

ICANN

**Moderator: Thomas Rickert
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1:00 am CT**

Thomas Rickert: Good afternoon and good evening, everybody. This is Thomas Rickert and I'm one of the co-chairs of the CCWG. And in terms of roll call, as usual, we take note of those who are present in the Adobe Connect.

And let me ask you whether there are additional participants of this call that are just on the audio bridge so that we can add your name to the list of attendees. There doesn't seem to be anybody only on audio. Let me also ask you whether there are any updates to Statements of Interest. I don't see anything in the chat, nor do I hear anything on the audio.

And just as a heads up there is a substantial number of colleagues in this group who haven't yet submitted their SOIs. And we've reached out to those yesterday after ICANN staff has done so a couple of times so we would really like to encourage you to show your own accountability to the community by just stating your interest. It's not issue whatsoever to have an interest, it just needs to be transparent what interest you are representing.

So thank you so much and with that I think we can move to the second agenda item which are the activity reports from the various subteams. And I'd like to hand it over to Jordan for a quick update on Work Party 1.

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

Thomas Rickert: We can hear you all right.

Jordan Carter: Fantastic. Thank you. I sent a structure of this report to you all on the email loop about 20 minutes ago so I'm ahead of the game. Usually I'm just relying on verbal stuff. Attached to that email is a PDF of the current work status. I don't know if our staff team - oh there we go, it appears to be appearing in front of us, which is good.

But the basic lesson of this chart, and what I wanted to draw your attention to is that we're making quite good progress on the elements that we've got in our chart. It's still loading isn't it? So I'll do the other bits of this update just before it appears. And Alice has put the links on the chat channel.

The - so the process I wanted to update was to give you that update and to just let you know that on Work Party Meeting 1, Number 4, which is happening on Thursday, it's my intention that we will get through all of our other work items for at least a first discussion. And we will be talking about how we arrive at consensus on forwarding documents formally for the whole CCWG to consider at Istanbul.

And then we'll have another consensus call agreement meeting hopefully next week at our usual time and then send the documents through on the deadline for consideration in Istanbul.

In terms of the current substance - I'll wait until Alice has got that document done. What I was hoping we could discuss in substance tonight is just the discussion of whether the GAC has got to in considering the interaction between the GAC operating principles and the ICANN bylaws.

And so if I could ask Mathieu to give us a quick update on that because he was writing as co-chair on behalf of the CCWG to the GAC chair to discuss this. That's one on substance.

And I just wanted to have a brief discussion about whether we're trying to fill out lots of options for mechanisms for discussion in Istanbul or whether we want to consolidate our thinking and party around one or two of these.

And there's not as much as we might hope for because of the sequencing of these meetings. We've got a meeting coming up this Thursday which will give us lots to discuss next week. That's just the sequencing as well for too much content for us this week so apologize for that.

While that document is loading, Mathieu, would you like to give us an update on where the discussion with the GAC has got to?

Mathieu Weill: Sure, Jordan. Thanks. You will remember there were exchanges about engaging directly with the chair of the GAC to discuss how to further proceed regarding the question that was raised initially through a stress test analysis and then handed over to Work Party 1 about decision making rules for GAC advice to be given. I don't remember the exact word, deference, that (unintelligible) for public policy advice by the GAC.

So as in the name of the co-chairs we have engaged with Thomas Schneider and we are currently in the process of finding a quick slot to give more

explanations about the requests and have an initial discussion about how to proceed with Thomas. That should happen pretty soon I hope. And as soon as it has happened there will certainly be a report back to our CCWG that I can - as one of my action items out of this call. And I think that's the status play, Jordan.

Jordan Carter: Okay thank you, Mathieu. We just had a note from Jörg in the chat about the chair having sent a preliminary answer to you. Do you think it would be useful to share that with the working party or just not? You want to proceed along the lines you suggested?

Mathieu Weill: I think I'd rather have the initial discussion and then share the whole package. My impression is that engaging with them is about finding a way to actually address those questions. And I think given the high load of important work we have on our plate right now within the working parties I would rather we focus our work on this working party (unintelligible) and not get distracted by the other discussions. But it's open for discussion obviously.

Jordan Carter: Okay. I mean, my working party hasn't discussed that yet so I don't have an account report as rapporteur on a view of the working party. But on first blush it seems to me given the amount of other work we have to do that that approach just - it sounds fine.

Thomas Rickert: This is Thomas. Just...

((Crosstalk))

Thomas Rickert: ...for your information I'm quite confident that we will find the time slot with Thomas either today or tomorrow to further discuss this so that we can report back to the group very shortly.

Jordan Carter: Okay, on that kind of timeframe I'm happy with that. Obviously this is also a discussion if people want to and I'm not going to run that discussion, it's up to Thomas as the co-chair of this meeting to do so. If I may I'd like to just look at this work party work status chart that we've got in the window.

On the first piece in front of you, hopefully you can have scroll control, there are a lot of green bits and those are the bits that have been discussed a couple of times at the working party and will either be able to sign them off ready to send to the CCWG for consideration at our meeting on Thursday - Wednesday - or we'll have to take another meeting on consensus calls, as I've already discussed.

As you scroll down to the second page there are some orange and red ones. The orange ones I've asked for us to discuss all of those at our WP 1 meeting before this week. And I'm aware of drafting and other considerations either having been done or being done on almost all of them.

I don't know if Keith Drasek is on this call. He isn't that I can see. I'm still just waiting to touch base with him about 5(b)1 and 2.

There were no substantive items transferred to us from Work Party 2. But Work Party 2 did confirm that they will not be doing any work on the last table 1, the third - or is it fourth - the fourth page of this paper in front of you. So the structures that might exercise these powers so that's it's (unintelligible) CCWG delegates, members, supervisory board and so on. (Unintelligible) we hope to do that this week.

So that's about all I've got in terms of status. If you want to discuss some points of substance there is the one we've just had on the GAC stuff. Steve

DelBianco is available to update one other piece (unintelligible) I forgot which we have discussed at Work Party 1 which relates to the other three Affirmation of Commitment reviews and how to include them in the bylaws so that's the thing that we could take 10 minutes on if you like. Thomas, that's all in your hands.

And after the Work Party 2 report there's just a reconciliation item that Mathieu is going to mention as well. So that's all I have at this point and I'd welcome any questions or comments or whatever you like me to do, Thomas. I'll be on the line.

Thomas Rickert: I'm a little bit confused because I will be very surprised if there was not noise from my line because there's deafening silence where I am. But by all means, why don't we continue with the discussion on the AOC point. But before we do so I'd like to give the opportunity to Kavouss who obviously has issues raising his hand to speak. Kavouss.

Kavouss Arasteh: Good morning. Can you hear me? Some sort of background or (unintelligible).

Jordan Carter: There really is, yeah.

Thomas Rickert: Kavouss, your line is extremely bad. We have a very nasty echo on your line.

Kavouss Arasteh: (Unintelligible).

Thomas Rickert: Kavouss, can I suggest that maybe you try to dial in again and then we put you back on the line because you're fairly - (unintelligible) understandable.

Kavouss Arasteh: Is okay now?

Thomas Rickert: So let's - let's go back to the discussion and then put Kavouss back on the line once he has rejoined with hopefully better audio. So, Jordan and Steve, why don't we discuss the AOC questions.

Jordan Carter: I'll hand over to Steve. Fire away.

Steve DelBianco: Thank you. It's Steve DelBianco with the CSG. Alice has just loaded into the Adobe room the updated document that Work Party 1 discussed last week where we finished out drafts of the four Affirmation of Commitments reviews as bylaws-based reviews. On this CCWG group we have already covered the first two of those reviews, the one security, stability and resiliency and on the ATRT - the Accountability Transparency Review Team.

If you scroll to the final two pages of the document that Alice has sent, you'll see the final two Affirmation reviews. One is on promoting consumer trust, competition and choice in new gTLDs and the other is reviewing the effectiveness of Whois policy.

So if I have it right, Jordan, would you want to briefly run through these two Affirmation reviews now that Work Party 1 has already discussed them?

((Crosstalk))

Thomas Rickert: This is Thomas. Let's just do that please.

Kavouss Arasteh: Okay now...

Steve DelBianco: Great. So, folks, you should be on Page 6 of 7 in the document that Alice loaded. Thank you, Alice. This particular review in the Affirmation of

Commitments was put together in 2009 prior to the start of the new gTLD round. This review committed ICANN that it said that if and when it expanded the new gTLDs there'd be commitments on addressing competition, consumer protection, security, stability, resiliency, malicious abuse and so on. And all of that is phrased in the very top paragraph.

And what the Affirmation required was a review one year after new gTLDs had been in the root, another review a year later and then subsequent reviews no less frequently than every three years.

So our Work Party 1 looked at that schedule and tried to rationalize it and make it general so that it would apply to any subsequent new round of expansion of gTLDs.

So what we've retained in here was the Affirmation's requirement in (one occur) one year after new gTLDs had been in operation and then you'll see periodic reviews no less frequently than every four years measured from the date that the board got the final report.

So of course that timing is completely open to discussion. But much of the text in here came directly from the Affirmation of Commitments including the notion of reviewing two things, reviewing the application and evaluation process, that's Letter A, as well as the safeguards that were put in place to mitigate issues involved.

Work Party 1 repeated the modification to the Affirmation whereby the review team was designated by community, not by the chair of the GAC and chair of the Board. So each relevant advisory committee, including the GAC, each of the SOs and SGs would designate people to be on the review team.

We said the review team could ask for independent advice but it could choose whether or not to accept the advice.

And in the fourth paragraph we suggested that the review team should have access to relevant internal documents at ICANN and that we would not disclose them under legitimate duty of confidence.

We repeated the Affirmation's requirement that they would be published for public comment. There was quite a bit of debate in Work Party 1 about whether the board shall take action of what the Affirmation says today after six months. And our group came up with a different phrase to say the board shall consider approval and begin implementation within six months of receipt of the recommendations.

So again the Affirmation said the board shall take action within six months. We thought that was, well, that was relatively uncertain what "take action" means so we said two things: consider approval of the recommendations and begin implementation.

That leaves open the opportunity that if the board decided not to approve one or several of the recommendations that it would not have to implement them. But that brings to mind a number of other community empowerment tools whereby the community with the super majority could force the board to adopt recommendations, they could challenge the board's decision not to accept the recommendations, etcetera.

Now Kavouss, I know you're on the line, he had proposed adding that subsequent rounds of new gTLDs shouldn't be opened until the recommendations of the previous review were implemented. And so I have that in yellow on the text in front of you.

But Jordan and Thomas, I could stop there and take a queue or go quickly to the final Affirmation review.

Thomas Rickert: I would suggest that since you've mentioned Kavouss that we give the opportunity to Kavouss and others to comment, give some (unintelligible) feedback and then move to the next point. So, Kavouss.

Kavouss Arasteh: Yes, good morning again. Yeah, my previous question was that Thomas Schneider replied to Mathieu in relation with the text that he sent about including the threshold or (unintelligible) the threshold which may increase the influence of the government to the ICANN (unintelligible) and that was some clarification.

I don't know whether Mathieu or someone has replied to this. And I asked whether Thomas Schneider is on the line to further explain about what he said. This is in continuation of what I said before. He put my wording in a better language, more (unintelligible) and more comprehensive. This is the first one.

The second question we've got the start of new gTLD was subject to heated debate at the GAC that is not only 10 years or 8 years of time, it is also to take into account of the experience problems, difficulties, gains or - learned from the previous round. So this is something that was under the discussion at GAC and we need to see what will happen. So and then situation of changing from the decisions (unintelligible) majority, simple majority, these are the things that I don't understand. Thank you.

Thomas Rickert: Thank you, Kavouss. With respect to the first point, we already mentioned that we have reached out to Thomas Schneider and we will update the whole group on the status after we did so so that's work in progress. With respect to

the second point, I think that is something that the group should discuss. We've heard from Steve, your point, as well as the suggestion that it's - that was made in square brackets. So can we get more feedback from the group on that point, please? Mathieu.

Mathieu Weill: Thank you, Thomas. This is just a personal comment. It seems the writing of this section is currently based on the assumption that there will be successive rounds of applications for gTLDs. And it's my understanding there might be another option where we wouldn't have any rounds but an ongoing flow of applications at some point in the future.

So I would - I just wanted to stress that because that might create some inconsistencies or (unintelligible) constraints on the future. And I think what matters here in terms of competition, consumer trust and consumer choice, is that there is a regular review. It doesn't necessarily have to be connected to specific rounds except the first one obviously for the next 10-20 years. So that would be my personal comment on this - on this specific section. Thank you.

((Crosstalk))

Thomas Rickert: Jordan, you're next. Please, go ahead.

Jordan Carter: I think my point has largely been made by Mathieu which is - I just - I looked at the suggestion by Kavouss and wondered whether it's - we have had a round and I think the - if the question we're being asked to do whether we have to have - this review needs to be done after the current rounds and before any subsequent round is open then aren't we - are we interfering in another process? That's my question.

And I have stayed as far away as I can from the new gTLD program so I definitely don't know the answer. I wouldn't like us to try and change - I wouldn't like us to try and use this accountability work in Work Stream 1 that was part of the IANA stewardship transition to force a decision on ICANN about the nature of a round-based or otherwise system and whether any further rounds or non-rounds can happen before this review has been done. That's all. This is an area I don't know much about.

Thomas Rickert: Thank you, Jordan. And I would also like to offer some personal thoughts on this. I think that what we're trying to do here is perpetuate the AOC requirements in the bylaws. So I think in terms of drafting techniques it would be an inconsistency to make something work for the years to come but then yet highlight one specific event in there. So I think that that might not be the best way to implement it.

I think the idea is that the outcome of reviews need to be analyzed by the ICANN board and taken into consideration for next steps which would be applicable to all sorts of reviews. And maybe we better place this request or reminder to the ICANN board in a section that speaks to exactly those periodic reviews.

Any further comments from the group? Kavouss, please.

Kavouss Arasteh: Yes, sorry to come back again. All the issue that we are discussing are not directly related to the transition (unintelligible) this is overall (unintelligible). I suggest that the three final drafts, whatever, should go to the full GAC physical meeting and we have to discuss that. It is very, very critical. I don't see it is appropriate to put something before the GAC that have the opportunity.

We may not be as active as ICG or as CCWG having so many conference call and so on so it must go to the physical meeting (unintelligible) but not the final draft. The pre-draft should go to the meeting about the consensus, about the threshold, about the new gTLD rounds and so on.

So I would suggest that Thomas Schneider and other people and other fine GAC members are member CCWG if they are aware at this meeting (unintelligible) we need to discuss it at (unintelligible) so we have to put all the element together, not to (unintelligible), not to have any unintended consequences. Thank you.

Thomas Rickert: Thank you, Kavouss. Avri.

Avri Doria: Yeah, hi. This is Avri speaking. I think - I mean, I have sympathy for the conundrum that Jordan was mentioning and wanting to avoid having one of these, the accountability being a forcing function on the scheduling of others. And I'm wondering whether there isn't sufficient wording in sort of an insistence that the currently-required AOC review be undergone according to, you know, its established, you know, requirements as it were, which do include for a future round but we don't have to say that.

And then to, A, set up the periodic and, B, to indicate that, you know, future accountability requirements for this review could come out of, you know, the upcoming review. And so basically this group enforces the accountability and the response to the statements that came out of accountability review without prestaging what those need to be.

So I'm wondering whether there isn't a way to word this that doesn't try to determine future rounds and their scheduling and leaves that up to these

committees but requires, A, that this first one happen, you know, as instructed in the AOC and then, B, ways to continue. Thanks.

Thomas Rickert: Thank you Avri. And what I take away from this discussion is that Jordan's group will likely analyze this discussion while proceeding with their work. What I've also heard is that even you, Kavouss, who's asked for that change mentioned or text as an overall accountability question so I have not seen a request or heard a request to embed the specific point in our works for Work Stream Number 1.

And if there is objection to that notion I think those who think we need to cover this in Work Stream 1 should please speak up. But in the absence of such opposition I will suggest that we keep it on the radar in our discussions but put it in the bucket for Work Stream Number 2.

And thirdly, if I may remark on the pre-drafting, I think this group does an excellent job in teasing out the points that we need to put into our recommendations. As far as concrete wording for the AOC or for the bylaw changes are concerned, I would suggest that we don't spend too much energy on that because I think that's something that the legal experts will need to review anyway. And so I think we should rather come up with a general idea and that's the implementation work is done by experts and not spend time or energy on that.

Sebastian is in the queue. Sebastian, the floor is yours.

Sebastian Bachollet: Hello. Yeah, I have two points. The first one is that we talk about the review of the Whois - or the (unintelligible) last review. But I am not sure that we (unintelligible) will stay and the name will stay. And as there is a work on

the directory services it may be useful to expand the discussion not to stick on this wording of - on Whois.

My second point is that review teams are created with a two-step process. And it's a pity that we lost this two-step process. Currently the community selects a list of people and the two - the chair of the - and the chair of the GAC (unintelligible) make the final selection.

And one reason why I think (unintelligible) is very useful is to have a more balanced selection because if each group selects people we don't know if we will have (unintelligible) balance, we will have regional balance, we will have balances all around. And we need to try to keep this (unintelligible) chair of the board or the chair of the GAC doing that or somebody else, but I think it's important to have somebody doing this.

And I can tell you not now because you have no time. We have done for the meeting (unintelligible) working group to try to end that with as much balance as possible. And we quite went to a good (unintelligible) of balance...

Man: Yes, I am muting my microphone.

Thomas Rickert: Sebastian have you finished at the end of your intervention. There was crosstalk so maybe you can repeat...

((Crosstalk))

Sebastian Bachollet: Yeah, my end was to say I am done. Thank you and I am ready to (unintelligible). Thank you very much.

Thomas Rickert: Thank you very much, Sebastian. Would you, Jordan, or Steve, like to respond to that intervention or shall we leave it there and take it back to the group?

Jordan Carter: I don't have anything to say. It's Jordan here. Steve?

Steve DelBianco: No.

Thomas Rickert: Okay so I suggest that we take good notes of your (unintelligible) particularly with respect to a balanced composition. And before we moved to Work Party Number 2, Jordan, are there any final remarks or points that you would like to see covered in this call?

Jordan Carter: No, I'm okay with where we're at.

Thomas Rickert: Okay. Thank you. And thanks to you and all your team for a great update. And as you said, there's much more to come during this week so we will have a lot of stuff to discuss during next week's call. Thank you so much. As far as Work Party Number 2 is concerned, I'd like to give the floor to Becky to deliver an update.

Becky Burr: Thank you very much. We have gotten all of the work streams organized and kicked off the discussion on them. The independent review work item group is particularly active. Robin has kicked off the reconsideration and there's a lively discussion in that group.

And the - we'll be planning to have a, you know, a completed draft of the compacted mission statement in advance, you know, on the 20th for discussion in detail in Istanbul as well as reports and updates from the various

groups. It looks like in the independent review project may be a little bit farther along than the others by that point.

Thomas Rickert: Thank you. Any questions for Becky? Kavouss.

Kavouss Arasteh: Yes, I'm sorry, I was not (unintelligible). Is the issue of binding or nonbinding of the review committee concluded or finding is discussed or not? Thank you.

Becky Burr: It is definitely not concluded. It is part of the ongoing discussion. And as I said there will be - there is - this is one item on which I think we will need to have legal input so I'm pleased that the legal team has been identified now and we can begin to sort of probe on those issues.

As I said, based on everything I've heard there is pretty strong support for making it binding although even, you know, even so there are some hard questions about what that means. I mean, binding in what way?

Would it be binding in the sense that it sends the decision back to the board and says what you have done is in conflict with the (unintelligible) and contact in your bylaws? Try again. Or something more prescriptive than that. And I think those are important questions that we will need to talk about in the context of the legal advice that we get.

Thomas Rickert: Thanks, Becky. This is Thomas. I note Steve has reminded me kindly that we also have the Whois review for that so as time permits we will go back to that point. Becky, there's a question from Jörg in the chat. "What is the legal nature of the compact mission? Will it be binding? Actionable?"

Becky Burr: I believe that the goal of the compact and mission would be to establish a standard for what kinds of actions are within ICANN's remit so that you could

understand whether ICANN is staying within its scope or whether it's action is outside of the scope so that's one question that would be very relevant in any of the review and redress mechanisms would be, you know, the threshold question, is the action taken within ICANN's mission statement?

And then the second question was, in any carrying out its - if it is within ICANN's mission statement in carrying out has ICANN conducted its activities in accordance with its commitments to the community to respect the multistakeholder model and to comply with transparency standards and to avoid discriminatory treatment and to reflect diversity, etcetera.

So it is a standard against which ICANN's behavior would be measured both substantively and procedurally. The - I think it's in the nature of what some people have called a golden bylaw meaning that, you know, there are some parts of it that could not be changed or at least could not be changed without certain safeguards being - occurring so, you know, from significant threshold of board approval plus, you know, community approval or any number of mechanisms.

So the question of how it would be binding and enforced is very much a question for the group itself. But I think that most sort of common conception of this is that it would be either not permitted or require a much higher showing of consensus to change something. And based on everything I've heard, you know, the notion that ICANN could expand its mission statement would be something that people are very skeptical about.

Thomas Rickert: Thanks, Becky. And I think that's getting back to the core component of accountability mechanisms that was discussed in Singapore. This compact could actually be the test whether say for spilling the board or other actions

whether there's sufficient ground and that would be present if there's a violation of that compact.

Becky Burr: Yeah.

((Crosstalk))

Thomas Rickert: ...that's certainly further - where we craft further discussion by your group. Actually I do have one question for you, Becky, if I may, and that is picking up on a reminder that was sent by Bruce to the list setting out the mission both in the bylaws as well as in the Articles of Association. So has there been any thinking about where to best place this?

Becky Burr: I have just forwarded that specifically to the email list for the compacted mission statement. I hadn't - I confess I had not gone back to look at that specific provision in the Articles of Incorporation. And I think it's important that we need to, you know, that we need to factor that into the process so it is now in the mix.

Thomas Rickert: Great. And before we move to the queue let me just pick up on what's being discussed in the chat now, i.e. (unintelligible)'s analogy to the compact being something like the constitutional level with the fundamental rules. And I guess that's exactly the line of our thinking to basically have the fundamental principles laid out there either in the bylaws and/or in the other association to have something that violations can be tested against but also as a guiding principle for whatever ICANN policies develop or board decisions are made.

Kavouss.

Becky Burr: Right.

Thomas Rickert: Kavouss, you're next in the line.

Kavouss Arasteh: Yes. My question to Becky was that if a review is made and a decision is made binding what would happen to an appeal to that decision? I think something could modify that binding to be nonbinding if someone appealed to a decision or what - the relationship between the appeals board and relation between the review teams. Thank you.

Becky Burr: That's a very good question. I think that the GAC advice is GAC advice and, you know, there's nothing that would necessarily change GAC advice. If, for example, somebody appealed ICANN's deference to GAC advice on the grounds that the GAC advice violated the bylaws or the, you know, the compact, the constitution, however it is, then I think that, you know, one of the things we need to think through is, you know, how that would be filtered through, you know, what opportunities the GAC would have to respond for example.

But I think the general notion in the straw man proposal (unintelligible), you know, that the ICANN would defer to GAC advice, you know, would really consider GAC advice, which is the language in the current bylaws, to the extent that that advice was consistent with the compact.

Kavouss Arasteh: Thank you.

Thomas Rickert: Mathieu.

Mathieu Weill: Yeah, thank you Thomas. Thanks, Becky. I think it's an important step forward to have this written down. At the same time we know if it's sort of a

constitution we need to be very, very careful before we amend anything because it will have tremendous impact all across ICANN at some point.

So my question actually, Becky, is about what - how you came into the proposition of the compact you're circulating on Work Party 2? And what were the inputs you were using? How did you actually pick the items that you are suggesting now?

And I think that's going to be an important aspect to be form the SO and ACs because I expect rather discussions around this. And so we need to be focused on aspects that obviously generate consensus but I think if you could expand a little bit about how you proceeded to get to that strawman it would certainly at least be helpful for me.

Becky Burr: Certainly. A significant part of documents already exist in the mission statement and core values in the current bylaws. There is also a provision in article - in Section 3 of the bylaws that lays down an overarching requirement that ICANN not single out any individual or entity for disparate treatment absent compelling good cause. And so that was added.

There has been significant number of comments on the public list about public interest obligations. So that was reflected there. There were also comments about institutional excellence and sort of competence and operational excellence so I tried to capture that.

So basically what I tried to do is, you know, capture all of the discussions that have come up partly - and, you know, starting with what's in the bylaws right now and the Affirmation of Commitments in terms of general principles and also using Steve DelBianco's - and his group's inventory of suggestions.

I did not include various suggestions about giving ICANN a, you know, human rights mission. That was clearly something that some people had raised. It was my sense from our discussion in Frankfurt that clearly, you know, ICANN had to, you know, has a - is not in the business of content, you know, that's something that's quite clearly there.

But giving ICANN a sort of more general promotion of human rights was problematic for a variety of reasons. And so the more - a better way to get at what people were - seemed to be concerned about was to define the mission clearly and so that, you know, expression and those kinds of things would be reflected and sort of expression and the like would be reflected in the limitations on what ICANN could actually do.

Thomas Rickert: Thanks, Becky. So I see no further hands. But what I would suggest for everybody to note as an action item is actually to review the document that you currently see in the Adobe room between this call and next week's call. We will surely get an update to this and we will put this again on the agenda for next week's call.

But since this compact is of such great importance we really must make sure that we're fully aligned on what's in there. So please take a look at it, please socialize with your respective groups if you are acting on behalf of a wider audience so that we can hopefully bring this discussion to a consensus in the very near future and not experience any surprises in the very last minute.

So, again, please take a look at that. We'll get back to it during next week's call.

We have not discussed the Whois review which Steve mentioned. And Alice maybe can bring back the other document while I give the opportunity to Becky to make some final remarks if any?

Becky Burr: No, I think that's it. I think our groups are off and doing good work. And I know that Chris is on this call and I was going to reach out to him in particular on the ombuds function. I had sent around to the group some resources from the International Ombudsman Association, I think it's, yeah, International Ombuds Association resources on charters and I hope we can kick off that discussion very shortly.

Thomas Rickert: Great, thank you. Mathieu.

Mathieu Weill: Yes, I think - sorry to interrupt, not wanting to stand between you and the Whois review. But I wanted to raise a point about coordination between Work Party 1 and Work Party 2. Becky has discussed the compact she is - has - the group is working on. And I've noticed discussions within Work Party 1 related to the principles that are embedded into the Affirmation of Commitment.

And my suggestion would be for the two rapporteurs to synchronize in order to avoid any duplication. I know Becky is also looking at this discussion in Work Party 1. But I think it should be made clear for all participants and members where this discussion about principle is actually taking place. And I think Work Party 2 is a good place right now.

I know it's on the agenda for the upcoming Work Party 1 meeting but I think that's an item that should be clarified in the next few days for everyone to have clarity about where discussions take place. Thank you.

Becky Burr: Yes...

((Crosstalk))

Becky Burr: ...we will certainly do that.

Thomas Rickert: Great. Thanks for that reassurance, Becky. Kavouss.

Kavouss Arasteh: Yes, Thomas, I raised this question two times but I have not received any answer yet. The ombudsman is okay today but with the future arrangement that we have so many entities like a standing committee for (unintelligible) appeal boards, I mean, is there really still a need to have a position like ombudsman?

And if yes then what is some conflict within the authority or actions or activities of that with all those committees address the new appeal board and so on and so forth. This question that I raised has not been answered. I'm not against the existence of - just a question. Do really in future we need this position? Thank you.

Thomas Rickert: Thanks, Kavouss. Becky, would you like to respond to that?

Becky Burr: I think that, you know, all of the independent review mechanisms are, you know, and all of the groups should be asking, you know, in light of sort of the totality of the picture here does this continue to make sense? So I would expect that that question will be asked and answered in the course of the - in the course of the discussion and that we probably shouldn't prejudge it going in.

From my perspective the existence of a variety, a number of groups and mechanisms doesn't diminish the need for somebody who is essentially a, you

know, a, you know, can work to solve problems as they arise and before they become big problems which is one of the functions of the ombudsman I would think. But again, as I said, I'm not prejudging that. I think it's a reasonable question.

Thomas Rickert: Thank you, Becky. Can we please go back to the Whois review quickly? And, Steve, would you like to take that one on?

Steve DelBianco: Sure, Thomas. Alice has reloaded Work Party 1's discussion of moving the Affirmation of Commitments reviews into the bylaws. The one on the screen at the very bottom, Page 7 of 7, is Item 4, which is the Whois review.

And just to clarify, one of the stress tests identified that the Affirmation of Commitments could be canceled with 120 days' notice and since we were counting on the Affirmation, including the reviews, to hold ICANN accountable to the community, there was a perception that we ought to find a way to make it permanent rather than something that was revocable by either party.

It was an additional reason that came up even at the congressional hearing two weeks ago, this notion that after the IANA contract with NTIA is gone there still would be one more bilateral and unique role for the US government in a contracting role and that would have been the Affirmation of Commitments. That certainly exposes it as yet another special role and bilateral relationship that would be under pressure. And so I think everybody recognized the desirability of moving these reviews into the bylaws.

This last one on Whois is a bit troubling because all of us understand that two things, we understand that there's an effort underway to redesign the directory

services, known as the Expert Working Group or EWG. There is a consideration, though, that that could be years from implementation.

There's also the existing Whois system. And ICANN is committed to maintain its effectiveness and enforcement, unless and until something replaces it. The Affirmation of Commitments review on Whois was last done three years ago. So believe it or not, it's already on the calendar for staff to take it up and to begin to pull together the review team assignments in 2015, later this year. So whether we act or not in this group the Affirmation of Commitments requires that ICANN start another Whois review.

The language on Page 7, Item 4, came pretty much from the Affirmation of Commitments, didn't need to make any tweaks to this one. Did suggest that it's every three years and that's exactly what the Affirmation has in it now. In yellow you'll see a line from two parties that were on our call last week, Robin Gross and Bruce Tonkin, both suggested in the chat, it wasn't extensively discussed, but that privacy principles such as for instance, the OECD, be added to the criteria of the review and so we put that in there in yellow.

You'll note that the Affirmation of Commitments already suggested there be representatives of law enforcement and experts on privacy so that Affirmation anticipated an expert on privacy participating. But it didn't articulate in specific words whose principles on privacy had to become part of the review criteria so that certainly open for discussion.

The other elements here are things that we've already discussed with you, that Work Party 1 once the community to designate the members, once you have access to internal documents with the duties of confidence and that, just like I discussed a little while ago, the output of the review team would be given to the board, after of course public comment, and that the board would have six

months to consider approval and begin implementation. So happy to take a cue on any questions on the Whois review. Thank you, Thomas.

Thomas Rickert: Thank you, Chris. Any feedback on the group? So, Steve, obviously there seems to be making a lot of sense to the colleagues on the call. I think we should leave this with the group for the week and get back to it and to ask whether there are any comments. But I think it's quite promising that we don't see any objection to that suggestion at the moment.

I saw that Chris LaHatte has kindly agreed to speak to the ombudsman question. And I think that we do have a few minutes for that before we move to the stress test. So Chris, if you would like to give some insight on that, please do. Chris, the floor is yours. Chris, maybe you are on mute. We can't hear you. Chris? There seems to be an audio issue which is why I suggested that we - Chris, why don't you give us a signal if and when you are back on audio.

((Crosstalk))

Thomas Rickert: Chris? Have you tried to speak? No, there seems to be an issue still. So with that I think we can close this agenda point and move to Mathieu for the stress test.

Mathieu Weill: Thank you, Thomas. So the working party on stress tests is pretty amazing. There are 25 stress tests to complete and I have to - and the status is we have all the stress test templates turned in for consideration by us. And so we were confronted when discussing about today's agenda of - with the key problem of okay which one do we want to address effectively during the call and prioritize this.

But all the stress tests are for you to review now thanks to the amazing job by Cheryl, Steve and the rest of the stress test working party. So what we will discuss with Cheryl is to organize a bit so I will turn to Cheryl for a general update and then probably we will move to some of the stress tests starting with the litigation and new regulation ones Number 3 and 4 so that we can have our regular discussion about the stress test and the way to proceed with them.

So Cheryl, would you like to say a word first?

Cheryl Langdon-Orr: Thank you, Mathieu. Cheryl Langdon-Orr for the record. And yesterday (unintelligible) and exciting adventure in the stress test world will include a review under Steve guidance of 3 and 4. But in a perfect world with the time allocated we'd also like to get to Number 20.

Just before we go to that, and I hand over to Steve, I did want to remind everybody that the stress test working party whilst we've gone through, as Mathieu just said, all of these in a first read through, in a first run at least recognizing that of course nothing can be finalized until the Work Party 1 and 2 work is completed as well.

That we have a teleconference meeting in about 28 hours' time, and I will ask staff to put the exact UTC time into the chat please, which in addition to everybody in the stress test working party any of you are also welcome to join us and use the same Adobe Connect room as you're using now.

And we will be going back to the beginnings and going through them all again with a little bit more rigor but with a particular interest in having documentation ready for us to discuss as a committee as a whole when we are in the next face-to-face meeting in Istanbul.

And also if we can, to look at some of the crossover and interaction with stress tests that were proposed out of the CWG specific to IANA issues. So with that preamble I've filibustered enough I hope for the most recent updated document to be up on your screen. And I'm not seeing it as individual scroll control but perhaps that's just me because you will need to scroll through for today.

Over to you, Steve. Thank you.

Steve DelBianco: Thank Cheryl. Steve DelBianco here. To remind folks, the stress tests themselves can really only be applied once proposed mechanisms and structures for accountability are there to test with these particular stresses. However, we've all found some benefit out of running the stress tests early against proposed or discussed accountability mechanisms and structures.

Its helps to identify gaps, for instance, in the approaches that are being taken. And in some cases it's really emphasized the importance of coming up with general-purpose mechanisms that would actually address a number of stresses that we could face in the years ahead.

I believe that Mathieu had wanted us to cover just a few of these and would Cheryl's caveat, the stress test team doesn't have a call until sometime in the next several hours when we will cover the same items. So I can give you a flavor for what we've come up with.

If you scroll to Page 5 of the 12 in the document there you will see two of the stress test. Now again there are 25; 10 or so had come from the Business Constituency, and another 15 were gathered from the community over the course of December, January. So we have Numbers 3 and 4 were very close together.

And they got to the notion that either regulations or litigation would interfere with the existing policies or with the enforcement or development relating to ICANN's activities. And this threat would not be related directly to the transition of IANA stewardship.

So we look at two columns here, the existing accountability measures and then proposed. In both existing and proposed the nature of this threat is the notion of the management and board, under a lot of pressure from legitimate places, might acquiesce to say government or GAC demands, they might change policy or moderate the way they do enforcement in order to avoid a fragmented root under pressure from some governments are instance, to avoid fines in the case of litigation or regulation or under pressure to keep certain governments from leaving the GAC.

That in any world, whether it's post or pre transition, but we evaluated that the community would not have any ability, any standing, to challenge or veto a board and management decision to do the things that we just discussed. That led us to conclude that existing measures were inadequate.

And again, a lot of this has to do with whether the community has standing. It's true that individuals have standing for IRPs, independent review panels, but their decisions aren't binding and the community doesn't have standing. A reconsideration only look at process, not substance. So this really begs the question of needing stronger proposed accountability measures.

So in that third column to the right, there are really three response options that have been discussed thus far and they're all listed here. One is the notion that a super majority would veto a board decision. And, Jordan, I believe that is now

in Work Party 1 to design the community veto. If I have that wrong please let me know in the chat.

As I mentioned, reconsiderations or IRPs would probably need to give community, perhaps under super majority, the standing for it to file, one of these mechanisms, review and redress mechanisms. Now the challenge there is it might still not be accessible to them if it has a high cost. If it costs \$1 million to file an IRP where does the community get that money? So we have to look at that as well as what would be the standard of review.

You see a veto doesn't have the standard of review if the super majority of community representatives veto a decision. However an IRP or reconsideration has to look at written standards for making its decision of review. So I know that Becky is working on that now in Work Party 2.

There's a third measure that would allow the community to force ICANN to implement a consensus policy or recommendation of an Affirmation of Commitment review. This first got discussed on the weekend in Singapore, the idea - actually, no it came before that. We covered it in Frankfurt when I believe Alan Greenberg was most forcefully arguing that it ought not just be decisions and actions that are reviewable, but also inaction.

The question became what kind of inaction and we concluded that we could preserve the bottom-up multistakeholder nature of decisions by suggesting that the community representatives could trigger ICANN to implement something like a consensus policy or a recommendation of an AOC review that had already been through the bottom-up consensus process. And so that's added as a third potential measure that would be available to the community if this stress test would occur.

And I think preliminarily we would say that these three measures together would be a significant improvement that they might still be inadequate if ICANN were under sufficient pressure. So I'll stop there and see if there are any comments or questions on this particular stress test example.

Thomas Rickert: I have Kavouss in the queue. Please, Kavouss.

Kavouss Arasteh: Yes, with respect to the any type of majority, simple majority or super majority, I understand that we are dealing or referring to a group of people that are present and voting, is that right? If that is not I have the second question. Could you please, Steve, reply to that?

Steve DelBianco: Hello, Kavouss. On the last Work Party 1 call, you called for us to try to be more precise about whether super majority was a 2/3, 3/4 or 4/5, and I agreed that that precision will definitely be necessary at some point. For the time being I have been using the word "super majority" knowing that those particular mechanisms have not yet been defined by the work parties that are working on them.

And I don't think it's a major...

((Crosstalk))

Steve DelBianco: I don't think it's based on the presence or a quorum at all. I believe what we are working towards is that the AC, the SO and the SG representatives, the AG - AC, SO and SG bodies - would be given sufficient time to respond on a decision that was brought forth say to veto a management move or some member of a given AC or SO.

So suppose the GAC came up and said, "We'd like to have a community invoked a reconsideration request on a decision." There would have to be a process where the other AC and SO and SG leaders would have the opportunity to review that and indicate their support or not support.

So I don't think it's a matter of gathering people in the room and counting heads or noses; I think it has to be a process that's documented, that's accountable, that's transparent and gives each of the AC, SO and SGs the time to reply. I hope that's responsive to your question.

Kavouss Arasteh: Yes, thank you very much. You replied to my question indirectly. There is no need to have any presence need to count on the quorum, this is a different process. Thank you very much for that.

Thomas Rickert: Thank you to both of you. Sam, you're next. Go ahead.

Samantha Eisner: Thanks. This is Samantha Eisner from ICANN. Steve, in the development of Stress Tests 3 and 4 one thing that doesn't seem to be present here yet is the potential for the community to - actually the way it's written right now I'm reading that there is a potential for the community to try to require ICANN to take action that would actually make it run afoul of laws.

And so I was wondering how that fits in. It's often not just an issue of trying to avoid fees or trying to retain a government that if there's actually legislation in place that if ICANN were to take certain actions it would be in violation of or could have suits filed against it, if it wasn't, you know, by an authority but it could have civil suits based on that. How do we balance this in terms of this stress test? I don't see that concept in here yet.

Steve DelBianco: Sam, I could take a stab at that to suggest that the community, under a very high standard of super majority, might well believe that ICANN should not acquiesce to a particular kind of pressure or should not be so afraid of a lawsuit that it fails to enforce policies that the community had already adopted on a consensus basis in a bottom up process.

So I firmly believe that it's possible that the community, given the powers we're trying to impart here, could instruct ICANN to do something that perhaps ICANN legal counsel would feel was not in the best interest of the corporation. Yeah, I think that you should expect that that possibility could occur in the future.

Mathieu Weill: Steve, let me - I think that's touching an important point. And maybe to be more explicit, that relates to the stress test (unintelligible). What you are saying, Steve, is that say the US Congress comes up with legislation that is contrary to (unintelligible) certain policy within ICANN. And you are arguing that the community should have power to force ICANN to act contrary to this legislation. Is that right?

Steve DelBianco: These are general - yes, Mathieu, these are general purpose community empowerment steps that are currently under discussion. And I'm unaware of any effort to constrain or restrict the community's power just because one nation might disagree with the implementation.

In the same token that our US Congress could go off the rails and do something that violates a lot of ICANN policies, it's also possible that a nation could adopt other measures that would really restrict free expression and violates the notion of a single root. It's going to happen.

We are going to have pressure from different parts of the world for different reasons and when we do, management and board will do their best to make a decision they think is in the best interest of the corporation and the community because they certainly consider both.

But if the corporation makes a decision on the balance that the community strongly disagrees with the answer is, yes, we are designing mechanisms for the community to push back and tip that balance towards the community's will and perhaps against the advice of legal counsel at ICANN.

Mathieu Weill: Okay, I think that's extremely important to underline because that's going to be one of the key aspects of the stress test because the current line of thinking I'm seeing from the group is this is a risk, it's not, I mean, it's already in place today; it's going to be in place post-transition. But the suggestion - underlining suggestion is to actually accept the risk and try and live with it, right?

Steve DelBianco: Yeah, or to increase our capability giving the community be accountability and empowerment on how to answer that risk. Not all stress test are solvable in the sense that you make the stress go away. Instead, many stress tests are simply an opportunity to give the community the voice it needs to decide how to react to the stress.

Today that community has no voice to question the corporation's decision in regard to one of these stresses or pressures. The proposal is three mechanisms by which the community would get a voice.

Mathieu Weill: Okay so it's a risk we have today but at least we would enable the community to have the final word. Samantha, is that an old hand? Okay, I have Jordan and then Kavouss. Jordan.

Jordan Carter: Thank you. Yeah, I wanted to just draw attention to the fact that there is a series of mechanisms or powers suggested here. If there was an issue that got dealt with by that community to veto a board decision then the follow-up from that is presuming believe that the board would consider the issue and make another proposal. And if that community vetoed that as well then the board would be thinking pretty seriously about it. And then in the end if the community didn't like what the board was doing it could roll the whole board.

So, you know, than the threshold presumably for the two things, for disagreeing with the decision the board (unintelligible) removing the board so there are different levels. So we have to consider the whole system in mind. And I think that while we, you know, while we can't ever guarantee to control the power of a state where the ICANN organization is resident there is a pretty broad array of powers that we are proposing for the community here that will help.

Mathieu Weill: Thanks, Jordan. Kavouss.

Kavouss Arasteh: Yes, the course of action explained or (unintelligible) by Steve, does it have any conflict with the Article of Incorporation because we're dealing with ICANN United States senate or congress and the communities or would have some impact on that? Would not be in conflict under the Article of Incorporation if it is still remain the same (unintelligible) of the 29 - the 21 (unintelligible) what are the other actions of that.

Mathieu Weill: Thanks, Kavouss. I think we were actually underlining how much of a conflict the complex situation that would lead to - and that's certainly the case. Bruce, you are next.

Bruce Tonkin: Yes, sorry. I was just on mute. Can you hear me?

Mathieu Weill: Yes I can.

Bruce Tonkin: Yeah, thank you. Yeah, I guess I noticed Steve is using the term, "against legal counsel advice" because I guess there's different scenarios. But once an area is where the board takes action presumably because a law is created somewhere and we are informed of that law by the relevant GAC representative.

And, you know, I guess we get legal counsel advice to say whether or not ICANN believes it falls under that law. But ultimately the relevant government could actually take action through a law enforcement agency which is a little bit different than just receiving advice.

But I think there is a difference between the board taking action on a piece of advice it receives from a government. This is the board taking action that is in breach of a policy. So I think fundamentally we have policies coming from the ICANN community, the board approves those policies. And under its bylaws it needs to adhere to those policies; it can't just arbitrarily make a decision there.

One of the mechanisms that community does have in the case of some new law being created is for the community to create a policy around that law and that would come to the policy development process.

So just - I just want to kind of separate an issue between the board taking action in response to notifying or been notified by a government of a particular law versus the board taking action in breach of a policy because I think those are quite different things. And the community also has the ability to create policies in response to new laws that get created as well.

Steve DelBianco: Bruce, it's Steve. I could add in the proposed accountability column and the existing, I could add that one response is the community could, from the bottom up, in a consensus way, create a new policy in response. I still think that doesn't change the conclusion that the community is unable to override a decision of the board. Angie said in the chat...

((Crosstalk))

Steve DelBianco: ...the community could do an IRP or a reconsideration but I believe you clarified for all of us, when we were together in Frankfurt, that the community doesn't have any standing to do a reconsideration or an IRP and the reconsideration is a process and not substance, and finally the IRP is not binding upon ICANN.

So one of the reasons we're doing the work at designing and improving those mechanisms to make them accessible to the community at large.

Bruce Tonkin: Yeah, and I (unintelligible) those changes are necessary. I'm just trying to sort of separate some separate mechanism versus - it sounds to me like you're trying to create some improved operation of the IRP and reconsideration to allow the community, etcetera, to respond.

I'm just wary of a completely separate process that just deals with this case versus a process that deals with the situation where the board is not following a community policy. I think they are a little bit different.

Steve DelBianco: Well there are several stress tests that touch the same one. And think about it, if one nation passed a law that says that ICANN may not publish a root that

includes a TLD, a gTLD, that contains domains that are critical of that government's policies, then of course they can block it through an ISP.

But a law that got passed in that way is a law that might be binding upon ICANN but that ICANN may choose not to follow knowing that that government can change the root through its ISPs and it doesn't - maybe ICANN wants to stand for free expression and not change the root that the rest of the world sees.

I bring up bad example since I think it answers the (unintelligible) example of many folks who are worried that this transition would endanger free expression. And I believe this stress test can help to get to the core of it that it doesn't make ICANN susceptible to pressure to eliminate free expression, that if the community deems that ICANN should maintain the values that it has, that it could override a board that was under a lot of pressure from lawsuits or regulation and legislation.

Mathieu Weill: Thank you. Is that an old hand, Bruce? I think that's your current hand?

Bruce Tonkin: Yeah, I'll take it down. Sorry, yeah.

Mathieu Weill: Okay. Kavouss, last word and then we move to the next stress test.

Kavouss Arasteh: Yes, I have some concerns that we are making national law subordinate to something else. I don't understand that. In turning into the area that is not - is outside our mandate talking about national law should be subordinated to a decision or laws anyone else. They are very very critical and so on so forth even ICANN this is not international law, there is a provision of dealing with the national law with respect to any international law (unintelligible).

I don't think that we should get into this - this matter. I don't understand this question at all that the government make something and - I don't know who has (unintelligible) a sense behind this (unintelligible). What you are going to say, you are tying up the hands of the particular government that they cannot do anything according to its own constitution because it is an ICANN law or bylaws?

Mathieu Weill: Thanks, Kavouss. I think that's a key question that's been raised by the stress test is that might place, I mean, that can be contradictions between national or legal regimes in various countries and ICANN can be right in the middle of that, and that's certainly something that is way beyond our mandate, that we should consider in terms of stress testing. And I think we have a pretty fair assessment right now that we don't know how to solve this. And it's not clear that we should know.

But certainly it's useful to be aware of this potential issue before we go out for public comment. We are only currently not solving this, and probably won't be, but it's a key risk for ICANN as any global organization to find itself in contradiction with some national laws.

Steve DelBianco: And, Mathieu, it Steve.

Mathieu Weill: Go ahead.

Steve DelBianco: Keep in mind that this stress test - the exercise is not to eliminate the risk, it's not possible; it's to ask the question whether existing versus proposed accountability measures give the community empowerment to hold board and management accountable and how it reacts to that stress.

Mathieu Weill: Okay. So I think we've - 3 and 4 a really important. We will certainly have to come back to them later on. And since there are contingencies we are not in a position to mitigate at this point, we will certainly have to report on this. And so certainly these will be discussed further in a few weeks before we go to public comment. I think it was important that we discussed them.

Can I suggest we move to Number 20, Steve? Number 20 is about blocking a delegation of a new TLD through a court decision.

Steve DelBianco: Twenty is on Page 6 of the document that Alice has in the chat. Number 20 was a Business Constituency stress test. It's very similar to the one we have just covered. It's a notion that courts get involved at blocking a particular delegation of a new gTLD and it could be a complaint from existing operators or other aggrieved parties. And the consequence they are would be ICANN is sort of faced with a decision whether to honor a court order, even though doing so could bring liability, fines, perhaps even injunctions upon ICANN.

It's not related to the IANA stewardship. In many respects it was related to the mess made of string similarity, independent reviews in particular, singulars and plurals but people are aware of others that are just as troubling.

So the question here is how is the community empowered to influence the ICANN management and the board's decision on how to react to this particular contingency, this particular stress test of a court? The community has no standing or had no standing in the new gTLD program to object to strings, only applicants and existing TLDs did.

So that meant the entire community of registrants and users had zero standing to file an objection on string similarity and if they thought plurals were going to be confusing or not. The reconsideration request in general they only look

at process and not add substance. And the community does not have a standing there.

So in this particular case, if ICANN board discarded policy in order to respond to a court order, the community would really have no standing or a way to challenge or veto that decision. So under the proposed measures, the three under remedial are pretty similar to what we covered earlier.

But there is a preventative one which is, in many respects, it's like what Bruce Tonkin mentioned on stress test Numbers 3 and 4, the notion that during policy development the community has the opportunity to challenge management board decisions about policy and implementation during the policy development process.

And as Bruce said, in reaction to something like this the community, if they could move quickly enough, we possibly could develop new policy and have it bubble up in time to answer the challenge. But all of us understand that when we cook up a new policy it usually takes quite long for the community to do that through the bottom-up multistakeholder process.

So since the remedial measures are very similar to what we just covered, I can stop there and see if there's any comments and questions on Number 20.

Mathieu Weill: Any comments? Kavouss.

Kavouss Arasteh: Yes. Thank you very much and I sincerely apologize to Steve. You talk too fast, thank you.

Steve DelBianco: I'm sorry, Kavouss. I'm aware of the late hour. I will certainly slow down. Thank you.

Mathieu Weill: Okay, so Number 20 one we have an improvement but still no elimination of the risk which is another instance of where - that involves actually legal and legislative actions so I think this whole category of stress tests we might find ourselves in these positions.

I see no other comments so far. Cheryl or Steve, which ones would be - not to address them now but which ones would be the stress test we would be probably discussing next week...

((Crosstalk))

Cheryl Langdon-Orr: One and two.

Mathieu Weill: One and two would be the operational ones, right?

Cheryl Langdon-Orr: Yeah.

Steve DelBianco: We have a call in less than 24 hours of the stress test work party. My guess is give us an opportunity to go through them and maybe we will come up with some suggestions for our next call.

Cheryl Langdon-Orr: That we certainly have suggested, we will look at 1 and 2 in terms of operational next week.

Mathieu Weill: Can I suggest that after your call maybe you share with the whole CCWG which stress tests you think will be the more valuable to discuss during the call next Tuesday so everyone can prepare and review them.

Cheryl Langdon-Orr: Absolutely. Thanks Steve. Thank you, Mathieu.

Mathieu Weill: Thanks. All right, and once again it's great to have the stress test. I think they bring a lot of value in showing what we are about to enhance as well as the remaining areas of risk.

And with that I would like to turn to Leon for the legal group update. Leon.

Leon Sanchez: Thanks, Mathieu, very much. Well as you can see one of the issues we are discussing is all about legal advice. So what got to the legal sub team work, we've held one call last week. And we went through the document with the different participants of the legal sub team.

And we reviewed and incorporated some of the concerns that were raised in our past call of this group. And as much as we wanted to shorten the document, I think we didn't achieve that goal so far. But we are definitely refining the language and refining the questions that so far we have built into the document.

And I'd like to remind both Work Party 1, Work Party 2, to come up with their own questions in order to be incorporated into the legal scoping document. This is of course as we've seen with the stress test part as well, a very important part of the work that needed to be considered and taken in front of lawyers for advice. So I would urge the rapporteurs to please, with those legal questions so we can incorporate them into the legal scoping document.

One of the questions that was widely discussed in our last call was - had to do with the jurisdiction issue. And while we all agreed that having a look into advice on whether jurisdiction - or how jurisdiction should be addressed and how the concerns of the different stakeholders should be addressed, we also

agreed that this would be an issue that must be addressed within Work Stream 2.

And the reason for this is that if we look at the jurisdiction issue at Work Stream 1 we could be facing the derailing of the whole process of the transition. So it was an agreement reached by the legal sub team and of course it would be put in front of the larger group starting with this call, and of course with a wider discussion on the list maybe if it needs to take place that this issue will need to be addressed in Work Stream 2.

Another issue that I need to update you about the legal sub team is that, as you saw on the list I circulated the message from Jonathan Robinson who advised us that the CWG had engaged with a certain law firm.

And I would remind you to kindly mute your microphones if you are not speaking.

He made the announcement that the CWG has engaged with our law firm to provide advice to the CWG. So far the CCWG hasn't engaged with any law firm as of today. We are going to hold a call with one of the short listed law firms tomorrow; the legal sub team is going to hold that call. And well of course - we are still considering which - as Bruce pointed out in the chat, the initial intention of the legal sub team would be to use the same law firm as the CWG.

But since we haven't had the chance to go through this call with the appointed law firm, we haven't been able to decide yet if this is the way we are going to go. So of course the possibility of engaging with the same law firm is important. I mean, it's high - it's a high possibility that we will engage with the

same law firm. But we surely need to go through our own process as well in order to define if this is the legal law firm we will be looking at.

I would now like to open the floor for any comments or questions you might have on this update.

I see Jorge Cancio has a question. It says, "Will you put this question on jurisdiction explicitly to this the CCWG list?" Yes, the document has been circulated. If you mean that if I will formulate the question on whether jurisdiction should be a matter of Work Stream 1 and Work Stream 2, I wouldn't ask the question as it is.

I would inform the group that the agreement by the legal sub team is that it should be a matter of Work Stream 2 rather than Work Stream 1 and of course call for comments or suggestions on that agreement reached by the legal sub team. I don't know if that answers your question, Jorge. And of course the floor is still open for more questions and suggestions. I don't see anyone raising their hand or...

((Crosstalk))

Leon Sanchez: I'm sorry, I was wrong. I see Kavouss hand is up then we have Sebastian Bachollet and Steve DelBianco. So please, Kavouss, could you take the floor?

Kavouss Arasteh: Yes, very short. I don't think that we should spend too much time on this election or the designation of the law firm. The CCWG had some and looked at that one (unintelligible) not spending the month as to see which one is the better result. I think they have some experience and will be beneficial that if we have quick - something quickly done and start the work.

And it just I remind myself and yourself that sometime I asked that would it be possible that we have some explanation about the limitation restriction of the California law, and you promised that at sometime there would be some documentation to explain to us what are the difficulties and problems of that California law with respect to what you are doing. And I hope that you have it still on your agenda. Thank you.

Leon Sanchez: Thank you very much, Kavouss. Well, point taken. And yes, we are also incorporating some questions with regards to California law in the scoping document so of course you can review that document. I will circulate again the link to the Google doc in which Robin Gross kindly have put a lot of effort into improving the initial document.

And well of course this document is also open to comments to the larger group. And now I would like to pass the floor along to Sebastian Bachollet. Sebastian, please take the floor.

Sebastian Bachollet: Thank you very much, Leon. Sebastian Bachollet. Yeah, just - I saw that there were good reason why the CWG choose this law firm. And I would like to suggest that you go first to this one. If you don't have really very good reason not to choose them (unintelligible) I think it will be - it will simplify all the work of this transition because it's not - you will have to find a third one to communicate between the two law firms, who will choose the (unintelligible) CCWG. It's a job that you will have a lot of coordination to do and that may be (unintelligible) way to go forward (unintelligible).

Leon Sanchez: Thank you very much, Sebastian. While I agree with your views that we should be making this is as simple as possible, is there is also the concern from the legal sub team, as Edward Morris pointed out in the chat already, that's why all this firm seems to have the right skills and expertise we are

looking for, we definitely need to have a direct call with them in order to double check on whether they meet the needs of the CCWG as well as the CWG.

And, well, I mean, chances are that they will but we will still need to go through that process of verifying the skill set and availability for ourselves. So, I mean, we are one call away from confirming or looking at other options so let's have this call tomorrow. And of course we will come back to the rest of the group as to inform what is the outcome of that call.

I see Steve DelBianco's hand is up. Steve, please take the floor.

Steve DelBianco: Thank you, Leon. I'm happy to defer to this group's judgment about the right firm and whether it's the same firm. Something you said earlier has broader implications and it's the question of which areas of inquiry will be in Work Stream 1 and Work Stream 2.

And I heard you say that you were worried about derailing the IANA transition. And, you know, I do think that once the legal firm is selected and the excellent questions have been put to them, only after their answers come back should the entire CCWG have an opportunity of understanding which things are so complex that they might have to go to Work Stream 2 and which are a central community powers that have to be in Work Stream 1.

So I don't want to bias any of that. Let's wait and see what we can do and what we must do in Work Stream 1. Because one sure way to derail the transition is to try to get this community behind a proposal that really doesn't give us the kind of powers we need to implement the rest of Work Stream 2. Thank you.

Leon Sanchez: Thank you very much, Steve. We would definitely consider what you are saying. And, yes, we will put the questions in front of the law firm that finally engages with the CCWG, wait for some replies. And of course we will subject the replies to the larger community in order to prioritize the needs of the CCWG.

Is there anyone else that is willing to make any comments or suggestions? I'm mindful of the time. We are almost reaching the top of the hour and we still need to address a couple of points in our agenda today. So if there are no further questions I would like to hand it back to Mathieu and Berry to go ahead with the agenda Point Number 3, the timeline. So please, Mathieu.

Mathieu Weill: Thank you, Leon. Unfortunately Berry has apologized for this meeting, I think is a bit sick now. So what I would like to focus on rather than an update on the timeline that hasn't really changed, is ensure we have a common understanding of what to expect from Istanbul meeting.

The first thing I want to stress - and it was mentioned last week already - is that we don't have an agenda yet and that's because we think the most effective way to proceed in this meeting will be to base our agenda on the actual issues coming up from the working parties and the questions that we have to discuss, find consensus on, etcetera, in order to come out of Istanbul with a general - a common understanding of what will go into the public comments that we are due to launch 10 days after Istanbul.

And so the expectations we have before Istanbul is that - our hope is that we can provide to the whole CCWG the inputs from the various working parties a few days before - at least before the weekend so everyone can have some reading on the planes. We hope that most of the main concepts and ideas can

be socialized on the mailing list or in the calls before so that we are at least a little bit familiarized with them before we get to the debate in Istanbul.

And the main aspects we are expecting to discuss are the draft compact. It was already introduced today and as a very good step forward. The AOC discussion about what should be included in the bylaws and how. Of course that community empowerment Work Stream 1 measures, the review/redress Work Stream 1 measures as well, and certainly we might also have to discuss the complete set of stress tests if there is anything remaining.

The idea being that with that we will be able to come out with general directions and common understanding about what we call for public comment on. We are aware that we might not have the legal advice back in time for that.

And certainly our option right now is to work on the basis of the initial legal feedback we've had either from within the group or from the past interactions with Jones Day, and of course keeping open any question that would raise legal doubts. So to Robin's point on the chat, that's a risk we are taking. We are aware of that, but I think we don't have any other option.

And can't rule out you have an initial legal advice, and that would be very positive obviously. But I think we - I can't see any alternative right now. Jordan, you have a comment; your hand is raised. Jordan, are you on mute?

((Crosstalk))

Jordan Carter: Yeah, sorry, I was not even connected on my audio. Can you hear me now?

Mathieu Weill: Yes I can.

Jordan Carter: Okay thanks. Look, I've been looking at this timetable and I'm getting suddenly more anxious about it. I think one of the reasons that maybe we just need to be really careful about aligning our expectations as a group about, A, what our final output needs to be, and the one that we send to the ICANN Board in June, according to the current schedule, which isn't - which is in front of us, and what we are going to get public comment on in April.

So if we don't have to have a, you know, I struggle to see how we can get enough done in time for our public consultation in April, to fully close out (unintelligible) in time for the schedule that is there.

I think that we're going to structure the public comment report (unintelligible) that I am basically agreeing in a different way with Robin. I think that by the end of the Istanbul meeting we will know whether the issues in the group are close to resolution, and that should be a good proxy for what is going to happen in the ICANN community as a whole.

So if we feel like we are in good shape and that there is a lot of controversy about what's going on, and we can prepare enough detail so that this stands as the only public comment periods, then that's fine. But I think we just - we have to start understanding the possibility that we are not going to get to that point or that the public comments come back require a bigger rethink.

And I think - and my personal view is that's okay, if we end up finalizing our - a second draft of our proposal for public comment later we could do that. But that's just what I wanted to say now.

Mathieu Weill: Thanks, Jordan. This is certainly an item for our discussions in Istanbul whether we feel we are ready or not. But I think most of the discussion here is

about the level of detail we would have to achieve before going into a public comment and that's certainly going to be a key discussion. But as mentioned earlier regarding the Affirmation of Commitment discussion, I don't think there is any reasonable expectation for us to provide fully detailed writings of bylaw changes, for instance.

Currently, our recommendation should be under requirement and principles level. And I think we still have a good chance of achieving that considering the progress that's being made right now. I have Kavouss on the line. Kavouss, please.

Kavouss Arasteh: Question, how much time have you put for the public comment period? How many days?

Mathieu Weill: It's currently 30 days.

Kavouss Arasteh: Thirty days, okay. Good, thank you. That's okay.

Mathieu Weill: Okay, so what I take from this discussion is obviously the important that in Istanbul we have a discussion on whether or not we feel we need to update the timeline or not. But I think until Istanbul I'd rather focus our efforts on getting as much detail concrete proposals on the table, discussing them, assessing our level of agreement on that and rather than discuss right now how we would extend any timelines or delays or anything.

So that would be the approach we would favor so that, as Jordan is saying, we run full speed ahead. As co-chairs we are very aware of these challenges and really looking at potential backup solutions and everything but I think what is important is focus our work, focus on requirements and not go too much into

details otherwise we will derail the timeline. And I think we would go further than expected and probably run the risk of derailing the process.

So, and of course, as Jordan is saying, yes, the issues to discuss will be settled a little bit late next week once we have the incoming inputs from the various groups. But for instance, it's clear the compact will be on our agenda and it's being socialized and circulated already. It's going to evolve - be discussed next week and that's going to be helpful to shape the agenda for Istanbul.

Jordan, you want to add another word?

Jordan Carter: No, sorry, I had my old hand up. I'll - writing some comments in the chat for people to look at.

Mathieu Weill: So our action item for the co-chairs is to include in the Istanbul agenda and item regarding the next steps for the group and a timeline for the rest of the group probably in the last section of the Istanbul agenda. With that, we are coming close to the top of the hour. Thomas, would you like to take over for the next point?

Thomas Rickert: Yes I can. The idea is just to give you a very quick outline of the report that the - that we will have to submit for public comment. And we are currently working on - or we've been working on the structure of the report. And, you know, this is just to share this initial thinking with you and get some instant feedback.

So basically the report is going to have a (unintelligible) abstract, which obviously we can't write before we know what the recommendations of the group will be. Then, you know, and this is pretty much standard for all types of policy related documents we're going to have, a section introducing the

work and providing some background information on the announcement of the US government and so on and so forth.

Then we're going to talk about methodology which is basically a description of what we previously did, so you will remember that we had for sub teams working on various areas and then move to the next level and now we're yet at another stage so this is going to be described in that section, as we proposed.

Then you will find our suggestion is that we will have the definitions and scoping document that Mathieu and others have been working on incorporated into the report. We will have the inventory of the existing accountability mechanisms, and this is basically where we find feedback from the original Work Area 1.

We will have the input gathered from the community, that's what came out of Work Area Number 2. We will have a description of the contentions, that's basically what's been done by the Work Area 4 and the stress test working party, and then we will have the accountability mechanisms as recommended by this group.

And we will have different subtopics there which currently is the architecture of the accountability mechanisms, you know, it would be sort of the index of our accountability mechanism cookbook, if you wish, and then we're going to have the recipes of nontriggered mechanisms as well as triggered mechanisms. And this is what's currently been working - worked on by Work Party 1 and Work Party 2.

These will then be stress tested and the outcome of the stress test will be based on Work Area 4 and the stress test working party which is going to make the

eighth chapter of the book. And then there will be written implementation plan including the timing.

You will remember that the US government has made clear that everything not only needs to be stress tests but also there needs to be clear vision on how the implementation is going to go about and also this is relevant for Work Stream Number 1 because not everything is or can be done prior to the transition but certain items will be permitted to, so the implementation plan needs to be built into our project.

So that's basically it. I think you don't have to respond right now but you certainly can. And we are now starting to work on putting or populating these topics with content. We have quite a lot of substance already because this work - this working group has been working very hard producing this work. But this is basically what we could come up with and present to the community.

Jordan, I'm not sure whether that's an old hand or a new hand but if it's a new hand please fire away.

Jordan Carter: It's a new one. My only point I want to make is that we've got to be mindful that in April, in theory, we will be asking the community to comment on these accountability recommendations and at the same time the community is going to be dealing with the names proposal.

And so I think we need to structure this report in a way that if people only have (unintelligible) and have only got the head space to answer four or five key questions that they can do that.

So thinking about the structure of what goes in appendices and so one and just having a really tight writeup of the key recommendations and how it fits together is really really really really really important, much more than usual. Thanks.

Thomas Rickert: Yes, I think there are - two things - one of which is the report which we have to put out for public comment and then as an additional layer I think we need to think of ways how to best get feedback from the community. And we can do that in different ways to exactly rest are concern that you had.

I think we should leave it there. We are four minutes past the top of the hour so you've all been very generous with your time. And with that I'd like to hand it over to Leon for the next agenda items.

Leon Sanchez: Thank you very much. So the next agenda item is any other business, so if anyone has any other business to put on the table for this call I would like you to come forward. I see Jordan hand is up but I assume that's an old hand. Jordan could you please - yes, thank you. So I see no one bringing any other business into this call. And well, I would like to thank everyone for their time and I'm mindful that it's really late for some of us already, and we have a lot of work ahead. And we will update you as soon as we have an outcome from our call with the law firm tomorrow.

And well, thank you very much again, and talk to you soon. This call is now adjourned.

Thomas Rickert: Bye-bye.

Cheryl Langdon-Orr: Thank you, bye.

Avri Doria: Thank you, bye.

END