

ICANN

Moderator: Grace Abuhamad
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2:00 pm CT

Becky Burr: ...we'll start. The agenda for today is to make sure that we agree on what our job is and to (unintelligible) here to there (unintelligible) for the various work streams. The way I have moved this paper around is that is that working with the Work Stream 1 folks (unintelligible) I've taken out things that I think belong in Work Stream 1 and that they agree and I've added things that the Work Stream 1 - work party (unintelligible) our - in our remit.

(Unintelligible), you know, for (unintelligible) over this, we are looking at mechanisms for - that are (unintelligible) that come into play when something occurs and (unintelligible) not ongoing items like (unintelligible) sorry (unintelligible) and we've been asked in each case to come up with (unintelligible) template (unintelligible) Thomas circulated. But it really includes (unintelligible), you know, (unintelligible) tools that we have and decide whether they need to be modified to provide accountability, look at the new - the new (unintelligible) made and determine whether they (unintelligible) and enhanced but existing mechanisms or whether (unintelligible) created to do it.

And then the final thing is to, you know, address questions about, you know, who is - who is - participates in the mechanisms, how do they get chose, who can invoke the mechanisms, what's the standard against which behavior is measured (unintelligible), you know, how the mechanisms makes decisions, arrives at decisions and, you know, what their output is, how accessible it needs to be and how (unintelligible).

From my perspective that's a very important question (unintelligible) address but we also really need to make sure that we're thinking carefully about preventing abuses to it so that we can, you know, so that it doesn't become a big headache and that doesn't produce any (unintelligible) outcome.

Basically based on (unintelligible) face to face conversation in Frankfurt, the wisdom that I took out of that was that, you know, we have a list of principles that we want to do - do we want to be able to ensure that ICANN is held to its bylaws and prevent mission creep effectively, prevent mission creep. So those are the - my going in principles are keeping ICANN to operating within its - in accordance with its bylaws and providing effective mechanisms to address it if they don't, and prohibiting scope creep.

Now the prohibiting scope creep will - part of that will be a Working Part 1 activity but at this point is there any (unintelligible) about these principles that anybody have a comment on the principles themselves? Okay I'll take no comment as no comment for the moment.

The next item that we have is the - a discussion of the existing - the existing mechanisms for review and redress. And those are (unintelligible) and the transparency policy (unintelligible) transparency and information access (unintelligible) within the scope of Working Party 1. I think both

(unintelligible) will have input into the bylaws and there will (unintelligible) harmonizing those things.

(Unintelligible) ombudsman, reconsideration and - and - hold on one second. Grace, can you send Suzanne Riddell the information for dial-in and stuff?

Grace Abuhamad: Sure, I will do that.

Becky Burr: Okay. So the independent review process and then the periodic review and performance of the supporting organizations and the Affirmation of Commitments and (unintelligible) or Working Party 1 (unintelligible) remit so in terms of the existing mechanisms that we want to look at we - we want to think about the bylaws issues as we go through this but ombudsman, reconsideration and independent review are the existing mechanisms that will be (unintelligible).

As we go and - hold on one second. I'm having a little hard time reducing the chat bar so I can see the - see if there are hands up. So if somebody - I'm going to just keep scrolling through this so I see it but it's not a perfect mechanism so just holler if I don't flip through this enough.

Grace Abuhamad: So, Becky the - just - when there's a hand up it'll be at the top of the participants list, they automatically move hands up to the top of the participants list.

((Crosstalk))

Grace Abuhamad: So you won't have to scroll. And I'll also watch the queue for you and if there's anyone that's in the queue - oh like an example right now is Paul is in the queue.

Becky Burr: Okay, Paul. Go ahead, Paul. We can't hear you, Paul. Are you muted?

Grace Abuhamad: Possible Paul maybe was doing this as and example for everyone. Okay, thank you Paul. That was the case.

Becky Burr: Okay excellent, all right. The next chart that we have here is the inventory of suggestions from public comments and posts. And for this I worked from the inventory that Steve DelBianco (unintelligible) David Maher's work stream came up with. And then we basically looked at them to say, you know, what is this - does this fall into the sort of trigger (unintelligible), not triggered category and therefore do we know it's within our remit.

I will say that Work Party 1 has (unintelligible) a bit with these triggered versus non triggered and I think there is some ambiguity about it so that's one of the things that we'll want to talk about to figure out if we can make that a little clearer.

But changes to the bylaws and articles of incorporation (unintelligible) representative I think that has both a triggered and a non-triggered aspect to it so we'll keep it on our list but it will be something - unless somebody else has a different view. And we'll (unintelligible).

Now again (unintelligible) those things (unintelligible) could use the independent (unintelligible) mechanisms or all of those mechanisms or it could be entirely different (unintelligible) would be to, you know, to make the (unintelligible) mechanisms that we have fit for purpose and try to create as few absolutely new mechanisms as possible.

Permanent ATRT we've moved to Working Party 1 (unintelligible) require the board to act on, implement or amend or take action on ATRT recommendations. It seems to be triggered by the failure to act on those.

The permanent cross community working group has - had both triggered and non-triggered items but for our purposes (unintelligible), you know, the suggestions were a group that decides in some instances whether something could be referred to independent panel review and that might be, for example, it certainly wouldn't be a gating factor for an individual player who's been, you know, (unintelligible) specifically harmed but where the community feels that ICANN has not acted in accordance with policy.

It might make sense to have a community committee to look at a request to (unintelligible) an independent review on behalf of the community itself. Bylaws changes for board acting arbitrarily and capriciously, suggestions for enhancing the IRP, independent appeals panel for contested delegations, transfers and (unintelligible) that's a - going to be a question I can tell you that the ccNSO feels quite strong (unintelligible) with respect to revocations and delegations affecting the CC community.

That standard and that process is something that the ccNSO committee - community needs to address so, you know, we're going to have to look at that carefully but I think the - we have to be prepared to let, you know, to address three different flavors, let the ccNSO come up with what they - how they want this to be handled.

Broadly expand the basis - the grounds on which decisions and operations can be challenged and lower the threshold to succeed in a challenge. That is, you know, partly in the mechanisms, existing mechanisms and partly not. The

recall mechanism is a new mechanism that it's within our remit. And the community veto is a new recommendation that's in our remit.

So any comments on those? Are we missing anything? Obviously there - it's possible to combine these things but it seems to me that one way of sort of thinking about our work is, you know, with all of the concerns in mind how can we modify the existing mechanisms to accommodate the community concerns that we've heard (unintelligible) that we have to (unintelligible).

The other work that is within our remit is the sort of standards document that we talked about in Singapore, the document that said, you know, basically here's what ICANN's mission is, here are the ways (unintelligible) while it is carrying out that mission so it roughly correlates but is not limited to the things that are in the mission statement and core values section and Article 1 Section 3, which is the transparency - or the nondiscrimination, nondiscriminatory treatment mechanism.

Any comments, thoughts? Okay, Alice is the next one - is the document - the methodology document - okay, great, you're bringing it up. Before we get deeply involved in this can we talk about whether you think it works to create as an initial matter an ombudsman group, reconsideration group, an independent review group, a new mechanisms group and a standards group?

That's - when I think through this that's what I think our work streams are. Thoughts? Disagreement? David.

David McAuley: Thanks, Becky. I think that makes good sense to divide it up like that but I would say so long as those of us, you know, as we pick things we could work on maybe more than one. That would be my comment to the suggestion.

Becky Burr: Absolutely. My view we'll take volunteers anywhere we can get them and anyone who wants to work on more than one. And obviously I think we'll probably need volunteers to work on more than one. That will be very helpful to us anyway so that we'll have a natural mechanism for making sure that, you know, the work going on in two different work streams is not crazy. Chris LaHatte.

Chris LaHatte: Yes, hi.

Becky Burr: So I'm sorry, I skipped Paul. I was looking at that - Paul was in the queue first and then ((Chris)).

Chris LaHatte: Sorry.

Paul Rosenzweig: Okay, can you hear me this time around?

Becky Burr: Yes.

Paul Rosenzweig: I was just going to suggest that dividing it up by mechanism tends, in my mind, to disaggregate what I think of as the cross cutting issues. You know, in the email I sent out, for example, I had a discussion with Malcolm about trying to identify who's an aggrieved party, that is who can initiate a complaint.

And it seems to me that that issue will pervade whether it's initiating an ombudsman complaint or initiating a reconsideration or initiating a review and redress independent of those mechanisms. So, you know, identifying what we think an actionable agreement might be seems to me to be an important discussion that pervades across your three and even across the four mechanisms.

And it may be that in the end we decide that aggrievement differs, that, you know, the (unintelligible) if you're just complaining to the ombudsman but you should be really, really injured if you're trying to still the board or something like that. But I don't know about that necessarily.

And then likewise, it seems to me that when you talk about standards you're talking about what I think of as governing standards that measure the conduct of the board. I also tend to think, you know, in my American lawyer's mind of standards of proof, or standards of evidence as well, that is how much do you need to be (unintelligible) whatever standard it is we come up with. Is it, you know, to use American phrases, preponderance of the evidence of proof beyond reasonable doubt, you know, and maybe that's another one of those cross cutting issues that needs to be pulled out somewhere and identified (unintelligible).

Becky Burr: Okay. That's a good point. Let's go back to it but let's go to Chris first.

Chris LaHatte: Yeah, thanks. I just wanted to say that I'm really keen to work with (unintelligible) of people on the (unintelligible). There are some important concepts of being an ombudsman that I'll need to share with people as we develop interchanges. Some people seem to think that ombudsman, for example, should have powers to actually tell people to do things and without giving you a lecture about it at the moment, that's not how ombudsmen work. So I'm keen and look forward to working with people.

Having - the other side of that is if we have this face to face meeting in Istanbul...

Grace Abuhamad: Chris?

((Crosstalk))

Chris LaHatte: ...a long way for me. It's (unintelligible)...

Grace Abuhamad: It's very hard to hear you. Could you please maybe speak closer to the microphone or if you must yell or something - speak a little bit louder?

Chris LaHatte: Sure. Is that better?

Grace Abuhamad: Yes, that's better, a little bit louder would be good but that's better.

Chris LaHatte: Okay well I'm talking quite loudly. The face to face meeting in Istanbul, that's a 30-hour trip for me and if we're just going to be there for a couple of (unintelligible) it's pretty exhausting trip for that. Would people mind if I attended electronically rather than face to face for that?

Becky Burr: Well we certainly will have remote participation set up so that - the whole group can work together whether or not they're in Istanbul. David.

David McAuley: Thanks, Becky. I just wanted to talk to the points that Paul raised; I think they're good points especially the cross cutting issues. What struck me as good about the suggestion you made about dividing it up by the body that we're talking about, ombudsman, IRP, whatever it might be, is that it seems - it strikes me that that's a good way to start to get pen to paper. It's almost like Steve did with stress tests.

It would be a good way to get pen to paper which might flush out the ability to look for or to get a better sense of what might be cross cutting issues at the meeting in Istanbul. So I still - I mean, I think Paul brings up a good point but

I still think that this would be a good mechanism the way that you suggested it.

And then secondly, I think Paul also mentioned standards. And I just wanted to mention that I find the standards part of it a little bit more opaque and I'm not sure I fully get it. But anyway that's my comment.

Becky Burr: Okay, David, is it you don't understand the standards when I'm talking about it or the standards when Paul was talking about it?

David McAuley: I think it might be a bit of both. It might be me so I just - I mean, I do read up all the stuff afterwards. I just may not - I may be lagging behind on the standards that...

Becky Burr: Okay. When I talk about the standard I am talking about the, you know, if our principles are we need to ensure that ICANN carries out its mission and stays within its mission and - and when it is doing that it needs to do so in certain ways that, you know, are multistakeholder, bottom-up, fair to everyone, transparent, those kinds of things.

So what I'm really talking about is the standard of behavior in which some part of ICANN is measured with respect to, you know, when you trigger one of these mechanisms. And I think Paul can speak for himself because he's got his hand up.

Chris LaHatte: All right.

Paul: Yeah, well I would make two responses to that. The first is that staying inside your bound, Becky, of standards, you articulated essentially procedural standards. I also envision standards to be substantive standards, which I

conceive of as definitions of what is inside and outside the bounds of ICANN's remit to do.

For example, if we are to take - I think it was Malcolm's (unintelligible) from our email, if they were to decide not to allow anybody who's a fisherman to have a dotFish domain name because ICANN decided that it was its job to reduce the over-catching of fish which, you know, we could all agree on, I would think that substantively that would be out of bounds even if ICANN followed every jot and tittle of its process. So that's one piece.

And the other piece of standards is actually what I would characterize as standards for adjudication which is if we're going to have redress or reconsideration processes there need to be standards that the adjudicator, the redresser or the reviewer, you know, invokes in determining whether or not the aforementioned (unintelligible) and substantive standards of contact have been transgressed. (Unintelligible) prove evidentiary rules that's okay.

Becky Burr: Okay, I totally agree, by the way, that when I'm talking about standards it is not just procedural, it's substantive and that's what the, you know, strawman that I put out there did. Steve.

Steve DelBianco: Hey, thanks, Becky. Steve DelBianco. I wanted to point out that Robin Gross and others had added another item to the inventory for community empowerment. And it was the notion of community veto above board decision.

That kind of an item didn't have a substantive standard. It has a process standard like super majority and the way it's done but it didn't have a substantive standard. The community wanted to veto or block a board decision such as the one Paul Rosenzweig just described.

That doesn't require a standard if it's a veto. The standards are required, as you said, Becky, when we were in Singapore, the standards are required when you're turning over to an independent panel to adjudicate whether something was done properly then they need some standard against which to measure the decision that board and management took.

Becky Burr: Right.

Steve DelBianco: Thank you.

Becky Burr: So are you suggesting just to explore this that - I mean, it seems to me that this is a piece of discussion. You want to veto a board decision for any reason or no reason...

Steve DelBianco: Right.

Becky Burr: And okay so, I mean, to me I think that we need to - that's part of the discussion we need to have about the, you know, the standing and the standard against which it's measured and who is allowed to invoke it and how it gets invoked an all those things. Right, because I think that's - I think that's the question of is it any reason or no reason is a substantive question to be discussed.

Steve DelBianco: Yeah, Becky it's Steve. In the mix of community empowerment mechanisms, I would just encourage you to keep alive the notion of a community veto (unintelligible) the super majority process but not a substantive standard. And it cannot come in and change the guts of a decision, it simply says that decision has been voided.

And that is a generalized tool. It was discussed extensively in Singapore under Work Party 1. And I think Robin Gross articulated the best how versatile a tool that could be; it could also be dangerous, right, so I understand that. But that's different than something where a standard has to apply.

If you keep both alive it may develop that the independent review that are standard-based could be sufficient to empower the community. On the other hand, the veto is exactly what we were anticipating when the community vetoes a budget once a year.

Becky Burr: Right.

((Crosstalk))

Steve DelBianco: ...vetoed a board decision to change the bylaws once a year. So those - we are already going to be designing a community process for the community leaders, AC, SOs and SGs to conduct a carefully documented, transparent and accountable vote. And if they come up with a super majority that says no, that budget doesn't fly, well that could easily be turned into saying no that decision doesn't fly. You shouldn't have accepted the GAC advice on that topic and sent it back.

Becky Burr: Okay. Okay in the list that we were looking at before the scoping document, there is the community veto description which I think I took directly off your inventory, Steve. So if you think that that does not capture that clearly enough we can modify that to make sure we keep that open.

Steve DelBianco: Yeah, and, Becky, the point of me bringing it up now is that Paul Rosenzweig was talking about the need for standard on ICANN acting outside of its mission and bylaws. That is one way to do it, Paul.

But another way to do it is if the community can veto a board decision then amongst the reasons they could do so is because ICANN has completely gone off of its core mission.

Becky Burr: So okay now going back to the cross cutting issues, isn't the kind of fundamental cross cutting issue is who should ICANN be accountable under what circumstances? And if we developed a list, which I think is implicit here, that says ICANN should be accountable (unintelligible) community and anyone harmed by action outside of - inconsistent with its bylaws, ICANN should be accountable to an individual registry for X, Y or Z. ICANN should be accountable to a particular SO for whatever it is.

And if we got the list of sort of what ICANN should be accountable for - to whom ICANN should be accountable under what circumstances, we would essentially have the ability to then, in our work stream, say is this an appropriate mechanism for delivering that accountability or is it more appropriately, you know, you know, an independent review or more appropriately the community veto, or more appropriately something else altogether. Does that make sense?

And to capture what I think is an important point that we need to remember that these issues are cross cutting. Paul, in particular, does that - or David, go ahead.

David McAuley: Thanks, Becky. (Unintelligible) and let me try and use an example. And, again, I'll say in the background, that's why I thought it might make more sense to start putting pen to paper on these venues and then bring up this issue.

But the example I would use is the data retention obligation that registrars have and the problem they've had in Europe with getting waivers and whether they should get a blanket waiver, all those kind of things. And it's possible that a registrar - one European registrar may go to the ombudsman and another might go to a reconsideration request and another might try an RFP. And some others may say, what do we do in this case?

And so I'm not - I just think that there's some complications involved...

Becky Burr: Right.

David McAuley: ...that maybe better expressed once we start to get a feel for what these mechanisms do and how to handle one party's concern that a precedential ruling of some sort might come out of one place that could affect them where they think it's better decided in another. I don't know if I'm putting it well but that's the knee jerk concern.

((Crosstalk))

Becky Burr: I think that's useful. I mean, it would be the - who is - how ICANN is accountable to whom using this mechanism, you know, might not capture everything but it would be a place to start. And that's why I proposed the, you know, the five work streams here. Anybody else have comments? Paul, are you content to have us at least start down this work stream path with the remembering the cross cutting issues in our head and after we get, you know, the first bit of work done regrouping on the cross cutting issues?

Paul Rosenzweig: Yes, perfectly content. I am persuaded that it may very well be that aggrieved parties have more than one place to go and that there may be some mechanisms that are restricted in who can go to them. And Steve rightly

persuades me that the standards issue is much less about ombudsman work
(unintelligible) - my standard, the standards and the...

Becky Burr: Okay.

Paul Rosenzweig: ...the broader standards will be relevant to all (unintelligible). I'm happy.

Becky Burr: Great. Okay could - this is obviously not final but if you - thinking about the work streams as ombudsman, reconsideration, review, new mechanisms and the standards, if I just asked you to raise your hand if you're interested in one of those things then Grace, can you mark that down in case I miss it? And we can just begin to start building.

Obviously, anybody is going to be permitted to work in anything that they want to. But just to get, you know, sort of some key volunteers as we start. Does that make sense, Grace?

Grace Abuhamad: Yeah, that makes sense.

Becky Burr: Okay. People were interested in working on the ombudsman work stream, could you raise your hands or speak if you're not in the Adobe room? Okay - (Chris) - we got (Chris). Okay well we'll come back to that but we'll need some help there.

What about the reconsideration? We have (Chris) and David. Okay independent review? Paul and David. And John (unintelligible) and (Chris). Okay. New mechanisms? David and - oh okay John - Jonathan. No, did you - you took your hand down. Okay, anybody on the new mechanisms, the community veto and the like? Okay and then the standard. Oh Robin, new mechanisms. Thanks, Robin. We've got Robin and Paul.

Paul Rosenzweig: I was responding to your standards. I moved along.

Becky Burr: Okay.

Paul Rosenzweig: I will do new mechanisms if you need but I was responding to standards.

Becky Burr: Right, okay. Okay so we need one more person for the ombudsman role and we may get that to - we obviously need more but we may get that on the call on Monday with others who couldn't participate today.

But I'll be reaching out to those of you who have volunteered for these sections so that we can get going on them. And anybody who wants to sort of take a leadership role in the working groups can let me know so we can sort of put everybody together.

Okay that's great. But the - we have the opportunity for, I think, if we meet weekly we have the opportunity for four more group meetings between now and that includes the meeting in Istanbul on Sunday afternoon.

I would propose that we, you know, hold those meetings weekly with the sub groups and try to keep the big meeting short and just a discussion of sort of progress that's being made in the working groups and then the cross cutting stuff. That make sense to everybody?

Grace.

Grace Abuhamad: Yes so, Becky, this is Grace. I just have a quick question. So regarding these five groups, are they expected to work within Work Party 2 and so within the

calls? Or are they - are you looking at having separate calls for each group and separate mailing lists and that whole thing?

Becky Burr: Well I think that (unintelligible) separate work. I don't think that we can get the substantive writing work done in the big group meeting. So it's my expectation that the work groups would have calls or work, you know, online - calls and work online and iteratively so that would be in addition. Because I don't think we can get what we need to get done in the committee as a whole.

Grace Abuhamad: And by committee of the whole you mean committee - Work Party 2, not the plenary CCWG meeting?

Becky Burr: I mean Work Party 2, yeah.

Grace Abuhamad: Okay great. Thank you.

Becky Burr: Okay as I looked at the responses to my Doodle poll although it was for specific days. But the Thursday was the day that seemed to accommodate most people's schedules. Now I know that means Friday for some people. I will propose a starting time and then I would propose that we rotate those eight hours per meeting which would give us, you know, 24 hours until we get to Istanbul and then the time will be set by travel and the like.

Anybody object to that? Share the pain a little bit so that the people in Australia and New Zealand or Tokyo and Singapore don't have to get up in the middle of the night all the time?

Okay, and with respect to what we hope to get done I think that, you know, what we should have done by Istanbul is, you know, a first cut on these items and an opportunity for everyone in the - the whole work party to come

together in Istanbul and sort of go through the first cuts. Does that make sense to everybody? Okay silence being assent. I'll work on a schedule that reflects that.

The Work Party 1 set up a separate editorial group which we might find useful but I don't think we need it to begin with. So I propose to not do that yet.

Okay that brings me to the end of my agenda for this meeting. We have a little bit more time in the hour so I'd like to open it up for other people to bring up issues. David.

David McAuley: Thank you, Becky. My question is really - I have two questions. One is about Monday's call. Is that pretty much just a redo of this so that if we were on this call we need not attend?

Becky Burr: Yes.

((Crosstalk))

Becky Burr: Yes that is correct. You're welcome to attend but the goal is to go through this, I mean, obviously it will be informed by what we've done here today but there just wasn't a time that I could accommodate everybody in terms of time wise and so it seemed to me to make sense to just - because this foundation meeting is so important to do it twice.

David McAuley: Okay thanks. And that's actually good for me because I have a conflict on Monday. The second thing I was going to ask - and I apologize for being thick on this. But on the new mechanisms, I thought what Steve was saying was that we should be aware that the community empowerment group is doing that which I would refer to as a non-triggered group - is working on those. Did I mishear that?

And if I didn't - if they are working on it I take it then that we will work on it as well, is that a fair statement?

Becky Burr: Steve, I read Jordyn's last message to put it in the triggered group or his last circulated update. I will confirm with him. It may - it may be that that they're working on it and we don't need to - or we can sort of fold those two efforts together.

David McAuley: Oh and I see that Steve is saying it's in - I think it's in this work party. Okay.

Becky Burr: Okay, that was my - that was my take from Jordyn's updated scoping document. Paul.

Paul Rosenzweig: Sorry, I got to unmute. I was just going to suggest - and I don't do this to volunteer in the least but with respect to each of these you probably have to name somebody who's going to push each of the subgroups forward. And...

Becky Burr: Yes.

((Crosstalk))

Paul Rosenzweig: ...who you're going to name. Robin does new mechanisms because she's the only person there, right? So - and so maybe I'd just throw that out not because I want to volunteer.

Becky Burr: Yes. I believe that that's correct. And so once I get volunteers from Monday's call I'll be looking for expressions of interest in taking a leadership role in each of the work streams. Okay anything else for us today?

So, David, you have - on this - you've added in the chat that you view the triggered as meaning a specific claimant or more - I think it's - I think that's one of the difficulties of this. I think it means it is in response to an event, something happens and the person or persons notwithstanding invokes the review and redress mechanism.

David McAuley: That sounds fair. Thanks, Becky.

Becky Burr: I mean, it's - it's very muddy to be sure. Okay. Anybody else have anything to add? The - every - all of these documents are available on the wiki. And I will update the documents to reflect these working groups. And I'll probably try to put a straw man into the actual draft work plan for comments in terms of timing.

Okay well I will try to be as efficient every time and give you 10 minutes - or I guess it's only 9 minutes of your day back. Thank you, guys, everybody for participating. It's going to be - we're going to have to get off to a running start here but I think this is important work and I really appreciate everybody pitching in.

END