one would be very concerned about that.

Mathieu Weill: Okay. Just I'm trying to make sure this - we are using this stress test to inform the Work Party 1 and Work Party 2 mechanisms and powers. So what I am hearing here is that there should be different mechanisms to change regular bylaws and to change the so-called golden bylaws. Is that correct?

Steve DelBianco: I think that's taking it - this is Steve. That might be taking it a bit too far. The stress tests are identifying that we have opportunities for the community to exert its will upon the board and management with regard to scope creep. We've established that.

What Becky brings up is a great question, is that community's consensus alone sufficient to allow scope creep where the community thinks it wants to? Or do we need some other mechanism to even stop the community from allowing the scope to expand? And if so, that might take the shape of a golden bylaw or article. And that's part of the compact discussion that Work Part 2 is undergoing right now. So I think...

Mathieu Weill: Yeah.

Steve DelBianco: ...that they may - if they end up concluding we need a golden bylaw then they may or may not indicate the means by which the golden bylaw itself could be changed. Okay?

Mathieu Weill: Okay, so just my question was more related to Becky or even Jordan if it was Work Party 1 whether this particular item of a golden bylaw or picket fence, whatever you call it, is on the radar and being addressed by Work Party 2 or Work Party 1? Just a confirmation I would like to have so that...

((Crosstalk))

Becky Burr: Yes, it's definitely in Work Party 2 in the mission and standards.

Mathieu Weill: Okay great. Thanks. Any other comments on this stress test 24? I see no hand raised so I'm suggesting, Steve, can we move to Number 15, the in country presence?

Steve DelBianco: Sure. This is on the very last page. It's Number 15. It has to do with Category 5, which is failure of accountability to external, not internal, stakeholders. There's a stress test suggest that ICANN would terminate its legal presence in some nation where users or registrants, not contract parties, by the way, but users or registrants want to seek a legal remedy for ICANN on whether I can did something it shouldn't have done, broke a law or ICANN fail to enforce the contract against registries and registrars or some other action.

                   I think the nature of this stress test suggests that what happens if ICANN take - tries to take steps to change where it has a legal presence, which I guess is

related to physical presence. I'm not a lawyer, not an expert on this at all, so could definitely use help from those of you on the phone that have legal training.

That the existing measures are, again, a familiar refrain, that if ICANN were to try to move its legal presence in a way that avoided legal jurisdiction NTIA has the discipline factor of the IANA contract. And then more explicitly a number of you realize that Paragraph 8 of the Affirmation of Commitments, I've abbreviated that as AOC, requires ICANN - to commits ICANN to remain headquartered in the US that anticipates that ICANN will create offices all around the world to increase its global reach.

And that's comforting in the AOC. But as we've discussed many times, the AOC can be terminated by NTIA or ICANN at any time for no reason whatsoever with 120 days notice.

We also acknowledged earlier on stress test 14 that as long as NTIA controlled the IANA contract that ICANN feels pressure to maintain and stay in the AOC. Of course that disappears when NTIA walks away from the IANA contract. That led us to the conclusion that existing measures are inadequate.

On the proposed measures, this is a difficult one, because one of the measures we've discussed is the community would have standing to veto a board decision so that if the board were taking action, were adopting a resolution about pulling up stakes and no longer having a physical presence in Brussels, or no longer having the legal presence in the United States or Brazil, if the boards took that action the so-called community veto, super majority, could kick in and block that decision.

Second is that - oh, thank you. The second one is the notion of bringing certain commitments from the Affirmation into ICANN's bylaws. Jordan described earlier that we have all four of the Affirmation reviews drafted for inclusion in the bylaws. And that's part of Work Party 1; we'll be discussing three more of those this week. And that would handle the reviews.

But there are other aspects of the Affirmation of Commitments that have to do with more than just reviews. They have to do with commitments that ICANN made. So I mentioned Commitment Number 8, Paragraph 8 of the AOC, and the question is should that also be imported into the ICANN bylaws?

In last week's congressional testimony, ICANN's CEO said, "We fully intend to maintain that legal presence in the US per Paragraph 8 and we would stand by that." The CEO at least is signaling an interest in maintaining that commitment.

But Jordan, who is handling this group, I don't really know whether Commitment Number 8 has been drafted. I think that Mathieu Shears might be on the line and Mathieu did come up with several elements from the Affirmation of Commitments that may or may not be brought in. So Mathieu, you may want to get in the queue on this one.

Now finally, if in fact, commitment Number 8 were brought into the bylaws and then ICANN's Board later tried to change that part of the bylaws, if you recall one of the community empowerment would be a supermajority ability to overturn a Board's proposed change to the bylaws.

In many respects, this is like a golden bylaw's provision that ICANN couldn't take something out of the bylaws that we worked so hard to put in there unless

the community was willing to support that. So that would lead me to conclude the proposed measures are probably adequate.

Now I do want to mention that affirmation of commitment Number 8 about maintaining a US presence might now be very comforting to residents and registrants and citizens who want to bring an action under other than US law. It doesn't necessarily force ICANN to have a legal presence everywhere so that if they wanted to use the law of some other nation to take an action against ICANN, this probably doesn't give much comfort.

But at least it gives the ability for any agreed (sic) party to bring action against ICANN using the US law that we're used to having today.

So I'll stop there and take a queue.

Mathieu Weill: Thank you Steve. Are there any inputs? Phil.

Phil Corwin: Phil Corwin for the record.

And just in regard to this, I wanted to back up what Steve had mentioned in his appearance before Congress last week and also in other events where he was present interacting CEO to Fadi's stressed ICANN's commitment to remaining under US jurisdiction, and also said that he was open and in fact seemed to advocate right in the Affirmation of Commitments into the bylaws. So I think these proposals are consistent with what he said.

And it would also be a good idea to - you know, US jurisdiction means maintenance of ICANN as a non-profit California corporation and maintenance of US law as the law for resolving disputes with contracted parties. It does not exempt ICANN from applicable firm (sic) and law in other

nations where it has a presence for other reasons. It's about the organizational jurisdiction.

So I'm in general support of these proposals and I think they're consistent with the most recent statements of the CEO.

Mathieu Weill: Thank you Phil.

I think as a first reading of Number 15, we can leave it at that. However, I would like to stress that the very discussion about ensuring basic jurisdiction of ICANN remains in the US can be a controversial topic. And the next phase is when we try to get agreement, not only in the US Congress level but in all stakeholders including outside of ICANN, so I would certainly encourage cross review of this within the various communities. But at least as a stress test, I think it's appropriate to say that this is a good way forward.

Steve, you want to have the last word before we move to the next item?

Steve DelBianco: Yes Mathieu, I do want to mention that this particular ccWG may not be the ones that originate this notion of bringing Article 8 in the Affirmation into the bylaws.

Again, as Phil Corwin indicated, the CEO unilaterally offered that up at multiple meetings in Washington last week, and he did so in front of a US Congressional audience. He is very attentive to this transition. That may be on the table as a condition of the transition, and it would be something that Congress could require. It may not even be an idea of this ccWG.

So while that doesn't mean it's not controversial to your point, it might be controversial but it probably didn't originate here and it might be a quid pro

quo for the transition. So we'll need to consider that and remember that it was the CEO who is also a Board Member who put this on the table in explicit terms just last week. Thank you.

Mathieu Weill: Sure Steve. But we have (unintelligible) two conditions - main conditions - for the transition to happen. One is approved by the US Congress and the NTIA, the other is building consensus across all communities internationally, though I think we must be aware both aspect of that.

And I wasn't in the loop Fadi's declarations, but I think our group does not have to abide by Fadi or any Board member discussions so far.

So let's be very much aware of the sensitivity of this issue. I think it's a matter for our group to address one way or another at some point. But regarding the stress test, I think we have it all (unintelligible).

Can I now suggest in the interest of time that we move to the legal group update, (Unintelligible), the legal (unintelligible) team?

And before that, I'd just like to express my gratitude to Steve and Cheryl and all the group on the work party on the stress test because they're making huge progress. I mean in only one week we had four new stress tests to address, and that's putting us on the right track to having this completed by our face-to-face meeting. So I mean I'm very, very grateful for all the work that's been done on this, and it's proving for useful for the overall work of the ccWG.

With that (Liam), would you hand over to the Legal Subteam?

Leon Sanchez: Thank you very much Mathieu; this is Leon Sanchez Ambia.

As you might recall, we had the first draft of the legal scoping documents presented on our last call. We went from a very short list of questions to a more elaborate document drafted by Robin, and it was circulated to the list and we got feedback from some members and some participants of the working group.

We are looking into incorporating those comments and suggestions to the draft, and we will continue to of course narrow down our documents. I think we went from a very short to a very extent document.

My aim would be to try to set up a call this week with the Legal Subteam later this week, let's say maybe Thursday or Friday, so we can agree to narrow down this document and of course try to fine tune the different questions and issues that have been raised by different participants on the mailing list.

With regards to ccTLDs, of course we are keeping them in mind. We will take a deeper look to issues that might be of particular interest to the ccTLD managing community, and we will of course take this back to the general group.

With regards to selecting the law firm that will provide the external council for the working groups (unintelligible) the CWG and the ccWG, we held different calls with the short list of law firms and we are still in the process of arranging a couple of calls with two more law firms, during I think this week, in order to have a better variety of law firms at the table, and to evaluate which one is the best fit to perform the service we need.

And I think - what else am I missing here? I don't know - well of course I see some comments on the Chat which applies to the anti-trust regulations. We've been covering this in the legal scoping documents as well.

There have also been some comments about the jurisdiction issue. I think we need to go deeper into analyzing the jurisdiction issues with the advisors as to have a better or a wider view with regards to the jurisdiction issues. And I think that would be it from the Legal Subteam update.

I don't know if maybe someone wants to expand on this or someone has some questions or comments with regard to the legal scope and document. I would now like to open the floor for any comments or suggestions.

I see no one raising their hand. Okay, well then we'll continue to fine tune the document. And our aim would be to have the final draft circulated maybe next week so we can of course have it ready for when we select the law firm that will provide service to the working group (unintelligible).

I'd now like to turn back to Mathieu and Berry for the next agenda item which is the timeline.

Mathieu Weill: Maybe we should take Thomas and Jordan's questions first. Their hands are raised in the view.

Leon Sanchez: Oh I'm sorry; I missed that. I see Thomas' hand and Jordan's. Yes, you're right. Thomas, please.

Thomas Rickert: Thanks Leon. And this is sort of a follow-up to my intervention at this point last week.

It strikes me that this document is still quite wordy. I'm not saying that there aren't good and worthwhile mentioning points in there, I'm just afraid that if

we present such a big document to external law firms that it might take them considerable time to get back to us.

So I would really like to encourage you and your sub team to maybe take a look at it and try to shorten it to the furthest possible extent. Thank you.

Leon Sanchez: Thank you very much Thomas. We will definitely look into it. As I was mentioning a minute ago, my aim is to hold a call with the Legal Subteam later this week in order to address these concerns and comments. And yes, we will need to shorten the document and of course fine tune the different questions.

So now I see Jordan is now in the queue, and then next (Unintelligible). Jordan, please could you take the floor?

Jordan Carter: Sure. Thanks, Leon.

I think it would be really helpful if the Legal Subteam gave us a paragraph or something about what it wants these questions to achieve. Because I think that the ones that are on the list show interesting questions, but I think in the nature of questions that are going to be very difficult for any law firm to answer economically speaking.

And so if it's an effort of seeking opinions on some key questions, and basically we're going to say to these friends is all we want is a very quick summary of your high level guidance. We don't want you to research case law or anything; answer these questions for us in a general sense. And that's going to consume some resources and take some time and so on.

If we are going to later then go back to the firms and say, "These are the mechanisms that we've developed and can you assess them," that's a different equation.

So I'm not entirely clear. And I think I'm going to (unintelligible) exactly what we're trying to achieve with this list of questions. And so whether it's general background to inform our deliberations, whether it's specific assessments of the mechanisms we're proposing, I think answering that question might help my clarity.

And then in the end I think what we want to do is to use the least possible time and money to answer the questions that we need to have asked. So that's just my current perspective. Thank you.

Leon Sanchez: Thank you very much Jordan. I think the ultimate goal for the Legal Subteam is to provide the external lawyers with the questions that may enable the group to make decisions with regards to the empowerment, and of course the (unintelligible) mechanisms that we'll envision. And this definitely (unintelligible) the Legal Subteam to provide with these clear questions and enable the community to have the powers within cooking in the recipe book.

Next in the queue is Steve DelBianco, I see your hand raised. Please, take the floor.

Steve DelBianco: Thank you Leon.

Once we have selected a law firm and begin to pay them, well then you're exactly right; they should be making ideas and suggestions for our cookbook but they should also be able to give us specific answers and how to implement a recipe we've come up with.

I understand all that once we're paying a law firm to service us and to that extent these questions are quite constructive.

But I had the impression that we needed some objective or subjective means of selecting which firm would be best qualified. And surely we don't intend to have a bunch of firms answer all these questions for free as a way of showing they're worthy of getting paid.

So I haven't gone through a law firm selection process before. But what if the short list of questions or qualifications that will be used to pick the firm, before we bother to dive into questions, and details for which we're going to pay the firm to answer.

Leon Sanchez: Thanks Steve, let me see if I've got this right.

We jumped into the CWG train with regards to selecting the law firm. The main concerns or the driving criteria for selecting the law firm is that they should be California non-profit law experts, and they of course need to have corporate governance expertise as well. And they should also have good knowledge or some kind of knowledge with regards to how ICANN operates. So these are the three main criteria that we're looking into with regards to selecting the law firms.

I'm not sure if Samantha Eisner is still on the call, but maybe she could help us elaborate at this point. She's been pressing (sic) into the firm calls with different law firms, and well, this would certainly be the criteria we would be looking into for selecting law firms.

Samantha Eisner: All right Leon, this is Samantha. I am on the call.

I think that you provided a really good overview of how we've been working with the CWG on this, that there's been - we also had other criteria such as connections with ICANN, and we've been very open among the group.

You know, we've had one of the firms that we've talked to, ICANN has engaged on other matters. We were very open about that. I don't know that that firm is going to be one that we're going to wind up going with because we're moving down a path; we've been very open about those issues. And so we are looking at those issues of independence and connections with the ICANN space as well.

And Jordan raised the issue in the Chat of is there a possibility that there's a conflict to the law firm in advising both the ccWG and CWG. We've actually been asking the firms that themselves as we've been going through the process.

Leon has been invited to all the discussions that we've had with law firms so that there can be a ccWG presence on the call, and we've been testing that issue with firms to see where they feel that it plays down.

And you know, as we look at this more and more and more down the path of having conversations with different firms, what this really is on the whole on the CWG or ccWG side, even though there are differences in the types of issues, that particular advice is needed on, this is on the whole an issue that giving (sic) the ICANN community good advice on governance, governance structures, and across the board whether it's particularly about the IANA Function or the more broad view of the ccWG, it's about making ICANN a better more accountable organization.

And so none of the firms that we've talked to have identified that there is any sort of conflict, and all agree that there is a lot of (unintelligible) between the work. And it would make a lot of sense, and particularly from a cost factor as well and the timing factor and being able to move quickly, that having one firm there is a good thing to do. And they've all assured us that they have the resources available within the firm to make sure that they have enough time to support each group.

So that's something that we've been looking at very closely.

Leon Sanchez: Thank you very much Samantha.

I'm mindful of the time here. I don't know if we have any other comments or suggestions. I'd like to encourage all of the members and the participants to take another look at the draft as it is at the moment, and of course make your suggestions and comments so we can build them into the document.

Next item on our agenda is the timeline. I'd like to turn to Mathieu and Berry, and of course continue the call.

Mathieu Weill: Thanks Leon. At this time and discussion, I'll hand over to Berry for a brief recap of where we are and would recommend we focus on how we are going to track progress up to our meeting in Istanbul. And following one of and suggestion by Jordan, I have a couple of words to initiate discussion regarding what we could expect from Istanbul discussion.

So Berry, could you give us a quick update maybe on the way we can track progress up to Istanbul?

Berry Cobb: Yes thank you Mathieu. This is Berry Cobb for the record.

So what you see in the Adobe Connect room now is nothing that is new, just an updated reflection of where we currently stand on the visual timeline. As Mathieu noted, we're basically working our way up into the face-to-face in Istanbul. And shortly thereafter, we will have completed our first draft proposal to ready for public comment that is still targeting for the 6th of April.

So really in terms of this diagram, there is nothing new that has been updated here other than to reflect our current timeframe.

The next document which kind of gets into - upload - is more detail in terms of how we're going to get from here to Istanbul and through Istanbul, and what is about to appear on your Adobe Connect screen is more of a table or matrix form that coincides or relates to the status that was provided by Work Party 1 and Work Party 2 and the stress test. Now I'll give everybody scroll and zoom control on this particular document.

First and foremost, I hand to Jordan. He's the one that created the original structure of this matrix status. I since then have taken it and expanded it to apply to not only Work Party 1 but Work Party 2 as well as the stress test. Some of you, on at least the Work Party 1 Group, have seen this in a little bit more detail.

But I'll just quickly highlight some of what we're trying to accomplish here to compare to what we've discussion during the call today.

The first page is really just an introductory section of what's trying to be achieved. Pages 2 and 3 are separation of Work Party 1 and Work Party 2 items. For example, in terms of Work Party 1 there are three tables, the first being the powers, the second being the mechanisms, and the third is a tracking

tool to understand assignments that are transferred between Work Party 1 and Work Party 2.

So as a quick example, what we reviewed today is the last row in Table 1 is the Community Can Remove ICANN Directors as the title of that particular power. It has Jordan and a few others that are the volunteers. I'll talk about target dates in a moment and status in a moment, but you can see that it's in draft form and that we have comments and also to track pending issues that should arise out of those discussions.

Also I'd like to point your attention on Table 3, which is approximately Page 2 and part of Page 3, is the area that we're tracking what mechanisms were transferred over to Work Party 1 and which ones were tracked over to Work Party 2. And each of those has their own particular section.

And then just real quickly, the same kind of structure exists for Work Party 2, which I believe is on Page 3. They have their four kind of sub streams, if you will, that they're discussing, and then you'll also notice in Table 2 some of the mechanisms that have been denoted to be transferred to Work Party 1 which are being confirmed in Table 3.

And then lastly on Page 4 is the stress test that had been identified from Steve and Cheryl that were just discussed so far as more incorporated. We'll continue to load these into the tool and track them.

And then lastly is really just - it's my own personal chart, but it helps load in some of the cells for the status chart. But I wanted to draw to your attention were the status options. And right now this is still preliminary, but this is kind of the method or the status changes. As a new mechanism or power or stress test is reviewed, it will start with not started, it will move into a kind of yellow

status which either means it's on hold for various reasons being discussed by the group or is in draft form.

Then you'll notice after draft - and again, I'm on Page 5 - that there is a ccWG Hearing 1 and Hearing 2. And I believe in the notion that no decisions will be made on any one call. The intent here is to review each of the powers mechanisms and stress test by a first and second hearing, and then it will move into complete. And then lastly of course there is just status codes for a particular item as being transferred amongst the two work parties.

So I'll stop there. This is still work in progress. We want to get with the work party leads to level set on and the coordination across all of these as well as to further refine target dates.

What you'll notice in here now is they all say the 20th of March which is just before we depart for Istanbul. Hopefully most of this will have been at least accomplished and in some form of draft and/or hearing mode by then which is 20 calendar days away. So we do have a fair amount to accomplish.

Thank you and back to you Mathieu.

Mathieu Weill: Thank you Berry.

What I want to stress, and pointing to what we can expect from the Istanbul meeting, is we would like to come out of Istanbul with agreement within our group on the various questions that are raised on the mechanisms. And we've identified several of them during this very meeting.

And so we will probably be working on the structure of the meeting that is based on issues rather than on work parties, and we will probably need to have

reviewed at least once all the recipes and stress tests before so that we have a good view on the issues we have on our table before we get into this meeting in Istanbul, and of course review this based on the work that's taking place before.

To give you an example, we've discussed a number of issues related to the Board, removal aspects that (unintelligible) Board Members. Is there a standard or no standard? How do we handle the period where one or more Board Members have been removed to ensure continuity of operations? And does the issues we would need to track in that very document to ensure we structure the work efficiently in Istanbul.

And I'm anticipating we will have a number of these issues open by then, so it's probably going to be quite a packed one and with a lot of preparation to be had before. And the sooner we can get a list of these issues, the better for us to address this.

I see that Jordan has his hand raised. Go ahead Jordan.

Jordan Carter: Hi Mathieu and all. I realize that it's eleven o'clock or whatever time, two hours after we started, and so I don't want to be long.

I think we need to - the stress test (unintelligible) finalizes essentially our proposal (unintelligible) the community. So to get us the best outcome from the meeting, I think we need to know in advance how we want to consult the community, the level of detail, and you know, how many questions we want to ask, and we need to finalize that discussion at Istanbul. And that will help to guide for the inputs that we need.

So I think there's quite a lot of thinking to do. And my suggestion is going to be that the (unintelligible) and the working party (Raportay) have a meeting between now and the next ccWG call next week, and to met out some of the details and what we might be trying to achieve by this, and how that benefits what we need to do there. So what the goals are for the best way, what the structure will look like that we (unintelligible) the community on, and are willing to focus the work we do in our working party, and the time we have on our calls between now and then to have the most productive meeting.

And that we have that call soon so that we can get a proposal out to the list in time for some discussion and get back before next week's call. That's my suggestion.

Mathieu Weill: Thanks Jordan and you raised this point offline before. And so I think we should definitely put on our agenda next week some more substance around the structure of the record of the public comment as well as the Istanbul meeting. And happy to take on your suggestions as one of the action items that we try and work on this by then between (Kuchers) and (Rapitures).

We've asked Staff to start and provide us suggestions for the skeleton of the public comment report, so we have some initial ideas. We'll circulate quite soon and organize the call.

Are there any questions on the timeline? I know we've reached the top of the hour already. If not, I'm taking these actions items to next week. Then I'm moving to the Leon for any other business.

And thanks very much Jordan for your careful constructive suggestions to move us forward to this critical step.

Leon:

Leon Sanchez: Thank you very much Mathieu. This is Leon Sanchez again.

Well, we're reaching - we're past the top of the hour. Is there any other business that anyone wants to raise, and if so please keep it so short that we can adjourn this call? Okay, I see no one raising their hand.

Well, thank you very much everyone. We still need to do a lot of work ahead. And for the Legal Subteam, I remind you that I will be calling for a Legal Subteam call later this week, so please be mindful of filling in the dittle (sic) that Staff will be sending out.

And with nothing else to add, I'd like to thank everyone on this call for staying with us till this moment. This call is now adjourned and I'll talk to you soon again. Thank you very much.

Woman: Thank you.

Jordan Carter: Bye everyone.

Man: Thanks.

END