

ICANN

**Moderator: Brenda Brewer
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Jonathan Robinson: All right everyone, welcome back. We'll begin the next session now. So after that extremely generous break - no, I think everybody felt like it was an opportunity to have some side discussions and so that's great but that was well timed, it seems to have worked well.

So now where we are is we've done that little exercise in trying to reduce the landscape of the frontrunners, if you like and set a couple of side and try and work through that.

And I think I'm going to hand over now to our colleagues from Sidley to sort of level set, get us back to those options that we've got and make sure we're all clear first of all on what they are, which is to the point we discussed towards the end of the last session and just make sure that we jumped around and it'd just be very useful to settle on what exactly we're talking about and then start to subject those to those that we have - that we want to work through in some detail to the more sort of detailed scrutiny.

So let me hand over to Sharon and Holly to talk us through these and sort of level set us on the remaining options for frontrunner consideration.

Sharon Flanagan: Okay. So what we have left here - we I think clearly eliminated three of the seven and that leaves us with Contract Co, that leaves us with accountability mechanisms and then on the hybrid or the integrated model I think we need to just level set here briefly because we have these two variants. We have IANA as a subsidiary, affiliates of ICANN so some legal ring sensing, and then we have IANA with shared services agreement taking off the table the notion of a try part, multiparty entity.

So I think at least one from me open question is whether - and I think we are moving toward essentially a single integrated model. I think one of the question is do we in all cases necessarily contemplate a separate legal entity for the IANA function or could we alternatively address it, or you address it through creating more of a divisional notion of a divisional separation or independence.

So I wasn't quite sure we had fully collapsed the two variants. And I guess maybe I'll pause there for comments.

Jonathan Robinson: Avri.

Avri Doria: Thanks. In terms of the divisional model we've talked about that and thought about it, and in fact where we started in a sense was division plus because part of the problem we have - for example at the moment we allegedly have functional separation. The contract that we have with NTIA requires IANA to be functionally separate.

It's so non-functionally separate that we can't even get a budget for what is. I think even in our notion of the GDD, which is our example of a division, I

don't believe that there is even enough separation there for us to say what is exactly GDD budget, what is it and what are the interface lines between them.

So one of the reasons for - at this point my being fairly dedicated to the notion of the contractual fence is because I believe it's the only way we get to the situation where ICANN has a contract that defines an SLA deck has a well-known interface and at that well-known interface and that contract becomes an automatic accountability mechanism that in some sense lessens our - we still got the ICANN accountability but it lessens our need to totally fixed ICANN before we can trust it enough to hold things. So that was why I'm sort of still tending towards support of the contractual ring.

Chris Disspain: Thanks. Yeah, I understand that. And I - I'm not sure that for the purposes of this high level discussion - and I actually agree, I'm not sure for the purposes of this high level discussion we need to decide that.

It seems to me that where we can head is to take the - whatever it is, version 4 of the hybrid model - and put it into - as an internal solution. Whether you have it as a subsidiary or you have it as a division is a discussion that we might need to have. But I'm happy to put it on the table now as a subsidiary, but the point is it forms a part of the internal mechanism.

So on that basis that gives us then two things to talk about witches and external Contract Co. mechanism or an internal built around ICANN's accountability mechanisms. So I'm not sure - no Avri?

Jonathan Robinson: Okay so let's not - perhaps, Chris, that might be taking us too far. And maybe we get there, I'm not sure. But certainly I think my understanding of the target first of this discussion is at least to try and integrate and make sure we're clear on - before collapsing those two hybrid variants together to make

sure we've got a single variants of those. If in the end that looks like a variant on the internal and that they themselves are able to - let's get there. But I'm not sure where they're at this point yet. Greg.

Greg Shatan: Thanks. Greg Shatan. I think actually Chris was onto something there in the sense that under the - under a contract code solution we've moved stewardship really outside of ICANN into Contract Co. The other solutions kind of keep stewardship within ICANN. And under the divisional model is more like the internal solution. And the subsidiary model creates a structural separation between the IANA function group and the rest of ICANN making it easier to separate at a later stage.

But I think the actual--I think Avri actually pointed out the more key advantage of the subsidiary model, which is that there can be a contract, and intercompany contract, between ICANN and the parent or affiliate and the subsidiary which can be used to hold all of the functional information such as SLAs, and basically can replace the functionality of what I've always thought was the neglected player in the current scheme which is the IANA functions contract itself.

Under the internal solution we've always had a little bit more issue is about how do you actually replace all the things that the IANA functions contract does that you want to retain. There are obviously things in a - many hundred page US government contract you don't want to retain, but there are important things that you do want to retain. And those are more difficult to retain under the internal solution or the internal solution with a department along with it.

Jonathan Robinson: Can I ask what I - a clarifying question of those - probably those past two points. Are you then looking at external, internal without subsidiarity and

internal with the subsidiarity? Is that - I get a nod from you Greg but I'd like to...

Greg Shatan: That's the way I see it.

Jonathan Robinson: Avri, in fact - so hybrid integrated, I mean, you can keep calling it that but it's just really, from an illustrative purpose are we seeing internal currently as internal without ring fencing, without subsidiarity, where as the one below that is a form of internal but with what I would call enhanced functional separation or ring fencing subsidiarity, you know, you may not agree with all of those terms but is that illustrative of what those variants are?

Greg Shatan: This is Greg Shatan again. I think under the subsidiary model - the true subsidiary, a separate entity it's actual structural separation and not just enhanced functional separation.

Jonathan Robinson: Yeah, yeah. Okay - before we move on in the queue - let's go through the queue but, Avri, do come in and Matthew, if that was consistent with - I didn't - I wasn't intending to only ask that of Greg, it was really to make sure that that was - you are comfortable with that kind of classification as well.

Avri Doria: I sort of am. I think that's definitely a definition of what it is at time zero. Because it's got a fence around it could evolve to something else, you know, in other words if the contract is not working out then ICANN can indeed decide at some date in the future, or the MRT, whoever is making this contracting decision could decide to contract to someone else.

And so yes, it is internal with a subsidiarity at the moment but at time TN when things are working out it could become external.

Greg Shatan: Right.

Jonathan Robinson: Yeah, absolutely. But that's arguably the case with everything, right, because that time future something else could...

Avri Doria: With a pure internal - while there is a pure internal where we just sort of takes the accountability and everything else remains as it is, that time N has a real disconnect between it, to get to that we are sitting out - IANA is a very difficult proposition.

((Crosstalk))

Jonathan Robinson: Which is what (Sharon) and Co said yesterday. I'm going to offer sharing the opportunity to add an input and then we will come to you, Paul, is next in the queue. Right, so Paul is next in the queue.

Paul Kane: Thank you very much. I have to say I'm a techie so this is way - I don't follow - I'm not following the path. Normally I'm the CEO of a number of companies, normally you set objectives, what the objective is, you set the constraints that you have to live with and then you come up with a model that's best suited.

What we seem to be doing is trying to shoehorn - identify a model and then shoehorn - potentially shoehorn what we want into it. And so I'm happy to listen to the debate. I'm not following the debate but I would welcome the opportunity of really going back to basics, coming up, I mean, I'm looking at the CWG principles. We spent a lot of time at our previous meeting of identifying the principles.

We should be going back to basics, coming up with as I say, the objectives, the constraints and then trying to work through which model works.

Jonathan Robinson: So thanks, Paul. We - it's hard to keep it on track but that is exactly how we intend to structure this discussion now. What the purpose of having this slide up right now is to say these are the different models on the table. But our first lens with which we want to look at those is the CWG principles and probably the NTIA principles.

I don't want to go there right now until - well perhaps we've - we've collapsed enough. We're pretty clear but I'm conscious there's a queue as well. I think - we seem from that previous discussion pretty clear on what the three variants are, but I want to make sure everyone is comfortable that we've got those.

And it would be really good to have a name for that third - and it feels to me like it's the top name, subsidiary affiliates of ICANN. So I would like to...

Paul Kane: ...be clear, I am not certain that if one is going down that model, that that is appropriate for the goal that we have. I appreciate it's a valid model...

Jonathan Robinson: Paul, we fully intend to test it, that's the next step. We will test it against the goals. It's just really - the objective was to say which models are we going to test against our goals now? We have a set of goals, we've got the models is now let's test them properly against those so that's certainly the intention.

(Unintelligible) yeah, I think so. I think we can...

Sharon Flanagan: Yeah, I think if you want to just update this list if it's external, as you have it, internal, it's accountability mechanisms with - what's call functional

separation. And then it's accountability mechanisms with subsidiary - with legal separation still wholly owned.

Chris Disspain: (Sharon), can I just - it's Chris. Can I just - you want to make sure it is very clear because I think this is really important. I hope everyone agrees, my understanding of the internal solution accountability mechanism, functional separation is that that includes the power to move it somewhere else. So we don't have to have that discussion right? That includes the power to move it somewhere else. As long as we're clear, fine.

Sharon Flanagan: I think the difference is do you do - it's really more kind of implementation. Do you do the work now to legally separate it or do you leave it as it is with additional government?

Paul Kane: So just on that point, there is already a contract in place with NTIA where ICANN have been asked to have functional separation. They have failed to deliver on that. And I learned at this meeting about this GDD thing, where it's actually gone closer to ICANN rather than being separated.

Chris Disspain: No, I'm sorry, Paul. I'm going to put my board hat on. That's not correct. The situation is that it is functionally separated in accordance to the contract. However, Avri is quite correct that we are appallingly bad at delivering a clear message that that is the case, and, B, we seem to lack the ability to demonstrate that any budgetary sense.

But in actual physical sense and in every other aspect of it it has been done, it happens to have a reporting lineup to GDD but it's got nothing to do with anything else. And it is very clear that we have failed in convincing members of the community that it has been done, that it has. It's just, we are, as I said, appallingly we bad at demonstrating that. Thank you.

Jonathan Robinson: So we just have to make sure we call things toward - a reminder that there is an order of people and some people are patiently sitting in the queue. So just let's get us back to that situation where we have - we've come into this, we've got (unintelligible) - we're really looking at these three options. We've got four people who are patiently waiting in the queue. And then we're going to subject these options to a detailed scrutiny based on the principles.

And so let's hear from Greg and then Elise, then Martin.

Greg Shatan: I'll pass for the moment.

Jonathan Robinson: Elise.

Elise Lindeberg: Thank you. Now I would like to keep the name for now on the hybrid model. It's just so I don't want to fence it is like it's an internal or an external because I don't think it's useful for the discussion because we don't know yet, we will have - going through our legal advisors they will tell us what kind of separation do we need, it's functional or is it structural or do we need both? Do we need just one of them? This is - we haven't done this yet.

So let's go down the path of describing what do we need a separation, that will give us the tool in the future, take it out and read it. And then we also need, you know, the decision, who is (unintelligible) we need both the structure and the decision power. This will come after you have gone through the legal advice when you're listening to us today. I don't think it is the time now to define it like two pools, like totally external, totally internal. That's what I wanted to put out. Thank you.

Jonathan Robinson: Thanks, Elise, that's right. I agree. I think the - we potentially rush and there's some detail work to be done to understand what is the right approach. And to me this represents it quite well now. I don't know - does this satisfy what you were asking?

Elise Lindeberg: I don't - the thing that you have stroken the three on the bottom I don't - it can't be a mechanism with a legal separation.

Jonathan Robinson: Well that's really - it's an attempt to deal with ICANN - IANA subsidiary, affiliate of ICANN in a way that's more easily...

Elise Lindeberg: I don't think you can do that. I don't think it's going to make it easier to kind of like try to...

Jonathan Robinson: Why don't we put a slash, IANA subsidiary, affiliate of ICANN then it's clear that that...

Elise Lindeberg: I'm not saying that this is what we aim for, I'm saying that it should be really clean on what we're doing...

((Crosstalk))

Jonathan Robinson: ...steps we're going through, I agree. That's fine. Yeah, exactly. Okay. All right Martin.

Martin Boyle: Thanks very much. Martin Boyle. I think a lot of my the reason I put my hand up has been discussed. But in fact I think my starting point was when people started talking about functional separation and in particular Avri made mention about well it can possibly be functional separation if ICANN can't tell us how much budget they spend on the IANA.

But in fact the contract with NTIA is a separation between the policy functions and the IANA operation which is actually quite substantially different. It means that IANA should not be making policies that goes along, and it also means that something that goes wrong in the policy process shouldn't be taken out, as it were, on the IANA functions operation.

But that's sort of been left me with the sort of basic problem that I've got with the new classification and that is that the accountability mechanisms are important for all of them. And I don't think we can get away with ignoring it particularly for the Contract Co.

I think a lot of the thing about the accountability is going to be to make sure that we have the mechanisms in place to respond to a failure in the delivery of the IANA functions and be able to put it right. And you might do that by now going to the external solution of the Contract Co.

But you've so got the accountability issues associated with that and therefore, you know, for the accountability mechanisms with functional separation, that's not actually a status quo, that is turning around and saying can we use internal models as are being developed through the cross community working group on enhanced accountability - or do we need to put something in place additional?

And I'm not really sure I can see anything more in that then saying well in that case you need to move towards the hybrid integrated model to separate as the final and ultimate punishment. So my real question is can you bring in the hybrid integrated model, for example, at the last stage?

In other words you are now getting to the point where things are going completely wrong, you are failing to resolve it and at that stage you go through the process of putting in the model that is appropriate to the situation that you have at the time bearing in mind that the RIRs and the IETF are also likely to be pretty peeved off with the IANA functions operator and therefore it might be that that multiple solution is right. Thanks.

Sharon Flanagan: Yeah, I think the difference - one of the differences is whether you try it up front to deal with some of the legal separation to, as Avri said, create the more facility of making it external should you need to at some point. I think the trade-off is - and that's work up front. The trade-off and the alternative is wait and do it when the time comes.

And as Holly mentioned yesterday, that is often times when things have already gone wrong and it's very difficult to get any consensus at a time when there's something - there's already a problem. So I do it as a trade-off of its work now or it's work later and the work later may be under more challenging circumstances given, you know, but the relationship might be at the time.

Jonathan Robinson: Good question, Martin. And it does tie in with something. I'm conscious that - so in terms of where we need to get to I'm conscious that we need to have a couple more questions and I think we will start to subject these to the detailed scrutiny as we intended to do and as Paul and others have suggested we do now. So let's hear from James and Elise and then will start to move forward to test these two further questioning and analysis.

James Gannon: James Gannon. I'm going to come back to Elise's point, I think we need to be extremely careful with our wording here so on the hybrid integrated model the IANA subsidiary affiliate of ICANN also has a shared services component and I think we need to put that up because particularly for people who may be

reading this after the meeting that we currently have it up there that the shared services agreement is totally struck out whereas the IANA subsidiary that we're talking about under the hybrid integrated model has a shared services component so I think that needs to be recorded up there.

Jonathan Robinson: So can I just make sure that I'm clear on that, James? That's more of a communications point then...

James Gannon: Yes.

Jonathan Robinson: Yeah, okay so...

James Gannon: I just think it's very important to have a right now.

Jonathan Robinson: So we might say, "Include shared services." So it's quite clear that it - is that the possibility of shared services?

James Gannon: Well I think - so the problem, Jonathan, is - if I may - is you've got a balancing challenge. If you create a subsidiary and you then have - you have the RIRs and the IETF included then you've got to account for how do you take account of the fact that the RIRs have the ASO in ICANN? Do they have - how many bites of the cherry do they have?

What's the status of the IETF etcetera? What I'm suggesting is that that - I'm not saying that's impossible by any stretch of the imagination but it's complicated and it's much further down the line so I think we need to make our deliberations based on the simple thing and acknowledge that there is a possibility further on that we could bring - (unintelligible) question was do I mean a possibility and the answer is yes, I think I mean a possibility.

Jonathan Robinson: Hopefully that captures it now with possible future shared services agreement.

James Gannon: Yeah, that sounds perfect. Thank you.

Jonathan Robinson: Fine. Okay, Elise.

Elise Lindeberg: Just a short comment, but I think legal advise always should be that if you can deal with the problem sooner than later is better. So as I said it might be problematic to do something when the trouble is already there. That's always the advice of the lawyers, do it now, while it is still possible to get (unintelligible). Just to underline not we need something now and not as something that might be looked at after something happens. Thank you.

Jonathan Robinson: A prenup. All right, Greg.

Greg Shatan: Thanks. Greg Shatan. I just wanted to clear up in ambiguity or perhaps it's only ambiguous to me but nonetheless I'll clear it up at least for myself. When we're talking about shared services agreements we're talking about shared services agreements with the numbers and protocol parameters communities.

I think we might want to specify that because when I initially was reading this, and maybe it's because I didn't get enough sleep, I was thinking that we were talking about shared services agreements between ICANN the parent and IANA the affiliate because typically an affiliate that isn't going to supply all of its own internal services needs a shared services agreement for things like HR and accounting and other things like that.

So one could read this and say, oh, of course it's a subsidiary with shared services agreements with its parent, and not think oh, it's a subsidiary with

shared services agreements with two, you know, other entities that also receive services. Rather than saying shared services, I would say service agreements because it's not really - we're not really sharing services.

Shared services usually implies but there is a single service that's being provided to two entities, a parent and its subsidiary. So I think the term "shared" should be taken out if what we're talking about is agreements with the IETF and the RIRs.

Jonathan Robinson: Okay so that's our current landscape of potential options. I think now we wanted to - is there anything else you'd like to add at this stage? Because I think now it's - okay. So here - but we thought of - well, but we do want to do is now flip to talking about the principles. So - and I know you, (unintelligible), look at the principles before so I think it would be useful if you gave your views on how these, you know, the principles and perhaps thinking about how these might - so we start to think about how these back up against those principles.

Sharon Flanagan: So as we typically work with our clients, you're our clients here, we seek to understand what the goals are and what the priorities are and what the potential concerns about land mines are, restrictions if you will. And then we go and work with the client to help think about how to design a solution.

So as we are learning about this project we needed to step back and really work to make sure that we understood your goals, and some of the things that we look at were the principles that you sent out, the CWG principles, which were in the scoping document that was given to us with all the legal questions, and also the NTIA principles.

And we concluded that on the slide here. And I don't plan to really walk through them per se but just have them up here as a reminder. But then our question is are there any other goals or principles or constraints that we need to really be aware of as sort of fundamental so that we can then take these models and applied this kind of screen to.

So for example, we've heard things just generally, you know, in our conversations with you all and also in our readings of the materials to date, you know, concerns around things like capture, concerns around things like minimizing liability, cost and efficiency concerns, avoiding undue complexity.

Just wanted to find out from you while what are - are there other filters that we need to apply here? And are their priorities to these issues? Is everything on this equal? Or are there some things that are more important than others so that if you were to look at the model and try to assess them you would be giving different weight to the application of the principles.

So that's what we thought we would talk about a little bit here and, and then go into a discussion of each model, vis-à-vis, your goals and priorities.

Jonathan Robinson: Okay so there's a queue developed immediately in and around this so let's deal with that and hear the questions relating to that so, Greg, you first.

Greg Shatan: Old hand.

Jonathan Robinson: Next is Alan.

Alan Greenberg: I guess in my mind capture is an important one. That we probably don't have full agreement on what it means and, you know, capture by a benevolent

dictator who likes the Internet the way it is may be fine, capture by someone else may be quite unfine. And since you can't really define ahead of time who is going to capture you it becomes a really important issue.

Jonathan Robinson: Thanks. Chris.

Chris Disspain: Thank you. Having - knowing that this working group has spent a significant amount of time working on these principles and coming to consensus on them I would be wary of characterizing anything else as a principle. I think the things that are not addressed in the principles might be concerns, you know, cost is a concern, it's not a principle.

So I think we just need to be very careful we don't spend a huge amount of time beating to death what we mean by certain things when they are simply concerns that would apply to every model and it's just a question of balancing them out. Principles are the key things I think.

Jonathan Robinson: Thanks. That's a good point. And I just asked Grace to set up the slide to make sure it's with other issues because it's important that we (unintelligible) - you make a good point about process and the work we've done to date. James.

James Gannon: James Gannon. I think this actually might be captured under Number 5 but it could possibly be worth taking out on its own, the ability of any model to maintain the stability of the IANA function in the case of strife or legal issues of any of these parent companies, if we want to call it that. So in this case it's obviously ICANN.

So if ICANN is under large legal attack or if it's undergoing any other governance issues or anything else that the - any model that we move to

retains the ability of the IANA functions and its governance to stay stable during that period.

Jonathan Robinson: Fair enough. And I think in a sense that' a form of that you might call stress tested so it's a - recognizing that once you settle on a provisional structure it's - how does that, you know, how does that weather the storms. And this - you describe a storm there so that's a good point.

Okay...

Chris Disspain: That's a new hand, Jonathan.

Jonathan Robinson: Okay, Chris, go ahead.

Chris Disspain: Actually I think James has just raised a really interesting point I think we're going to need to deal with in some way. Where ever you put the IANA function it's going to be at risk. If you leave it in I can take that risk, if I can collapse, if you put it in a separate entity it that risk is a separate entity collapses.

The more you define where it is the more it can be attacked legally it strikes me. So for example there have been attempts to claim that there is property in the database, there have been attempts to claim that the owner of it can be made to take certain actions, you know, there's a case - I guess you know there was a case in the US where the group that tries to get money for reparations for the behaviors of certain countries tried to take ICANN to court and say that that country code for a particular country was property and that there was value in that and so on and so forth.

There are advantages sometimes to fuzzy lines. There are advantages sometimes to not defining things as property. There are advantages sometimes to having it - having things up so managed within an entity so that you can't actually divided up and say I'm going to take it away. So we just - I'm not pleading any case here, I'm just laying - lying a blanket across the top of this as a stress test.

We need to remember that the last thing we want to do is to set up a target. If we do that you can pretty much guarantee there will be an archer out there who will shoot an arrow into it. So let's just be a little careful. Thanks.

Jonathan Robinson: Thanks Chris. Jordan.

Jordan Carter: I'm looking at these five principles on the screen from the legal scoping document and I've got open on my screen in front of me the principles document that went through multitude an iterations at the hands of Martin Boyle and many other members of the CWG. And I don't understand why the two don't match up. Shouldn't we be using our full set of principles that we decided to test these? Were these men to be a kind of helpful abstraction?

Jonathan Robinson: That's a really good question, and I'm not sure I have the answer. Maybe someone else can help remind me why there's a sort of summary, because we have - you're right, we have a set of principles, which have evolved since we - to be clear - have evolved since we did this so there may be a draft inconsistent. But I accept your point, this is perhaps an incomplete list.

Well it is, by definition because the principal document is much longer than five points. Greg, do you have any comment on that or anyone else can remind me why the principles - or - who have I got to potentially respond? I've got Grace and Lise.

Grace Abuhamad: This is Grace, for the record. I just want to make a small point that this slide was prepared by Sidley and they had - we hadn't shared the principles with them explicitly so that also may be part of it. They'd only see the legal scoping document and the NTIA principles so it may be because we never explicitly gave them the principles document that this was...

Greg Shatan: Right. This is Greg. These were not actually I think billed as the CWG principles in the scoping document, I don't believe, it was intended to be a lift of the principles. I don't remember exactly how they were advertised in the scoping document. But the principles itself is something a little bit different clearly.

Jonathan Robinson: So that's a good point. So we shouldn't call them principles - CWG principles critically but we did all agree on the legal scoping document, just for the record. It's not that it was an unauthorized document from this group.

Lise, and then we'll come back to Jordan.

Lise Fuhr: Well I just wanted to give a quick update on the principles because I know that Martin is almost done with having a consensus on the document from the parties that were disagreeing on the text regarding 7.2, I think it is.

I don't know, Martin, do you want to add something to that? But, and I had a question in the chat which if Sidley Austin had seen the principles. And I answered, "They're on our Website." So they're out there, they're not a secret document. But it's just that we didn't deliberately send it to Sidley Austin. Martin, do you want to give a quick update? And then I think we should move on from that.

Martin Boyle: Martin Boyle here. Yes, there is what I hope is the final, but certainly it should be seen as a near final document of the principles. I think the - the principles are actually rather wider than directly got implications. I think it would be useful for Sidley to see the principles and probably useful for you to see them as they currently stand because there are no objections currently on the document that we haven't had a final signoff.

But they do include certain things about the sorts of relationships and in particular where the policy comes from, the clause 7.2 that Lise just referred to over which much blood has been shared. And some of the key - I think probably all of the key legal implications are covered in the legal scoping document. But I think I would have to read both again side-by-side to be sure. So if the Secretariat can send it on to you, I think as a stand with the caveat that would be very helpful. Thank you.

Sharon Flanagan: Yeah, we will certainly review it. So the question stands whether then this captures what you think they key principles are from a legal perspective of what the models need to be able to address, and with the caveat that we understand that there are other principles as well that we need to review, and that ultimately any model will need to be assessed against.

So are there other issues that we need to put on this slide now for the purposes of our discussion in the next hour about the models and how they measured up preliminarily against these considerations?

((Crosstalk))

Jonathan Robinson: I know we've got Stephanie and Erick so...

Jordan Carter: It's Jordan here. It was just to finish the point from the principles matter. The group has spent a lot of effort on developing some consensus around the principles that should test the models. So as long as we can regard these questions as an element of that and as long as we are going to make any final decisions about models today then I think these two - I haven't read the principles in enough depth to know what whether there are legal elements to the broader document that should be included here.

But I do know that in the end it's that broader document that sets out the framework the CWG has agreed for assessing the models so that process will need to happen at some point. So it's an important principle I think that the CWG defines those, the advisors help us - can help us test against them and can help suggest what the legal implications are. That we can't contract out to her advisors the decision-making criteria.

Jonathan Robinson: Okay so that's helpful, Jordan. And I'm just going to note before going to Stephanie and Erick, that if - you made a point much earlier in today's discussions around the stress tests, and it strikes me that clearly a form - I'm not wholly comfortable with the concept of a stress test but I do think that - and just the word, it's just the semantics rather than the principle, but certainly we have to outline the implications of any model, of any construct we build in RFP 4.

So to that extent that to me is a form of stress test because we have to explain and detail the implications. We also have the work that we plan to do with the CCWG stress tests and make sure that those are - make sure that they test the relevance and cross compare to the work that we've done.

We also have probably more technical stress tests in the form of SAC 069 which we are committed to reviewing against. And I think you've effectively

raised a fourth point which is the principles, make sure that they are - that any work is consistent with the principles.

So I've got those four on a list and I think, you know, it would be good to capture those, Grace. And I see you are, thank you. So that's useful.

Stephanie, you were next or have I captured what you were going to say?

Stephanie Duchesneau: Yeah, my point is pretty similar to what Jordan just said that I actually think at this juncture it's worthwhile to look at a narrower set of principles because while we have a much longer list I think what is on the screen is actually a very good summary of the ones that are actually going to help us decide between one model and another.

Jonathan Robinson: Helpful, thank you. Erick.

Erick Iriarte: Thank you. Erick Iriarte. I would like to add or fix it this element, with the diversity of the customers of the IANA function is not the same, the ccTLDs and the gTLDs specifically in point 5 said interaction between ICANN as the policy source for gTLDs also we need to add on the policy for ccTLDs.

And especially for the ccTLD community the relation with the IANA (unintelligible) in more of the case and we have some troubles in house. So this diversity of the community is very necessary to be focused in any kind of legal document and also political and policy documents.

Jonathan Robinson: Thanks, Erick, that's a good point. And I just for the record note that Grace had been capturing some of these other issues in the right hand side on the notes. I just ask that they also sort of are mirrored in - making her work very

hard here - both simultaneous note-taking and copying across two computers and so on. But there you have it. All right.

Erick Iriarte: Sorry, to be specific is that diversity of the community, be clear and specific with gTLDs, ccTLDs situation.

Jonathan Robinson: Okay, thanks, Erick. I've got a couple more questions and then I'll hand back to see if we can - need to do any more on this slide. So it's Elise.

Elise Lindeberg: Thank you. No, I just want to make sure that we don't create layers of - we have the principles and then we have your interpretation of the principles then we have to match - the final outcome that we come to to both those. The principles are the principles. You can find guidance in them, but you cannot interpret them and then set the status of them. Okay just so that's clear.

The other thing is then looking at Point 4, creating effective independent review and redress mechanisms for instance where ICANN's performance of the IANA function (unintelligible) to document policy and/or applicable rules. Sorry, are you looking into the redress or review mechanisms, the link between the review and a possible outcome that could lead to, you know, moving the IANA function, is that you - the way into this? Or why is it mentioned as Point 4 because I don't really see it as the scope of what you're looking into now.

((Crosstalk))

Sharon Flanagan: Well Item 4 is from the scoping document so it was drafted by the client committee. It's not something that we drafted. But we do understand that is something that we've been thinking about certainly.

Elise Lindeberg: I think the link between the...

((Crosstalk))

Elise Lindeberg: ...the redress is something else actually. But the link between the review and the possible outcome is something that is very valid for you to look at.

Sharon Flanagan: It's very important and we have some ideas around that at some point that we may share with you but we agree with you.

Jonathan Robinson: Okay so I think that's a neat point to perhaps start to do some more bearing in mind these set of principles but the key elements on the legal scoping document and there's - there seems to be a sense that these are workable but that we shouldn't - they're not a substitute for the principles that are working guide. We've got the NTIA principles.

It would be in a sense really great to keep this as a reference. Do we - I think we have this as a reference document sent around. We have a printed copy, does everyone have that? They were handouts at the entrance so it might be good if somebody - just wondering...

Sharon Flanagan: So everyone in the room should have a printed copy or there are printed copies available. And then I've sent the slides around this morning so slides Day 2.

Jonathan Robinson: Could someone from staff just walk around and hand them out? That would be great if you wouldn't mind please? Olivier, don't - let's not disrupt the whole room just someone will come and just - well whatever. Okay.

((Crosstalk))

Jonathan Robinson: Thanks. So - thank you, Olivier. So that's a useful - that means that as we work through the slides you've got this - clearly it's the prior variant hasn't been updated with the modified titles that we understand where this has got to digitally and this is - the essential content is there.

Jan, did you have a question?

Jan Scholte: Yeah, Jan Scholte. I'm just wondering what is the relationship between the NTIA principles and the CWG principles as stated here? Are the NTIA sort of the meta- principles, the bigger principles and then the CWG are more precise interpretation of that for the problem at hand? Because I don't see any reference to multi stakeholder, for example, in the CWG document or principles. Is that all relevant?

Jonathan Robinson: Actually I think it probably would be perhaps correct to describe those as the requirements as set out by the NTIA. So - and then we said well what are the principles or the working group, so it's probably more accurate to describe those as the NTIA requirements.

Right, so let's move on to the next slide. So this is an illustration of what - where we - we set out a table last night in fact and said well here are the seven models, we can presume any would go although Grace has great out a couple of options this morning. So let's just - let's not move it around too much for the moment, you can just display it for the moment, (unintelligible).

So here we thought of taking these CWG elements and the NTIA requirement and subjecting each of the models, if we were going to do all seven. And what we found in a cursory glance and view of this was the problem was that it didn't actually - it didn't really separate out the models very clearly even with

all of the ones that are on the table. It actually wasn't the most useful device to use.

So using these - whilst it's helpful to have only a set of 10 very high level criteria to subject to various models to, the challenge with that approach, when we try to look at it and say well what might be the outcome, you end up with lots of potential no impacts were not sure.

So we could do that exercise but actually we felt that it wasn't really going to take us to where we needed to go. So just moving on a slide, in a sense it felt easier to do a simple pros and cons of the model and start to really lay out side-by-side what are the strengths and weaknesses of each particular model.

So now we've come down to, in the course of this discussion this morning, effectively three variants. And probably - with a stretch we've got three half-hour sessions that we could work through. So my suggestion to you is that we just - we get an opportunity to go around the room and layout and with (unintelligible)'s help we'll try and capture these as a set of pros and cons and see how they stack up next to one another.

So everyone has got a chance to actually articulate what their concerns or support for the three particular models that we're going to work with. So they will need the correct titles, which are working on now, Grace, which is great. And so that's really - and bearing in mind as we do that - that's why I was useful to have this slide in front of you.

So everyone has got the CWG elements and the NTIA requirements in front of you as a reference point. But - and these in a sense go to Paul's earlier point and any other constraints we know of like for example the registries have their - their constraints produced by their position paper. And I'm sure many of the

other groups have done work in their groups or individually within your organization there's been work that will have set to you some constraints that you may or may not be able to work with.

So in the back of your mind those may be drivers behind your pros and cons, strengths and weaknesses. But having said that just remember please what I said yesterday is that consensus will only come through compromise. And I know that that spirit has been with us and, you know, ideally we can find a way through this maze. And so in bringing those positions from your groups be also mindful - or your own individual positions be mindful of where you might be able to be prepared to modify those as well.

Chris, I sense that you've got a question by your hand...

Chris Disspain: Just a question, absolutely. Just a question, Jonathan. Just because from experience, this is great, it's going to be fantastic. Can we just be clear that it's okay for Holly and (Sharon) to also contribute? Are they going to say, you know, in our presentation we identified this as a pro, this as a con. And can they also input if somebody says something say well actually maybe you're looking at it the wrong way. I just want to make sure that we don't have that discussion halfway through rather than now.

Jonathan Robinson: Thanks. That's a really good point. And, yes, I see no reason not to - in fact I'd actively be positive about it, so that's great. I'm almost tempted to handover to them to lead the pros and cons, I don't know how you feel about that - or maybe I'll run through it and then you can contribute. Yeah, okay. Let me do that, I'll sort of chair the session. But, yes, we need that input, that's the purpose of doing this this morning with them here and so let's do that.

And, you know what, if we want to look through it twice it might be that when, you know, there may be a need to do it twice, it might be a first pass. And don't feel that's your last chance. I'm very happy that we cycle through all three twice because it might be that in discussing one, you know, you then say actually I'd really like - I wish I'd said that about X. So let's give it perhaps two iterations in 15 minutes each rather than sit with one for 30 minutes.

So if we get done with it quickly - the quicker we get done with it the more chance we've got of coming back to it for a second bite. And so let's give that a go. Are we ready to go with external Contract Co. I think this is relatively free-form. It's pros and cons, strengths and weaknesses but constrained by the CWG elements, NTIA requirements and any others that you are aware of in your own community or that you might be sensitive to and the broader community.

You may be aware that issues are out there that may not be your issues as such that issues that you feel the group should be aware of. So please also bring those to the table. And we've got Olivier first, so go ahead and Olivier.

Olivier Crépin-LeBlond: Thanks very much, Jonathan. Olivier Crépin-LeBlond speaking. We've got those handouts which are on paper. Is this online as well? We have received requests from people who are following us remotely that they don't have the handout, if we could have that please, a link over in the chat or something.

Jonathan Robinson: The handout is the slide in the Adobe Connect room that - the question is have we circulated that by...

Olivier Crépin-LeBlond: The slides are not scrollable now, you've taken control of the scroll...

Grace Abuhamad: Yeah, so I'll just clarify for everyone. I sent the slides this morning. The email was titled Slides Day 2. They haven't been edited since we started working but I will edit them live and as soon as we hit the lunch break I'll send them out again with edits. Does that work? Okay.

Jonathan Robinson: Thanks, that's a helpful reminder. All right so who is going to jump in first and start to give us some pros and cons? As I say bear in mind we could cycle through it quite quickly and then come back to it a second time around.

Jordan Carter: Can ask a process question? From the chat room, (Sun) has asked whether we're just focusing on legal pros and cons or all sorts of pros and cons? Can you just clarify that?

Jonathan Robinson: I think it's broader than that, Jordan. I think we've got to subject them to our collective view. And the point of having the legal advisers here is to give a legal perspective on that. But as they said to us yesterday, essentially any of these could fly.

So to some extent this is up to us to start to put it to the test that we think, you know, how will this work? Will our community support this? Will the chartering organizations vote for it? Will NTIA have difficulty with it? You know, these are - there are some broader, softer and hard questions that we have to be asking ourselves in the back of our minds. And will this meet our requirements or can we compromise on the requirements that we came into this process with in the first place?

Holly Gregory: So, Jonathan, I could just start to prime the pump if that would be helpful and give an example. I look at the Contract Co. and a pro is pretty clear separability; right? Takes care of that one.

On the con side you now have to build another accountability function, you need board, you need to figure out who changes bylaws, do we have members are not, all of the same kind of sort of accountability mechanisms that you're considering, vis-à-vis ICANN, you need to think about how do we now have accountability of this entity? So you sort of have to duplicate those concerns.

Jonathan Robinson: Holly, that pump priming seems to work because there are now six hands from two. So, James, go ahead.

James Gannon: Hi, James Gannon. So I have a process question again. So if we are asking pros and cons outside of the legal questions which we have independent counsel here to counsel us on, how are we going to address matters of opinion where you can have one statement which, depending on who you ask, is a pro or a con?

I can understand for the legal points, we have independent counsels to guide us on that but for others, they can both be a pro and a con.

Holly Gregory: I think right now we're just trying to catalog - we don't have to put a lot of value judgments on what people say the pros and cons are. Is that correct?

James Gannon: So that's what I was asking. It means the process, if there is something that the room disagrees on that is both the pro and con depending on who you ask, or are we...

Holly Gregory: Put it on both sides.

James Gannon: Yeah.

Jonathan Robinson: Chuck.

Chuck Gomes: Thanks. That needs to get to the mic. I think it's pretty clear that a con on this one, and this isn't my con, I think it's an NTIA con, I think Larry Strickling has been pretty clear, he's not fond of creating new entities and an external entity. So again - this is not my position but I think it's been quite clear from Larry that that's the case.

Jonathan Robinson: Thanks, Chuck. Avri.

Avri Doria: Hi. Avri speaking. I think I have two cons, one of which is it is confusing to have an external entity deciding on a contract between ICANN and ICANN. And the other one, while there is a clear path to separability, it's not clear how you would separate.

Holly Gregory: Could you give a little bit more explanation around that last comment? I'm not sure I understood it.

Avri Doria: Right, well, I mean, there's the - there's an RFP, you know, so there's some kind of trigger for there to be an RFP whether it's a periodic or something else. But then once you say we're going to give it to someone else, how exactly do you go about shutting it down in one place, replacing it with another one? So I think that that's what's not clear to me.

Holly Gregory: So if I would, I would say that then you have to be - if you do actually separated out to a different operator that you would need a whole another set of accountability mechanisms that you duplicate over there.

Avri Doria: That would be one of the issues, right.

Holly Gregory: So there are a whole host of implementation...

((Crosstalk))

Avri Doria: How do you set up the interface between the two - between ICANN and the new IANA? How do you do all that?

Holly Gregory: So implementation and accountability of a distinct IANA operator.

Jonathan Robinson: I just wonder - one of the things that the contributors could help us with is making sure that their comments are satisfactorily, not perfectly represented in the, you know, we're not going to wordsmith it but it should capture the essence of what you mean.

So for example in that last point, not clear exactly how you would separate that felt like a complexity point almost but just be satisfied that it represents the point that you want. Or if it has been represented elsewhere, I mean, the one thing we could do is if you feel - you might want to do a +1 to appoint as well if you want to emphasize it, that's also an option just to ask for a +1 to a point.

All right, there's a big queue so let me make sure we start to deal with it.
Eduardo.

Eduardo Diaz: Thank you, Mr. Chair. This is Eduardo. I, you know, when we look at the path for (unintelligible) that's a pro in the sense that really when we talk about separability here and we look at the principles we're looking about the separation of the IANA function.

But the stewardship stays in ICANN. And manage that contract. So to me there is no doubt clear separability because there has to be an accountable - this company has to be accountable to this, whoever is contracting this function as such. So, you know, accountability will be a con on this. And I don't think there's a clear separability in the whole sense. Thank you.

Jonathan Robinson: Eduardo, I want to make sure I understand that you're seeing there is effectively, you assume, that accountability is within ICANN with this model. So I think it's really - the point might be - I'll try and capture it.

If accountability stays within ICANN then the model creates complexity without...

Eduardo Diaz: In the sense that there is - if I am the contractor and I contract you to do a function, an operational function, which is what the contract company is going to do, to me that is like a subsidiary. I mean, I am the one managing the contract, not the Contract Co. That's what I mean when the stewardship is not the function. This is talking about the - separability is talking about functionality, the actual function of the IANA.

Maybe I'm confused.

Jonathan Robinson: Chris is next in the queue and he seems to want to help clarify this anyway.

Chris Disspain: Yeah, I've got the same - I think my point is the same as Eduardo's but I would put it slightly differently. But there's - I'm not sure this is a pro or a con, it may be a meta-issue.

What this model does is actually move the stewardship. What Eduardo is saying is that the principle that we have, one of the principles that we have is that we should be able to separate the IANA functions operator. What this does is this moves the stewardship at the beginning of the process to another body. It leaves the IANA functions operator in ICANN, whether it's by way of a subsidiary or whatever, doesn't much matter, please it in ICANN, and allows for the possibility of moving that at a later stage using the fact that the stewardship has been moved somewhere else.

In my view that's a con because - when I say a con I mean - it's not a con in the sense of a confidence (unintelligible) although, yeah, no it - and that's because I think that - I think that that's a step for me - personally that's a step too far and the disadvantages of it are that - we've already said, we've got to create all the accountability mechanisms, etcetera.

So I think Eduardo's point was - I think if I'm wrong, Eduardo that you'll tell me, but the principle was that we would have the ability to move the operational - IANA operations function, and this achieves that by first removing the stewardship.

Jonathan Robinson: I'm just wondering how we capture that easily. This model moves the stewardship without moving the function - in advance of moving the function.

Holly Gregory: And for some I would wonder if this is both a pro and a con...

Chris Disspain: Exactly. I'm not suggesting that for others - that's why I said it may be a meta-issue.

Holly Gregory: So maybe this one goes on both sides...

((Crosstalk))

Chris Disspain: Yeah, exactly.

Jonathan Robinson: Okay, one option would be that there's a column that runs across the - both that is - that are essentially comments about the model but may not yet be a pro or a con. Okay, I've got next in the queue Alan Greenberg. And, Chris and Eduardo, could you drop your hands?

Alan Greenberg: My point was exactly the one that has been raised until now. I personally view this as a huge con because ultimately the stewardship is responsible for ensuring that IANA does its job properly and we are taking it and moving it to an unproved, perhaps currently undefined entity, and that scares the something out of me.

Since perhaps the - I don't remember if it was a principle or not, but certainly the prime directive, to use a Star Trek term, is stability and security of the DNS. And this one - the person - the entity that makes the decisions, we don't know a lot about it and it hasn't been, you know, there's no test pilot who is going to fly it first.

Holly Gregory: This is the untested model or untested door.

Jonathan Robinson: Okay thanks, Alan. Jordan.

Jordan Carter: A couple of pros, one is that having a contract with an external body is the status quo and so it's a model of...

((Crosstalk))

Jordan Carter: ...that's very direct and clear. If you don't follow the contract you lose the function. Another con is that - another pro is that it's clearly implementable. We know that a contract can be signed with ICANN, because hey presto, a contract is currently signed with ICANN.

Another pro of this model is that it creates - it avoids creating a single point of failure. It says that run by the ICANN community is stewardship is distributed across more than one legal entity. That's also a pro of the integrated model or any of the trust models.

A con of this model I think is the response to the previous Frankfurt model, so some pretty interest community views that people get on their high horse and say they can never live with it so that is a con we have to take into account.

Jonathan Robinson: Okay, thanks. Olivier.

Olivier Crépin-LeBlond: Yeah, thank you very much, Jonathan. Olivier Crépin-LeBlond speaking. And the concern I had with regards to the Contract Co with the financial weight of the Contract Co itself which makes it very vulnerable to attack except if it had a huge piggy bank that would have to disclose or fill one way or the other.

Jonathan Robinson: Okay, so just a couple of thoughts on where we go from here. I've got the queue. I'm going to close it off to Alan so that we then go on to the next one and rather keep alive the possibilities and then we loop back to this so that we consider the landscape rather than dig too deep into any one option.

The other thing is just to re-encourage you to put, not necessarily pros and cons in and around the model you've historically supported, you know, are not

supported as the case may be, but just to try and assist getting beyond any entrenched positions, if at all possible.

Okay so, Elise, you snuck in there while I wasn't looking. All right, so will close the queue after Elise. And we will forcibly close it then. All right, Jordan, so I think you've just spoken so it's Greg next.

Greg Shatan: Thanks. Greg Shatan for the record. I think perhaps in some of the discussions about Contract Co. we are forgetting that Contract Co. is intended to be more of a conduit than an oversight entity in and of itself. The intent was to have the MRT, by some form of contract or delegation or the like, performed the primary function of oversight, not the board of Contract Co. unless we made the MRT into the board of Contract Co.

So Contract Co. itself is supposed to be a lightweight, bare-bones, legally sufficient entity but no more than that. Now maybe you can also say that the MRT is an untested steward as well but at least we have some definition around what it would be in terms of being a robustly multi stakeholder body not unlike this body in some substantial fashion. So I suppose we're all untested stewards here and we have an important job. So I guess we are also a con in that case.

As to the third bullet point under con, I don't know why this is being termed a contract between ICANN and ICANN, Contract Co. is not ICANN. So there is a contract between ICANN and ICANN but it's in the hybrid integrated model between the subsidiary and parent. But in that case there's no external entity commenting on it and that's not this model anyway so semantically I just don't think it's correct to say it's a contract between ICANN and ICANN. Contract Co. is intended to be external to ICANN. So I'd say a pro is it's a contract between ICANN and a third party.

Jonathan Robinson: Which is covered by the status quo of Point 6, if you could just put a +1 on the status quo.

Greg Shatan: Yeah.

((Crosstalk))

Jonathan Robinson: ...if you feel your point is adequately represented in just make it clear to us. Martin.

Martin Boyle: Thanks, Jonathan. Martin Boyle. I think it's in part taken account of under various headings but I think it's also something that would need to be addressed if you go ahead with this particular model and that is ensuring a succinct close link between the policymaking function and the customers through the intermediary body, the MRT or whatever it becomes, through into the Contract Co. and eventually back into the IANA functions operator.

And essentially my concern is at the moment we have got a very long chain and we risk having supplementary decisions coming into that chain reducing that line of accountability. I don't think it's, you know, started a complete failure of - and so I would be reluctant to put it in as a con. But it would be something that would need to be addressed. Thanks.

Jonathan Robinson: You and again actually maybe I could encourage you to say if you want it in a pro, con or both, so comment broke on both would be useful as well.
Brenden.

Brenden Kuerbis: Good morning. Can you hear me?

Jonathan Robinson: Yeah, Brenden, it's pretty loud so...

Greg Shatan: And then some.

Jonathan Robinson: We hear you nice and clearly so that's great.

Brenden Kuerbis: Okay. I'll speak softly. So the model as defined does not have or provide for any functional operational or structural separation of the IANA from ICANN. So you would not enjoy any of the benefits if that were to occur for instance, accounting clarity or limiting liability for either IANA or ICANN. Thanks.

Jonathan Robinson: So I interpret that as a con...

Brenden Kuerbis: Correct.

Jonathan Robinson: Thanks, Brenden. Alan.

Alan Greenberg: Thank you. Three points. It says contract is the status quo as a pro and that is indeed correct but currently it's the - the contract holder is the US government, a somewhat tested entity and one with battleships so not quite the same thing as Contract Co.

((Crosstalk))

Alan Greenberg: Number 2...

Jordan Carter: It could have a battleship.

Alan Greenberg: Chris, are you saying ICANN's going to fund a battleship for Contract Co?

Chris Disspain: It was actually Jordan who said that, Alan, but it's nice to see that Jordan and I are finally on the same page about something.

Jordan Carter: So replicable.

((Crosstalk))

Alan Greenberg: One of the issues that came out of certainly in the Registry Stakeholder Group paper, into a lesser extent perhaps in the auDA one was we want simplicity; we're trying to avoid complexity. And I think in my mind, I know other people don't agree, this Contract Co. is one of the more complex.

Lastly the intent was indeed, as the second to last bullet under the pro says that Contract Co. is intended to be a conduit, not the oversight itself. But I believe I heard yesterday that there's no practical way to make the MRT the oversight without making it a committee of or the board of or something of Contract Co. therefore we have built another multi stakeholder operation instead of having it just simple conduit. Thank you.

Holly Gregory: Right. There's no way to have a Contract Co. without having some oversight body of that entity.

Jonathan Robinson: Whether that gets captured (unintelligible) captured at this point as a, yeah.

Alan Greenberg: Not a +1, that's a con.

((Crosstalk))

Alan Greenberg: It was intended to be a conduit but that's not what we now understand is legally possible.

((Crosstalk))

Holly Gregory: Isn't that the first con though, as well though? I mean, it's the...

((Crosstalk))

Holly Gregory: ...Government accountability of Contract Co.

Sharon Flanagan: ...that was the first thing that I mentioned, the accountability of Contract Co. You have to - you're just dumping at the level of problems if you have to create an accountability structure for Contract Co.

Alan Greenberg: But I'm questioning that's whether the intent of Contract Co. was to be a conduit is a pro when it turned out not to be possible.

Sharon Flanagan: So you've got it on the pro side, I'm not sure...

((Crosstalk))

Sharon Flanagan: So in that case I think it goes on both sides. Okay.

Jonathan Robinson: Okay so just to - I mean, just to respond to Jordan's point in the chat which is are we talking about the Contract Co. element or the - of the Frankfurt proposal, the whole model. I think in broad terms we've been talking about the models, that's my understanding. So we can't narrow it down simply to the legal definition of a Contract Co. I think we're talking about three different

models and the shorthand representation for those models in this case it's Contract Co., that's my understanding.

Okay, Elise.

Elise Lindeberg: Thank you, a more general comment for the working methods that we are doing now. I think this is interesting as a working method so bringing out good arguments. I don't see the point in putting +1, -1, green, yellow, whatever, because it doesn't weigh in - should we all raise our hands and say if we are +1 on this one, it's not useful.

Just give us the good arguments, pros and cons, and we discuss them, that's what we should do.

Jonathan Robinson: Fair enough, that's a good point and a point well made because otherwise it just to try to stack the decks with a plus - okay so we can deal with that. Have I got any opposition to that? It seems to be a reasonable point, let's just keep it relatively neutral. Okay fine so...

Holly Gregory: With one thing, the only thing that's green that's not necessarily a judgment, the green is just indicating that something is on both sides of the line; somebody stated it as a pro and is a con, so that's all that green means.

Jonathan Robinson: That we can tidy up the formatting and organization of this. For the present it's a matter of capturing the arguments. Right, so as I said I think we should move on now to a different situation. Yeah, all right so as soon as you're ready, Grace, I think we should move on to the next slide.

And here we talk about an internal model which we've characterized as having accountability mechanisms with functional separation. So the status question

is as we understand it, is that there is functional mechanism - functional separation. And the intent here is to enhance the accountability mechanisms - I would expect primarily through clear and effective work with the CCWG. And that's exactly.

Holly Gregory: And do we include in this some kind of golden mechanism that's going to allow for actual separation?

((Crosstalk))

Holly Gregory: I just want to be clear that that's part of the - so this is the...

Chris Disspain: Well, sorry. If we're not going to do that than there are two separate.

Holly Gregory: Right. So I just want to make sure that that's what we're talking about here. This is the ability to, down the road, if things aren't working, we're going to build in an accountability mechanism that forces the issue.

Jonathan Robinson: Actually maybe I should try and drive that a little harder. The next two models are - have many similarities including the one that Holly just described. The most striking difference was - it may not be the only difference, the most striking difference is that the one we will look at next is ring fenced from a kind of corporate organization point of view, whilst it's still within the umbrella of the corporation it is more thoroughly ring fenced or prepackaged in a subsidiary form.

If everyone happy with that characterization, just before - I don't want to get too much detail in this but just trying to make sure we've got at least some clear water between what we're talking about here" we will talk about in a moment. Avri, your hand is up.

Avri Doria: Thanks. So in terms of a pro here is one feels comfy because that's where we are now. In terms of a con, it relies completely on fixing all of the accountability with ICANN. Another con is there really is no notion of separability. Very first pretense of functional separation, and there is no other separability.

((Crosstalk))

Chris Disspain: That's the whole point.

Jonathan Robinson: Okay so just a quick...

Avri Doria: The golden bylaw is not about separating, the golden bylaw is about taking out boards and accountability mechanisms.

((Crosstalk))

Jonathan Robinson: ...clarifying question here, what do we mean? Let's just establish, this so-called golden bylaw if in both this model and the one to come, establish what exactly that means.

Avri Doria: I don't think it's in the next one.

Chris Disspain: Jonathan, we're getting very confused here. It's in an urgent use of golden bylaw. So, look, there are a bunch of golden bylaws that the CCWG talked about, that's not what we're talking about. My understanding is that there is no model on the table, I'm in danger of going into a triple negative with a twist here, but there is no model on the table that doesn't have the ability to separate.

Every one of these models has the ability to separate. Now if people want to put a model on the table but doesn't have the ability to separate the function, that's fine. But this one anticipate that there would be an ability to separate. We haven't talked about whether it would be an ability to separate through a suggestion I made yesterday, which would be subcontracting or whatever, but in principle separation.

And I assume that Avri's model, with an affiliate thingy, whatever - the whole reason for doing that is precisely to do that. So that's my understanding.

Jonathan Robinson: Okay so...

Avri Doria: You could change it to no clear notion of separability.

Jonathan Robinson: Well we have a - let's just be - but we do have clearly is a principle of separability in our principles, right? And I mis-remembering - that's in our principles. And what we have - there is a subtlety in the types of separation that may occur that sort of got teased out yesterday and we should be mindful of.

One is what I've begun to think of as outsourcing, in other words putting the supply of the technical services outside of the organization. And the other is a form of corporate or legal separation - legal is not the right word, a form of corporate separation where the entity itself is in some way separated.

And so those - when you talk about separation or separability it's worth having those two possibilities in mind. I've got a queue, I just want to make sure that we give an opportunity to Sidley if there's anything you'd like to say that clarifies or...

Sharon Flanagan: Yeah, I think in some ways the con, as I see it, is the need to at the time of transition to legally separate the function. So it's the do the work now nurses do the work later point. So I see that as a potential con that the structure is not yet - the ability to separate is there but the structure isn't yet in place and so would need to be done.

Chris Disspain: So you mean that as a con against the other internal model.

Sharon Flanagan: No, a con against this one because...

Chris Disspain: Know but what I mean is it's a con of this model against...

Sharon Flanagan: Correct, I'm sorry yes, fair point. That's a very good point, yes.

Jonathan Robinson: Make sure you understand this because here you saying the con is a need to legally separate. Does this model contemplate separate legal entity or subsidiary?

Sharon Flanagan: No.

Chris Disspain: No that's Avri's model.

Jonathan Robinson: Fine, so when you say...

((Crosstalk))

Jonathan Robinson: ...at transition you mean at some future point, right. So let's just - because what we mean by transition is today. So you need to legally separate at the time - at some future point.

Chris Disspain: Well no so, Jonathan, Avri's model contemplates that you set up a separate affiliate entity on transition.

Jonathan Robinson: Absolutely, Chris. Yeah, I get it...

Chris Disspain: And (Sharon) is saying that's a con of this model is you would - in order to separate down the line you might have to do that later so why not do it now?

Jonathan Robinson: Let's just make sure we capture that accurately in the notes. In order to separate at some future point additional legal - additional corporate restructuring would be required - would be required.

Greg Shatan: The work of separation is not yet done.

Jonathan Robinson: In order to fully separate at some future point, additional corporate restructuring would be required.

Holly Gregory: And I think you need to add to that the concept that at the point at which that separation is happening it's likely that you're in a period of distress of some type, so the decisions become harder to make.

Jonathan Robinson: Yes, please Avri. We'll to you. I just want to make sure we capture so I'll definitely - keep your hand up and I'll come to you. So can we just capture Holly's point. And such work - and such work will be - may be added time of - likely to be added time of difficulty. Not to wordsmith perfectly but to capture the essence. I've got...

Chris Disspain: To be fair that does actually capture the essence. Is it okay for us to be talking about these bullet points out of the queue or would you prefer we did it...

((Crosstalk))

Jonathan Robinson: We've got to, I mean, to the extent that we need to - really got to be careful we don't have people dominating but at the same time we've got to be - if there's a need to clarify a particular bullet point - so if it genuinely is a clarifying point on the bullet, please come in on it.

Let me defer - okay Chris, go ahead and then I'll come back...

((Crosstalk))

Chris Disspain: So there were two things here it seems to me. So one is that you set up a subsidiary, let's call it a subsidiary and affiliate, which is Avri's suggestion. That gives you a legal structure that gives you two choices when it comes to separation; one choice is to spin off the subsidiary, the other choices that you ignore the fact that they subsidiary and you sublet it - the contract to someone else.

In this model you haven't created the subsidiary so if you wanted to separate - whilst you could create the subsidiary it would seem a bit daft. What you'd be doing is spinning it off - what you'd be doing is subcontracting it to someone else. So what it's doing is effectively reducing your choices. Does that make sense?

Holly Gregory: It could be creating a spinoff at that point or you could be subcontracting but creating a subsidiary is more difficult.

Chris Disspain: Exactly.

Holly Gregory: But I think both options are still open. I do think the other con that we haven't talked about is we need to work at firmly nailing down the mechanism that (unintelligible) at this decision to separate, and what the triggers are and all of the mechanisms to make - to give effect to the teeth in this accountability mechanism. It can certainly be done but we haven't done the hard work around that yet.

Jonathan Robinson: Understood and those are points of accountability. Now I want to move us off this bullet point but since this book point came - well did the come from you, Avri, in the first place and from Sidley, I would like the two of you to be - I'm not satisfied with the wording so I want to move off it but I want you to be sure that it captures things accurately.

Avri Doria: I think that second bullet actually gets closer to what I was trying to say, that while there is perhaps a notion of a golden bylaw that's kind of like a deus ex machina that we're saying there is some mechanism up there that if things got really bad we could separate. But I have no idea what that is beyond a deus ex machina so I think that second point becomes closer to what I was saying.

Jonathan Robinson: So I think we're okay to - yeah, Holly, you're okay?

Holly Gregory: Yeah, I think - I think in the first point if you decide to separate rather than to subcontract at the future point additional corporate restructuring is needed.

Jonathan Robinson: Great, all right. Let's move on then. Avri, you can drop your hand please and I'll go to Greg.

Greg Shatan: Greg Shatan thanks. I'm not sure if this is a restatement of the last bullet point but I think of it as being a little bit different which is that the accountability mechanisms are unclear and undefined. And I think that's a bit separate.

I think another con of this is that there's no clear place for documentation regarding operations or oversight of the IANA functions as opposed to a model with a contract. And I note that both the Contract Co. model and the hybrid model have a place for a contract.

Olivier Crépin-LeBlond: Thank you, Jonathan. Olivier Crépin-LeBlond speaking. And we've spoken about the golden bylaw a number of times and it's been confusing because the golden bylaw means a number of different things and we don't know what is in the golden bylaw itself.

I would suggest a GDRP as opposed to a UDRP, a golden disaster recovery plan, which could be actually a pro in that if there is a golden disaster recovery plan that is already set in advance that can be a case of if something goes wrong - majorly wrong that's what happens next and that's done in advance, that doesn't need to be done in - when shit happens. And I did say that four-letter word.

Jonathan Robinson: Holly, did you want to respond or - okay, we'll keep moving on then.
Chris.

Chris Disspain: Thanks. Just a couple of points on the list so far. Isn't the third - isn't the second and the third bullet point the same? In other words what we're saying a con is that we don't know - we haven't yet worked out how to do it, isn't that the same thing?

Sharon Flanagan: I think the bullet point that follows is a little bit broader.

Chris Disspain: Right.

Sharon Flanagan: But it's also dependant on a whole host of other accountability mechanisms. And I would also say the kinds of documentation issues that Greg raised we could add in there.

Chris Disspain: Okay. And I'm fine with that, that's great. But I just want to make sure that that - therefore there's a logical pro on the other side which is that our legal advice is that those mechanisms can be put in place. Because right now if - so it's clear that those mechanisms can be put in place. And another pro would be that the CCWG's input, you know, to some of the questions that the CWG has asked them has indicated that they believe that the mechanisms that they are creating can be used to achieve the purpose of separation.

I wanted to make - I don't know if it matters or not but I wanted to - I wonder if it's worth making very clear because of the particular model we're talking about, are we talking about operational separation because at the top con it says if you decide to fully separate. And I think - it probably doesn't matter but we're actually talking about operational separation so I think it's worth mentioning that.

Jonathan Robinson: I would like to be clear because if - okay full; is that correct?

Chris Disspain: Yeah, it's the IANA function. Yeah. I have a question...

Jonathan Robinson: Chris can we - maybe we want to just further clarify that because if you decide to fully separate as opposed to outsource...

Chris Disspain: Well no, this is where it gets confusing, so, Jonathan, thank you, that's a really good question. It goes to where I was going to go next. Chuck said we should - he said it wasn't his point but it seems pretty clear that Larry was concerned about the likely political impact, etcetera, etcetera, etcetera.

So this is where my - the suggestion that I put forward yesterday, which is that you would - you can do it with Avri's model, you can do it with this model, which is the way you would functionally separate is by subcontract thus allowing you to maintain more the accountability mechanisms etcetera.

I believe that that's the only thing that I can come up with, I think has a reasonable degree of probability to being acceptable.

Holly Gregory: So are you suggesting that this accountability mechanism with functional separation is not contemplating any kind of legal separation down the road and we should take that construct out of it? And what we are simply talking about here is the subcontracting option? And we could do that and use that as a means to clarify the distinction between this model and the next model which had the legal ring fence.

Chris Disspain: See, again, it depends on which way you look at it. My view is that that is functional, that is actually separation because it goes to a separate entity. I'm not talking about...

Holly Gregory: I agree, I'm just trying to clarify do we want to make that clear as a part of this proposal?

Chris Disspain: Well I don't - well where I was headed, possibly because where I was headed was are we in danger here of putting off the debate that we need to have? Because all very well talking about functional separation, but if in the minds of some people functional separation is giving it completely out of ICANN with ICANN having no control over it whatsoever, in other words ICANN is not the contractor, I'm talking about in this model, I think that makes a difference to the pros and cons. Do you see my...

Holly Gregory: Yeah, we're going to be talking - that's one of the reasons why I think Jonathan's idea of going through this once, been going back again is good because I think some of those cons will come out more clearly when we're talking about the ring fenced issue in the next model.

Chris Disspain: Not a problem.

Holly Gregory: So just for these purposes. The other thing is I want to say it's becoming very clear that some of the cons that we're coming up with are really things that haven't just yet really been fleshed out and I think that that's probably true for all of the models. So again this is a, you know, this is an exercise we're going through. But on the table we should recognize that all of these are sort of also highlighting areas for more potential work if we decide to go down that path.

Jonathan Robinson: So those are two excellent sort of procedural points. To my mind at the moment, Chris, it's not clear yet whether this is about a simplified form of separation or a more standard form of separation. And I think that by going through this - watching through these twice...

Chris Disspain: Yeah.

Jonathan Robinson: ...we should tease that out. And we'll tease out also other things. So to deal with that I'd suggest we close the queue where the currently is with Chuck and try and get a little bit of time on the other one before lunch. And so that's practically how I would like to work with those, if we can.

((Crosstalk))

Jonathan Robinson: I could just do it without saying anything. I was kind of wondering...

((Crosstalk))

Jonathan Robinson: All right so the queue is closed at Elise as per our tradition. And next up we have Alan. So just - I mean, if didn't need saying, let's keep it brief to try and get onto that other one before lunch so just if you could work as fast as you can. Thanks.

Alan Greenberg: Think you. I'm glad I'm being replaced as the one who's between the group and lunch or coffee. Thank you, Elise. I feel a fair amount of frustration right now. We started off these two days the same let's leave accountability to the CCWG. And we are continually in this discussion saying, oh that we don't have the accountability yet.

And we were also asked that if you need accountability measures that are different from the more generalized, the ones the CCWG has worked on, to specify what we need. So the combination of that says unless we are discounting their abilities to do anything at all we shouldn't be viewing all these as a con, we don't have it yet; these groups are working in parallel.

In terms of the - in the first bullet on the right saying that we will have to decide on the restructuring at the time of stress, I have suggested a number of times that if indeed having an affiliate will help us in issues like bankruptcy or others that we may want to do that really soon, not in the times of stress.

It doesn't have to be in the critical path for transferability but it may well be done a year or two from now before the stress comes up. So there is an if there.

End last one we're talking about golden bylaws in a number of the proposals we've seen along the way we did say there would be a golden bylaw change the members, or whatever, could direct the board - could make the decision that something has to be done and find a way of doing that.

So we have talked about how the decision would be made, just like the MRT in the first one would make a decision, here the members or whatever the CCWG is calling them, could make that kind of decision. I think we have addressed some of these, what are being viewed as unknowns, we just seem to be forgetting them each time.

Elise Lindeberg: Okay, Alan, I'd like to get back to accountability because I think - I agree that we need to be careful on how we treat accountability in this group. But I think we need to touch upon it and we need to define where do we need the accountability group to step in and take over.

But this is a pro and con and at the moment we don't have these things in place so this is an exercise of finding what are the pros and cons on the different model and then we go into what issues do you want the accountability team to take over.

So you can't just say accountability everything is going to be dealt with within the accountability group but it's...

((Crosstalk))

Jonathan Robinson: Okay let's keep things moving.

Alan Greenberg: Just for clarity, I wasn't saying trusted, but I was saying it's part of our job to define what it is we need not to say it's not there.

Jonathan Robinson: Okay good. Martin.

Martin Boyle: Thanks, Jonathan. Martin Boyle. I think I'd like to pick up on Bullet Number 1 and the pros which refers to the status quo and then very clearly limits it because I think actually part of - and perhaps the main advantage of this particular solution is that it does ensure the accountability of the IANA functions operator to the people who need the IANA functions operator to work successfully.

We have the mechanisms in place both for defining the policy, which the IANA functions operator must follow, and also it defines - or sorry it gives a platform for the customers to have a direct input to the IANA functions operator.

As a registry I see this as being absolutely fundamentally important and therefore this particular one has no intermediaries that can be blamed for something going wrong. Thanks.

Jonathan Robinson: Thanks Martin. Stephanie.

Stephanie Duchesneau: It strikes me that there is somewhat of a lack of clarity of who the decision maker or the counterparty is if you had to come to a decision to separate. It either relies upon the ICANN Board or you're creating some sort of a membership structure and our current ICANN SOs, ICANN ACs, are not incorporated, so I regard that as problematic, either way you spin it.

Chris Disspain: I asked Sidley to comment on that because I understood them to say that under the terms of the golden bylaw you could do it with the SOs and ACs.

Sharon Flanagan: You - in order to have some veto I think you'd still probably need some kind of cognizable entity. But I think we need that in Contract Co. as well so I'm not sure - I don't know that it favors one or the other.

Chris Disspain: Why masking simply because I want to make sure I understand Stephanie's point. Isn't it right that if we have a golden bylaw that says you can spill the board, the board build mechanism you can build that on the basis that you say in order to trigger that bylaw ICANN's - ICANN supporting organizations and advisory committees have to vote in favor of that, therefore ditto, you can do exactly the same with this.

Sharon Flanagan: I believe that's true.

Jonathan Robinson: Just in terms of the sort of colloquial speak that's developed, that's the empowered community is it, in the CCWG's work. So the CCWG work, depending on the golden bylaw or bylaws, would have the ability to invoke this action under certain circumstances. Okay.

Okay let's go to Jordan next.

Jordan Carter: I have assumed that between these two models - Jordan here - is that whichever of them was chosen, these first two, there would be a clear escalation path that led you to a decision to separate, and that there would be a clear institutional framework for doing so. If that isn't the case in the model isn't developed enough for it to be taken seriously. So I'm just putting that on the table as an assumption.

I'd like to start with the pros of this model, which is that if it was to be contemplated in it would guarantee beyond a shadow of a doubt that ICANN's accountability would have been radically improved and that would have been

nice spillover effect for all the policy and contracting and other work that ICANN does outside this.

So I think that we have to look at these models in the context of the whole system, not just on their own terms. I think a couple of cons that haven't been mentioned, this is a radical change to the status quo in the sense that it abolishes an external contract for the provision of the IANA function. And it is that reality which has led us to the IANA quality that we have today. So it is a very big deal to say we don't need a contract anymore, and I think that's a major, major con of this model.

A second thing is that it reduces the transparency in a nature that might already be captured by that bullet point, so we're not +1-ing but in the contract you can see it in one place if you know who the parties are, you know how it can be terminated. In an internal process that is subject to bylaws and corporate politics and all that jazz, there's always less transparency I believe than with a contract so transparency is a con in this model.

Another con in this model from the point of view of the project that we are engaged in of coming up with the transition model is that this increases the CWG's dependence on the CCWG's work. If you proceed with an external model it is, to some extent, redline from the broader ICANN accountability challenge.

That if you proceed with an internal model you can't finalize it realistically speaking until the CCWG has finalized its accountability proposals because you're dependent on those proposals to flesh out the accountability environment within which this is happening in my view.

So I think from a project point of view this model, if chosen, might slow things down a bit. It might not but it might.

Holly Gregory: I have a question. I think it's a failure of my understanding on this. I sort of came in with the assumption that this group could in a model like this, and the other models as well, could decide what accountability mechanisms it believes it needs to be able to be confident in proposing the model and term those out sort of conditions of the model.

So to your point, I don't - yes, I'm not sure - it seems we're sort of circling around this issue when I think you could put on the table here is what we think is necessary in order to have comfort with this model.

Jordan Carter: I think you're right, we are obliged to do that by our charter which says we have to deal with the accountability of the operational model. I'm just saying that it's a piece of the jigsaw internal to the corporation when we do the internal model and it requires more attention in my opinion, to be paid what the CCWG settles on than with an external Contract Co. which to some extent, by definition, is a standalone accountability mechanism, that being the contract.

In other words because this model doesn't have a contract, there's more dependence on the general ICANN accountability provisions than they would be otherwise.

Holly Gregory: Okay.

Jonathan Robinson: Okay so I've got - I'll say that on that last point I agree and I interpret your point as, in one sense, a lack of confidence in the execution.

Jordan Carter: The point I was trying to raise is that in terms of tight time frames and stuff the fact of having to wait may slow things down. That was the very narrow point I was trying to raise.

Jonathan Robinson: I've got - I wanted to just make a response to your first point because you saw it to kind of overarching clarification. It is my understanding, consistent with yours, Jordan, that through the design teams we are working on systematic procedural escalation and SLAs.

To the extent that that's escalation (unintelligible) other dramatic remedies, I think we heard yesterday that that remedy can be put in place regardless of the mechanisms we choose and will be put in place once we settle on the other parameters.

So broadly I think we have - we should expect, as you said in your first point - that we will, regardless of the choice of these three models, have an appropriate escalation and ultimate corporate remedy in place.

((Crosstalk))

Chris Disspain: Well, since we're talking about the actual bullet points here so I do. Two things, one is a question - I agree with Jordan in his second bullet point but my question would be doesn't be equivalent time constraints apply simply because you're going to have to do that with Contract Co. anyway so whether it's us that doesn't or the CCWG that doesn't.

But secondly, and much, much more importantly than that, I may be being overly sensitive but I'm concerned that these documents are going to the public, and I prefer us to be not using words like radical, it's a change, radical is an opinion. I'm more than happy to accept that it's a change but I'm just

concerned about using words in there that are, you know, are not measured perhaps.

Jonathan Robinson: Okay so good point. We need to be careful of emotive language. And second I do note a point in the chat that this is pretty arcane, and it must be very challenging. It's challenging for us to follow in the room, native English speakers I suspect, people familiar with legal and corporate organization, reorganization, the loan if these aren't your areas of specialty, you're remote, it may not be first language.

So all I can say for the moment is, some of this is a necessary discussion but we need to be mindful of our ability to distill this out and communicate at some point. But in part that's why we have explained here and a communications plan as well as the work we're doing.

Jordan Carter: Jonathan, I didn't realize that we were going to end up debating each other's bullet points and I'm a bit uncomfortable with Chris responding in a way. But I just have to say that I do regard that as a radical or fundamental change to the existing status quo. And I don't think it's just a change.

So I think some...

Jonathan Robinson: Look, I mean, I'm happy that - as I said the essence of the bullet points should convey the intent. If the intent is to emphasize that it's a substantial or fundamental change, fair enough. I think radical has a slightly emotive component to it so let's - yeah let's - yeah, well it depends on again some of this is - let's not get too caught on it.

As long as Jordan is happy that it's adequately represented, the sentiment is adequately represented, that's fine. But as I said - it's important that we don't get too much on word smithing, that your intent is captured.

Alright, Eduardo.

Eduardo Diaz: Thank you. This is Eduardo. I'm going to be brief, I have two points. First about language, I will suggest that we take out the feel comfy because it's (unintelligible).

And secondly - and I consider this a (unintelligible) and bear with me because (unintelligible) is it's going to be easier to separate, and then you will say why, and the reason is is when, you know, when you look at it from a practical point of view if you look at it and feel it for you have this legal fence and you put in a (unintelligible) because you want to make a separate very - it's easier, you know, to spin off really to me that's like an oxymoron in the sense that, you know, if you want to spin off a subsidiary because it's doing something wrong you don't want to spin it off but to keep doing it wrong.

You probably will go out and do another spin, right? And look for somebody to do it. So why have this whole legal fence to do what you're going to end doing by doing an RFP and then when you do the RFP then you put there what you want to do at that point. Thank you.

Sharon Flanagan: So the pro is that by not having the spin off prepackaged ability, you're more likely to fix what's wrong and contract out with an RFP. Yeah, functionality.

Jonathan Robinson: So I've got Chuck and then Elise, and I think Thomas, you wanted to make a procedural point so - is Thomas in the room? Yeah, sorry. Okay so Chuck.

Chuck Gomes: Thanks Jonathan. Chuck Gomes. Just want to do a counterpoint to what I said in the previous external model and that is that NTIA favors an internal model as far as everything we've heard.

Jonathan Robinson: Thanks, Chuck.

Elise Lindeberg: Thank you. No, I just wanted to support Lise's comment about that the accountability cannot be pushed forward to the CCWG as a whole because we are providing the model. If the model stops accountability measures later on, the damage is done. It has to go back to us. Anyway we need a model that can build in the accountability measures, that is secured. So we need to look at the accountability for sure.

So our accountability tools needs to be produced as a condition for the model that we put forward. This has to be in place for this model to work. And a comment to Chris, you were asking about the internal hybrid model, if this is about total separation - separation we're talking about. I thought we already established some kind of agreement on the internal hybrid model being about how much separation you need within ICANN. Because that was, you know - but I'm not sure. That was the question. Are we talking about total separation (unintelligible).

Chris Disspain: No, you misunderstood me in that case, no I was simply saying that the affiliate - the affiliate is not separate, the affiliate is - if I understand correctly in the proposal the affiliate is owned by the member - by ICANN so it's not separate.

Jonathan Robinson: Yeah, thanks for that. And Thomas, you got the last word on this one it seems.

Thomas Schneider: Thank you very much, and sorry for blocking your lunch - (unintelligible) your lunch temporarily. But I thought it would be useful for you to convey a feeling to this group that I'm having, and the signals that I get from other governments here is going in a similar direction.

We may have something like traceability or understand ability or whatever you call it, it's not my native language, issue here with this process but those who are not insiders who are not able to have been following all the thousands of hours that you listed in your papers, in the sense that - and I'm not speaking on my personal - as a personal experience - it's challenging to see the forest for the trees here in terms of we discuss mechanisms, we collect pros and cons and going into quite a lot of detail.

And in the end in my function as the GAC chair I'm supposed to sell this if you want to governments who have had - who don't have the resources and the possibility to follow this process so closely. So they will ask me okay, we have public policy issues on a high level, we want this to be accountable, to be transparent, we want equal footing for, I don't know, all regions in the world and so on and so forth. How was this integrated in the process?

How was this model, which in the end will be chosen, where this variants be developed. It is very difficult for us here to translate this process into something that other - even ourselves but then even more other governments or other stakeholders I guess, this is not only valid for governments but for many of those who are not as close to this process as many of the people here are, to translate the so that people understand, that people feel included in this, that they see what is going on, why discussion is moving from an initial proposal to another one.

So I just wanted to convey this message. And with regard to governments, we are not intending to step into details or give opinions of how things should be done in detail. We think this is a private sector leadership model, so we trust that the details will be worked out fine.

Our task is to make sure that the public interest understood as, let's say the aggregation of the interests of my citizens and my businesses, as a representative from one country plus all the other citizens and businesses and civil society and communities that these concerns are somehow worked into this model, that the community as a whole will then trust it and accept it.

This is why we have taken some energy to comment on your principles. And we would maybe have expected that we would have first try to agree on a set of principles and didn't use these principles as a test for these pros and cons. It's not really clear at least to me, what's the basis of these pros and cons are, if there would be a more structured like working through the principles and see okay if this is the principle that should be - the requirement that should be met by any new mechanism.

Going through principle by principle or requirement by requirement which model is performing or is likely to perform better on this principle or on that principle or if we choose this model, A, how do we have to then maybe going a little bit into detail how do we have to frame it, that is more likely to live up to principle X or Y.

And that may be much more easy for us to understand ourselves as those that participate in this group to understand but then also to let's say lead and support the discussion with the other governments who are not here who will ask like okay what was the diversity in this room, how many people from

India, from Africa, from Latin AmEricka were here, how many governments so on and so forth.

So there are a lot of issues in the end which I think I would just urge you to take into account that in the end of the community, including governments, will have to say yes to this model. And we should avoid that in the end they will say that we don't really understand; this is much too complex, this is not traceable for us, not understandable for us, so we are not in a position to actually support this. We may also try not to object to the because we don't really know whether this is good or not because we just were not able to follow.

So I think something like a more structured approach in terms of form follows function, what are the requirements and then understandably develop the form according to the requirements, according to the principles would be, at least for me, very helpful to help getting community support for this model in the end. I just wanted to convey this message to you. Thank you.

Jonathan Robinson: Now that's helpful, Thomas. So I heard three things there, one is a communications issue; one is a substance issue and the other - and the third is a method issue. I think probably in reverse order, on the method side of things we put the principles up at first, we need to do a sort of - we intend to come back to the principles to test whatever model we work with against those principles.

I think we felt that it would be unwieldy to put all of the models or even this limited subset systematically and rigorously through the principles. It would be nice to do that but realistically it's not practical. And so we've tried to do a simplified form of that recognizing this is a working group. So that's my initial comment on method.

I think on the communications side we are going to have some real work to do is we need to work with you and with any of the other groups. But I think it would be doing you a disservice to suggest it was all about communications. I heard you in there listing substance issues that we need to think about now.

I didn't manage to capture all of those but I think there's something there that we could talk with you a little bit more and make sure that that at the very least you're satisfied that we are addressing those issues of substance and if we're not that we capture those.

Thomas Schneider: Just a quick reaction if I may? Something that I forgot to say, I think you're doing - you're somehow doing what I was saying that you're going through pros and cons but it's not that clear - clearly understandable, at least not to me. And I guess I'm not the only one. It's not everything is completely wrong, don't get me - it's just I wanted to convey the message that we should be careful in making this as understandable as possible and as inclusive as possible. Thank you.

Jonathan Robinson: And I think Elise, wants to make a follow-up point and then we'll...

((Crosstalk))

Elise Lindeberg: Okay. No it's just to support my colleague, the GAC chair, is just to say that I think really we should stop only collecting opinion and start to tick off what we actually agree on as a basis for further discussion. I think that's one of the things because the principles have been they're driving around, and we really haven't said that, this is it, no we have them. This is that now, we have this.

You know, so we start to build something that we have the bottom clear for what we are building on and inside the process. But also one thing, (unintelligible) in substance something that we can send out to our community, and it should be provided quite fast if it's possible.

Jonathan Robinson: So we - I mean, certainly, Elise, we've got that on the communications side. And I think you do us a little bit of a disservice saying we're going - we're going through opinions. I mean, these are - I believe are well-informed opinions based on, you know, a composite and individual knowledge of the principles and the work we've done to date.

But I think, you know, maybe we can talk about this a little more at lunch and make sure we address yours and Thomas and GAC colleague concerns just ensure that we are properly understanding and meeting those.

We've hit one o'clock. I hoped we go through each of the three models beforehand but it feels like an opportune moment to take a break now and come back and look at the third model afterwards. And so I think we will do that, and then come back.

We knew last night that we had some buffer of time in the session after lunch so we have the time to come back and do that and it's probably a timely point just to take a breather now and then come back and look at the third option.

So thanks everyone. We will see you at two o'clock, in one hour from now.

END