ICANN

Moderator: Brenda Brewer
March 23, 2015
9:30 am CT

Coordinator: The recording has been started. You may begin.

Man: To wrap up this power discussion with still a couple of slight questions we'd like to address with you (Thomas).

Thomas Rickert: Yes. It's probably the opportunity to those in the queue to speak. So Athina is first.

Man: Let's listen to...

Athina Fragkouli: Yes. It was the previous document.

Thomas Rickert: So we were discussing the composition of the Community Council.

Athina Fragkouli: That's - yes, indeed, yes. And it was a clarification rather than a question. And it's - well I understood that we were identified SO and ACs. And of course a SO is one SO. And then there was also the NRO there.

                     And I heard some comments that NRO and a SO it's the same thing.

Man: Yes.

Athina Fragkouli: I'd like just to clarify that that's not the case.

Man: (Unintelligible).

Athina Fragkouli: SO the (ARR) - the NRO is the (ARR) so (five ARA) is the registries. And a SO is a representation of the community, of the number in community. That's all. Thank you.

Thomas Rickert: Thanks very much Athina. And by the way the queue is closed after Steve so that we can then move to the next item.

                Mark.

Mark Carvell: Yes, thank you. And I'll try and be brief. But to give a bit of an account of how I see the GAC interacting with the Community Council it's - first of all I endorse previous statements to the effect that all constituencies within ICANN should be engaged in this body to which the Board is accountable. It doesn't make sense for the ACs as well as the SOs not to be engaged in some way and actively in - with the council.

                That presents some key questions for the role of governments in the ICANN model. As is well accounted we had an Advisory Committee. Would we as participants in the council be able to contribute to votes that underpin decisions? I mean that's something we'd have to consider very carefully. It's a political issue because it is a migration from an advisory role into an operation role within the ICANN model.

Secondly, would we be able to do that? How would we devise the modalities for contributing to votes?

A third issue is would we in place of a vote or voting contribution to the Community Council would we simply be advisory to it. I think that's a pretty obvious option for the GAC to consider.

Man: (Unintelligible).

Mark Carvell: Just as we advise the Board.

Man: (Unintelligible).

Mark Carvell: Whether that's underpinned by the Bylaws, we would advise this council to which the Board is accountable that there is an inherent logic there which well to me certainly makes sense. And we'd want some - I would've thought some kind of formal liaison function or functionality in respect of the council.

So there are some key questions that we and the GAC have not had the opportunity to consider. And we will have to do that as an early opportunity.

But I see this as a positive way forward. But we'd have to look at the modalities. I'm indifferent at the moment to the issue of whether we bring in external entities. I haven't really thought that through either, the IETF or whatever. Perhaps they may have some advisory opportunity or liaison opportunity. And maybe that's the way forward for that.

Okay, thanks.

Thomas Rickert: Next Malcolm.

Malcolm Hutty: Thank you. I think Matt's kind of just covered what I was going to raise, so I've only to say that Chris earlier has said that bodies would be able to opt-out of having these powers. I think that's possibly putting it a bit too mild. I think that anybody that is going to have the opportunity to exercise this power must first confirm that they are willing in principal to do so if they think it's appropriate in the circumstances.

So, you know, taking the GAC position, the GAC clearly hasn't considered this yet, hasn't reached a position as to whether it would want such a power.

But I think that before it will give them such a power it would have to first confirm that it would not decline to exercise it on the grounds because it was - did not consider it was appropriate for the GAC to be having that function.

Paul Rosenzweig: Yes. Just a brief point, in the course of my life I have sat in thousands of committee meetings probably and I assert as an ironclad rule that their effectiveness is inversely proportional to the size of the organization meeting group.

It is I would think important to have a group that is large enough to be representative and diverse and meet those needs. But once you reach that threshold, no larger. I don't have any opinion on who should be in the group. But instead of giving every organization three people consider giving them one or two at a max. That would be my recommendation.

Thomas Rickert: Thanks Paul. Steve.

Steve DelBianco: Yes. This morning we discussed some ironclad core values about multi-stakeholder. And so the new phrase for who's represented in these groups

ought to be anyone that is a stakeholder in ICANN's activities that has a legitimately representative body that it can put forward to participate in the powers that we're creating.

So to me the notion of stakeholder is a little more generic than whether you happen to be an AC or an SO. As Malcolm said, that's a somewhat arbitrary distinction. It's arbitrary in the sense of whether they happen to advise or vote or develop policy.

And I believe those are just capabilities. At its core we want everyone who is a legitimate stakeholder in the work ICANN that is the work of ICANN both to develop and execute registrations and resolutions because that's pretty much all ICANN does so any stakeholder that would be there.

Now I heard an earlier discussion that said that if the Stakeholder Group is only advisory it wouldn't count. And I'm disagreeing with that. If they're a stakeholder and their capacity today is advice letters, then that's fine. Their capacity could change over time. I'm thinking of the GAC in particular.

We want to welcome the GAC to vote when and if it wants to, if it ever gets that capability and with all due respect to Mark if you're having trouble working that out that's fine. Take your time. We're here when you're ready.

The other notion is SSAC. Is SSAC a legitimate stakeholder in the activity of ICANN? Well yes.

And is it a problem that the SSAC members are appointed by the Board from a roster of people that the stakeholder community puts forth? No. I don't think that that matters at all who appoints me. I mean if they're a legitimate stakeholder they ought to be in this list.

And then finally to Paul's point and Paul's relatively new to this so he might not understand but in the GNSO which is the largest part of what ICANN supports, there are four radically different Stakeholder Groups, registry, registrars, commercial Stakeholder Group and noncommercial. They are dramatically different Paul.

And that's one of the reasons that the number four shows up with respect to the GNSO. And we don't want that to cause everybody to have to do four. You can normalize it so that that four can participate and vote differently whereas others might just have a different weighting so there's equal representation of stakeholders.

Man: Steve can you enumerate the stakeholders that you have in mind? I mean in the Scoping and Definitions document we have listed all sorts of stakeholders. And I'm sure that we don't want all of them sitting at the table.

Steve DelBianco: Right.

Man: So I don't want - mean to put you on the spot. But I think what the purpose of this exercise is to try to get some clarity on whom we want to have at the table.

Steve DelBianco: Well we're putting that back up. I could go through that. But I was first looking for some eye contact on whether this notion of the stakeholders we care about. Stop worrying about whether they happen to be an AC or an SO. And an SO isn't a stakeholder organization. It's a supporting organization.

And let's not worry about whether they happen to have members that were appointed by some other body as opposed to democratically elected from

within. And I'm thinking here of the SSAC. I believe the SSAC is a legitimate stakeholder. The RSSAC is a stakeholder. The ASO/NRO together not separately is a stakeholder.

Man: So for the GNSO that would be we have four Stakeholder Groups but for the ccNSO that would be (unintelligible)?

((Crosstalk))

Steve DelBianco: That's a great question (unintelligible) the cc. And I don't know enough about ccNSO. If they want to organize between registrars and registries and I don't think they do, I don't believe they organize with commercial registrars. See I'm the business constituency. And we are commercial registrars and are customers within the space.

                  Now my members register names in ccNSO all the time. So if ccNSO wanted to create a business constituency they will come over and join. But that's up to the ccNSO.

                  Now if in fact the GNSO ends up needing four because there are four dramatically different, then ccNSO has four slots. They may decide that one person gets all four votes. That's completely up to them.

Thomas Rickert: And going back to what Jordan has put into the original template he had the idea of five per chartering organization as we know from cross Community Working Groups and then a little less for others. Does that get traction?

Man: Not going to close this one. Not going to close that.

Thomas Rickert: No, no. We're not going to close it. This is just an initial discussion on and which direction we should take. Sebastien.

Sebastien Bachollet: We had the discussion this morning. And we had -the other suggestion I made once was consider of each SO and AC joining together in this body. Then if we want to make the discussion we - I don't know where we are going because we had this discussion this morning. We didn't close this loop. Then why to come back again on this one now? Because if it depend of the way we organize and that stops the discussion and wait until we have the organization set up.

Thomas Rickert: Steve.

Steve DelBianco: Sebastien coming back to this was essentially because we just spent a couple of hours reviewing the powers. So now that we have an eye on the prize, now that we know what powers we're talking about the community having, I think it just makes it much more real to understand the importance of voting thresholds.

Think of all the time we spent on that and what constitutes supermajority, which elements of the "Community" can stimulate a move to block the Bylaws or to dump the Board.

So it was really constructive I think to go through these powers and the importance of voting and then come around to the question of now that we understand the importance of voting how do we think we ought to do it?

So it's appropriate and I don't think we'll close it right now. But we have a renewed appreciation for why it's important.

Thomas Rickert: Sebastien we talk the community powers. So regardless of what legal vehicle we're using we need to discuss the question on who gets the power. You know does everybody get the same power of the ecosystem? Do we have different powers for different types of groups?

So that's basically what we're getting at. And we can - we could easily marry that with the suggestion that you make, should that get sufficient traction in the group.

So unless there are any further hands up, hands raised for this topic I think we should move to the next agenda item. I think our task is clear. We will come up with a, you know, a refined proposal if you wish. We will put together something on the basis of stakeholders, you know, to be inclusive. And we might also come up with some suggestions in terms of how to balance the power.

I think we got some indication of who you want to have power and who not. So I think we're going to drive this forward and then get - you know bring it back in front of the whole group.

So with that I'd like to close this agenda item. Excuse me Roelof, I had - it was an oversight. You wanted to speak.

Roelof Meijer: This is Roelof. Yes. Thank you, (Thomas). I raised my hand before the break but then I had to do it manually raise my hand because my battery had died. I raised my hand electronically after the break and somebody de-raised it.

Man: Take the hand (unintelligible).

Roelof Meijer: So can I still say something or...?

Man: Actually it will be fine (unintelligible) next.

Thomas Rickert: Well I'm so sorry to hear what you've gone through. So please do speak.

Roelof Meijer: Oh and I'm just beginning. Yes, this is on the issue of what kind of community should be represented.

And I think my reply would be as many as possible. Although of course there should be kind of a physical limit.

But I would prefer less representatives per structure and more structure represented then fewer communities represented and more people per community. So I think like five - for me it's far too much. I would try to run with two and then the community or the constituency itself would have to make sure that there's a good process underneath that makes sure that what their representative or maybe two representatives bring in the position they take is well founded within the community.

I'm a supporter of having the IETF, the IAB and the NRO as part of those structures and that's because I we spend a lot of time in the beginning contemplating that everything that we were doing and everything that ICANN is doing is for the global public interest.

I think then it is - although we never really managed to decide what it was, but I think it means that we have to get as many different (fields in) as possible. And not say this is an internal ICANN affair so it should - the input should be limited to those constituencies that deal with internal ICANN affairs.

Man: (Unintelligible).

Roelof Meijer: And another argument for that would be that at the moment ICANN welcomes during the public comment period, ICANN welcomes input from anybody, any structure. We are trying to increase ICANN's accountability. I don't think we will succeed in doing that if we decrease the number of communities that can provide input in these important mechanisms.

Thomas Rickert: And to close this item, but Sebastien and Alan's hands are up. Is that an immediate response to what Roelof said? So if so please proceed.

Sebastien Bachollet: Yes, just one word diversity with two people from each organization, we don't achieve diversity.

Thomas Rickert: That was quick. Thanks Sebastien. Alan.

Alan Greenberg: (Unintelligible) she asked me a question about the PowerPoints. And I thought she was talking about presentations. She meant plug converters.

Woman: (Unintelligible).

Alan Greenberg: Nomenclature is everything. I have no problem at all with representation and a voice for any of these communities we're talking about. A vote I think is something different.

                   So I think we need to distinguish between presence and able to contribute and input and making the decision to turf the ICANN Board for instance.

Thomas Rickert: Well I guess the earlier point. I guess it was Chris' suggestion that we could have observers and liaisons from other groups. So I think the direction that we're taking away from this is that we would like this panel to be inclusive

but think thoroughly about whom we allocate powers to and how these powers are balanced.

With that I'd like to hand it over to Mathieu for chairing the next session. And I would disappear to go under the oxygen tent for a while so Mathieu over to you.

Mathieu Weill: Thanks Thomas. You had the easy part eventually. I have good news. I have good news for everyone. We're reaching the point in our agenda where it's time for lunch.

Woman: (Unintelligible).

Mathieu Weill: Just to give you an idea, so I think this call is for some significant reshuffling of the agenda. And what we are proposing now is that we give Work Party 1 a slight - a small break. And move to one other item in the agenda was below and really change the order here.

But focus - enable Becky to give us insights about the independent panel which is one of the key building blocks in the system which means and why Becky can join us that the review part of the AoC incorporation into the Bylaws we'll find a way to address this a little later, maybe tomorrow. And there's a jurisdiction which also is quite important and but I think we need to have the independent panel discussion first.

So Becky's going to introduce the work of Work Party 2 on that important aspect. I'd like to just frame the discussion. We'll have to be very efficient in the way we address this so probably by addressing a number of questions one after the others in terms of the way it's looking.

I'm hopeful that it's going to be an easier conversation to manage because it's a one single mechanism with specific powers. Not to prevent any debate that has to occur.

And I think the key questions coming into this debate are how's that binding because this started with the question of how we can have a binding - what is the binding nature of this process.

Is this an extra new process or an enhancement to the existing IRP process? Those are questions I've seen on the list many times.

Is it panel? How is it selected? Is it standing or not standing? And I think that's - those are the key questions we need to start with, ensure we have agreement on.

Becky.

Becky Burr: I want to start by thanking everybody who's come up and made suggestions since this morning. It's been very helpful and I really appreciate all of the input that I've gotten. Some of it has been incredibly useful.

So we'll be able to reflect this. And I think it just goes to the importance of these kinds of discussions where we are really talking about framing issues we're not presenting any kind of done deals.

And in the case of the Independent Review Panel modifications we are going to be asking a lot of questions that we need community input.

When you talk about the Independent Review Panel as it currently exists in ICANN there are a couple of complaints that are I think pretty much

universally held. One is that it's way too expensive and inaccessible. Two is that it sort of gets at problems when they have become very, very, very big problems and doesn't resolve problems early on in the process. It's accessible really in significant commercial disputes.

But for example if the community wanted to challenge an action or inaction of ICANN Staff or Board or others it's too expensive to do that. And by community I want to make sure for people that understand, I'm reading that quite broadly because I can certainly imagine a situation in which the GAC or individual governments might want to raise independent review...

Man: All right, well I think Becky's pretty long-winded (unintelligible).

((Crosstalk))

Becky Burr: ...questions. For example I think somebody asked me how a decision about whether something was...

Man: Thank you.

Becky Burr: ...consistent, when they're not consistent with the Bylaws would be decided.

((Crosstalk))

Becky Burr: Or what avenue of review would be for that. And potentially an independent review that is accessible both from a...

((Crosstalk))

Becky Burr: ...financial and a time and resource manner could...

((Crosstalk))

Becky Burr: ...be a way of addressing that. So we took that as a - I think our premise is that if this is going to be workable it needs to be accessible to the variety and diversity of members of the community and the situations in which it would be raised.

We also took away and I think in many respects, this is recent learning from the new gTLD process.

Man: Okay.

Becky Burr: But there's - there are - there have been a huge number of sort of independent panels. But there hasn't been a really good mechanism for reconciling inconsistent decisions of those panels. And there hasn't been an - a way for the community to express its view on certain things like when singulars and plurals are confusingly similar.

And so we wanted to try and think about a way in which to the extent we're using external Boards or whatever, we can use this process to develop internal consistency over time with respect to decision making.
And I can see Malcolm's getting confused. But I didn't mean to suggest what you think I was suggesting, just saying. Yes. No, I...

Becky Burr: No. It's probably me that should stop thinking. There is also - we heard strong support in the community for making the holdings of the independent review binding in some way. We are obviously awaiting legal input on that. I am

confident that there is a way of making those decisions binding but I am not sure about the manner and the extent to which.

So it may be that you can just say no, ICANN. This didn't work. Try again. Or it may be that the - depending on the decisions that they could be binding in some other way.

But I think we started with (this) because we have not heard anything really to the contrary to a desire to make this binding or enforceable and so to have - to give it some teeth.

The - going through the template so I've just gone through sort of is the mechanism triggered or not triggered, obviously it would be initiated by someone or some group or some group of individuals in the community.

So standing would be - it would be sort of the last resort. As currently constructed it does not contemplate an appeal provision. I think that is an issue that is up for a discussion.

There's also a question on the table as and this goes along with the binding nature of this whether it could be presumed to be binding but the Board could follow some procedures to challenge or overturn that.

The other thing I want to say just to add to that start, this process is deliberately designed to be flexible so that it could be used by other parts of the community looking for an appeal mechanism.

So for example if the ccNSO decided that it wanted to have some kind of appeal mechanism related to IANA functions or delegations or re-delegations,

that ccNSO could decide that this was potentially useful and could set its own rules with respect to use of that.

So to the extent that, you know, we're talking about action or inaction here sort of in the ordinary course we're not precluding the use of this for other purposes to the extent that the relevant group deems that it is fit for perfect - purpose, sorry.

The standard right now in the Independent Review is any person or entity that is materially affected by an action or inaction. We are conscious of the fact that materially affected is often interpreted to mean commercial or financial. And that might not be as probably not an adequate standard here so we are looking for input on how we would determine in noncommercial settings what a material effect would be.

The standard that we have been operating on is the following. It essentially goes back to the original standard but before it was amended which says if you're challenging an action or inaction you have the burden of demonstrating that whatever that action or inaction was either violates - exceeds the substantive limitations on ICANN's activities on its mission or that the manner in which it was undertaken violates one of the commitments, core values. Sometimes, you know, there - these things are called lots of different things in different countries.

But, you know, so we have a substantive standard. Then you don't have the right to do that. ICANN it's not within your mission statement. And a procedural standard that even if you did - even if the action was within your mission statement you undertook it in violation of the principles and core values regarding the manner in which it's undertaken.

Oh my scroller went away on my document. We propose and I think that there are different views. There's a variety of different views on this in the group.

But the drafter and a number of us feel like we have to overcome the sort of random - a random arbitrator problem that we have seen in some of the standards of review which is to say we want a panel of judges or reviewers or panelists, whatever we call them who have all of the requisite legal training and legal skills. But also understand ICANN as an institution over time and are able to see the ways in which decisions affect the institution and play into it.

So we have recommended a standing panel. There's quite a lot of diversity about views about whether it should be a standing panel of 15, any 3 of whom could be convened. Another proposal is a panel of 5 or 7 who would be standing and who would be called upon as needed to respond and to manage these things.

Obviously geographic diversity is important here to the extent that it maps to sort of different legal regimes and norms about legal review and so one of the reasons that five seems like a minimum was that it could map to the geographical diversity in the ICANN community.

It would also assure that a claimant in any case would be able to call on one of the panelists from their own region. So we thought that that would help with the sort of cultural and legal diversity as well.

The requirement that would be that the members of the panel would have to be independent of ICANN including any kind of participation or position within specified segments of the community and that's critical for the independents requirement which I think is fundamental to everything we do.

A standard process when you're talking about judicial independence is to say that members are paid a stated compensation and that compensation cannot be reduced during their term, that they cannot be removed except for specific causes like corruption or misuse of their position.

We've also received suggestions about term limits so that there's no suggestion that panelists are behaving in a particular way in order to secure an - a reappointment. A fixed term would have to be long enough to be meaningful so that it would be worthwhile for people.

And then we have also talked about the need for post-term prohibitions or prohibitions on post-term appointments to the Board of the NonCom or anything else so that again the provision of this service would be independent of any expected return other than the compensation that you are receiving as a matter of the community's agreement.

Another issue that's quite important and quite - and we have a lot of discussion on and need input on is the sort of election, nomination, appointment process.

Typically in one of these independent judicial systems you would have one branch of government nominating and another branch of government confirming so that's something that we could have, you know, the Board nominate and the community confirm members or the other way around.

We could - there are all kinds of variations within that. Also it's often times the case that in these systems the governments look to expert bodies, Bar Associations, International Dispute Resolution organizations here to kind of

rate or evaluate potential candidates so that you get an objective view of the individual's qualifications.

But I think there's pretty wide agreement that this is not something that is just an appointment by the Board itself or by the CEO itself but that it needs to be collaborative with the community in some fashion.

And some of the mechanisms that the Work Party 1 is talking about in terms of Community Councils or any of those things are obvious mechanisms that we could look to to provide the - either nomination or confirmation process.

Again, you know, could they be recalled. Well they could be but only for specific cause. And again the question on how would a removal be instigated, how it would be initiated, again some of the mechanisms and processes that Work Party 1 is talking about, you know, surrounding vetoes, of budgets and Board actions, those kinds of things are mechanisms that could be used to provide that kind of evaluation.

It would be a de novo review which is that they would look at the facts. The current standard in the IRP basically doesn't look at the facts, the underlying facts of the situation but just says did the ICANN Board reach this decision in good faith. Here we would try to do something else.

One of the most important suggestions for how we would make it financially acceptable certainly at least in the ordinary course of - would be that ICANN would bear the cost of maintaining the panel of - the panelists and paying for the panelists. There could be some sort of allocation of costs or other costs associated with the proceeding.

But we have also discussed a kind of loser pay system which is public in some judicial systems or alternatively and I think there's stronger support for the approach that anybody who brings a frivolous or abusive claim could - the panel could charge them with paying costs to discourage frivolous suits.

The timeframes, obviously we want to work expeditiously. We've - there's one independent review that has now been going on for 18 months. That's a really hard thing for the community to live with.

I wanted to say one other thing about standing that I did not put into this pamphlet but will. And this has been raised to me by ICANN Staff itself as a problem with the current independent review which is that there's really no requirement. It's set up as a dispute between one party and ICANN.

And there's no provision for other affected parties to get into the mix in a real way. Now I think that there are, you know, sort of standard intervener provisions in arbitration. But again the acceptability issues become very real there.

So we would want to think about acceptability for affected interveners, people who want to make a statement that, you know, although there's a dispute between ICANN and this one applicant for example or this one commercial actor, the community has a view about that. And is affected by it or the affected community is. So that's something that's definitely there.

For purposes of expediency only, we are suggesting that English be used as the primary working language. But if we first ensure that there are panelists from all of the regions we may be able to create some language diversity and I think clearly providing translation services as part of the acceptability provisions would be required.

And the notion is that the standard which is to say the mission statement and the core values and commitments that we are talking about against which an action or inaction would be measured would be embodied in the Bylaws in a durable way for example as a golden Bylaw or something that could not be amended away without significant input from the community.

So that's the outline of what we are thinking about. Obviously this is complicated. There are important questions. I've tried to highlight questions where we are continuing to think. And certainly need input from the community on.

But for those of us who have been sort of working in the ICANN's accountability field for a long time this is a really exciting proposal to us. And feels like it could be an incredibly useful way forward with one caveat which is we have to be mindful that any mechanism we create that makes things more accessible also invites abuse. And we have to be mindful of addressing and mitigating opportunities for abuse and misuse of this upfront.

Thomas Rickert: Before going to the line, there's two quick questions that I'd like to make sure everyone has understood is, first is what you're suggesting here is an evolution of the existing IRP, right, or a new body.

Becky Burr: No. It's an existing...

Mathieu Weill: All right so it's...

Becky Burr: An evolution. And we're not - we are suggesting that it be a standing panel but no new or separate body.

Mathieu Weill: Okay. So this is an evolution of the IRP. That's extremely important. It's not creating a new body. It's really reinventing this one. But it's an existing one.

Second question is the point about last resort and I'm not sure I was - I'm completely clear about whether it means that you need to exhaust your initial complaints, mechanisms before you get to that or what exactly does that mean in real life for non-lawyers?

Becky Burr: Well there are two - that's a multilayered question.

Mathieu Weill: Ouch. That was not intended.

Becky Burr: No, no, no. I think it's - I think that there are some - you know, we tend to treat the ombudsman then reconsideration then CEP then IRP as all mandatory all the way through. I don't think that necessarily we ought to be demanding. It depends on what the standards for each of those things are.

So it's not really necessarily an exhaustion of remedies. But it depends on the remedies.

But the question is really is it binding on - I mean we're saying it has to be binding on ICANN. Does that mean it should be binding on the people who bring the complaint in the first place? I mean that would be a standard allocation. And if you say it's binding on one party then it has to be binding on another. Or you could say it's binding unless you want to go to court and settle it there.

So there are some issues about what last resort means. But they need to be equitably allocated between ICANN and the parties. And it may be that the standard is different in different situations.

And there's one other thing. Can I...?

Mathieu Weill: Last resort in terms of it is binding. There's no other...

Becky Burr: But (unintelligible).

((Crosstalk))

Mathieu Weill: There could be external appeals but no other.

Becky Burr: No other internally.

Mathieu Weill: That's a good.

Becky Burr: Okay, can I just add one thing? The one thing I want to add in here is that the CEP which is now the - I don't even know what it stands for but the effort to continuing engagement. That's part of the IRP now. We are very much looking at that as part and parcel of what needs to be fixed here. We've heard lots and lots of concerns about delay and expectations and time periods and all of that with respect to CEP.

                   So it isn't separately broken out here. But it is within the scope of this process.

Mathieu Weill: What is outlined; a number of questions obviously have - are raised. I think in the interventions we make - we need to make sure. We probably are going to go for a first round highlighting some of the issues at stake. And then we'll try as much as possible to not leave these questions open but try and see where we have some common ground or we need further discussions.

So we'll do a first round of comments and after that I'll probably hand - take it back and then structure the discussion into more closed questions so that based on the comments that have been made so far so that we make progress in a very short time that we have until we break for tonight.

So Steve you're first in the line.

Steve DelBianco: Steve DelBianco with GNSO and CSG. I don't know whether it's the use of a template or your background as a policy and legal expert. But we managed to bury the lead here. We managed to - they say sell the sizzle not the steak.

And you've described how the cow was born and raised and what he ate. But the sizzle in this is worth going after.

So let's just put on a salesman's hat and think about the five dramatic improvements that are here. And ideally when we sell this to everyone else we start with the sizzle and not the steak.

But this increases the access to the IRP in the sense that standing would be available to the community. It increases access because it's more affordable. It is ICANN paying the experts. Oh and the experts are established and experienced panelists who ought to be able to work faster as little as three months in here to turn around a decision.

And a fourth element of sizzle is it is based in standards in the Bylaws that we as a community spent the morning improving including limitations on scope. Something that was echoed in the GAC letter we received today.

And finally the IRP crown achievement is that it's binding upon the Board. So the sizzle in this steak is pretty dramatic and demonstrates fantastic work in Work Party 2. I think it's fantastic.

And we got to press ahead with this. There will be some questions but this is exactly the kind of review rigorous power that balances the other things we discussed earlier today. Think about it. We - the ability to veto a budget, veto a Bylaws change and spill the Board are all there. Well because situations like this take too long or we didn't have a standard with which an Independent Review Panel could judge it. So an Independent Review Panel not so useful to do a line item veto in a budget. Instead we have other powers for that.

But this is the perfect complement to those others and I compliment you on the work.

Mathieu Weill: Steve. So next in the line is Chris.

Chris LaHatte: Yes, thanks Steve.

Mathieu Weill: Thanks.

Chris LaHatte: Chris LaHatte for the record. I'm not speaking as the ombudsman. I'm speaking because one of the other things that I do is I'm an arbitrator. So I can add a little bit of my own experience.

And I just want to comment on in a practical sort of way about some of these issues. The first is that we've had what I would call quite an artificial surge in the number of IRPs entirely due to the new gTLD Program. Prior to that they were relatively rare and we wouldn't have had as many as one a year.

That means that looking forward even if we're going to be expanding the scope to which people can use the process we also have to look at some practical issues like the number and size of the panel.

I think it would be a complete waste of time and money to have 15 on a panel for example because if you're only going to be getting a few of these per year then you got to get arbitrators who'll think oh yes, this is great. I'll take this appointment for prestige purposes. But in fact they're not actually going to be doing anything or adding value to the process.

So I think you need to think small. I think you need to think no more than five.

The other thing that you need to think about is when these panels were actually making decisions is having different sizes of panels for each IRP. It's quite common in arbitration to have a single arbitrator for the more straightforward issues and a panel of three -- you use odd numbers for voting purposes of course -- to - for the substantial issues.

And one of the issues that you do decide when you're setting up the processes is providing purposes of course. To - for the substantial issues and one of the issues that you do decide when you're setting up the process is, is this a one or is this a three?

A model for that I'd suggest is the UDRP process where you can opt in to have either one or three panelists for those decisions although some people think that their complaints are so important that they select three when it should only be one.

And there's another practical reason for doing that. If you have three then you end up having occasional hideous problems where one of the panel member dies and conveniently during the process, which has just happened and you've got to replace them. So you have to look at it from that perspective.

The other aspect you've got to consider when you're setting up this is the rules of procedure. Now because I'm a lawyer I worry about roles and procedure because they have to be simple and easily understood and efficient.

But the other side of it is that you have to pick panel members who are able to steer things through complex issues without getting bogged down and captured by lawyers who will want to involve you in all sorts of irrelevancies.

And particularly common law is and I regret to say this but American lawyers in particular will want to confuse you with issues like discovery and matters like that, which are alien to any civil lawyers who are not interested in that for the good reason that it's an expensive and essentially useless part of dispute resolution.

So the rules of procedure are incredibly important. You also need to set up a process whereby people can readily understand and to make the complaint at the very beginning. You have to have it very clear rather than just rely on lawyers.

One of the things that you have to do is to avoid getting a process that's too legalistic because otherwise it's not going to be accessible. But the other thing you have to do is to ensure that it's fair and that the process enables parties to be heard.

And I was very pleased when Becky mentioned that you need to have an intervener process. And it would be very simple to add a line in the process or a couple of lines, which say either the panel on its own initiative can invite other parties to be heard whether as actually parties or as just persons of interest or parties of interest.

So there are a number of things like that that you can do in a very practical sense.

In terms of appointment of the panel members please forgive me if I'm taking up too much of your time. There are of course vast numbers of arbitrators out there in the commercial world and I'm sure you'd get lots of them flocking to do something like this.

But there are some existing areas where you can immediately find quite a lot of people who know something of ICANN and that's on the UDRP panels run by ICC and WIPO and others.

And so there are bodies of people who you can readily appoint although if you want to have a standing panel you can do so except as I said you might have people who are sitting around feeling a bit bored without actually very much to do.

And you'd need to consider of course whether they get paid for each job or whether you put them on a retainer. I would go very much for paying for each IRP rather than having them on a retainer that would be considerably cheaper.

So just some thoughts and I'll toss it over to the next person.

Mathieu Weill: Thanks Chris, very detailed and look for it to I think there's a lot of interaction to be had with work party two on those matters. Becky was that what you were about to say or any direct followup?

Becky Burr: Why don't we just go through the other questions I have a lot of responses.

Mathieu Weill: Excellent, so next is James Bladel.

James Bladel: Thanks Mathieu and Becky thanks for that overview. I just - I'll try to be brief here just wanted to say I agree with Steve. This is the crown jewel in the portfolio of mechanisms and powers that we're putting together.

I think that the ability to overrule a board decision or reverse a board decision but that said I think that there's potential, several areas of potential where this could go off the rails and create a number of unintended consequences that I think that it's very important that we get this right on a couple of areas in particular.

And I'm viewing this through the lens of a commercial provider so keep that in mind here that for example, standing. Becky you mentioned material standing. I think there's a concern that if get too broad in opening up standing that every decision that involves any kind of commercial, you know, if ICANN puts out an RFP and three people respond but only one is awarded then you've just created two parties with standing to reverse that board decision.

And I think we need to be careful in those particular situations particularly if we lower the bar so much that people who weren't even a party to a commercial bid or, you know, a proposal or suddenly now believing that they

have standing to challenge the ultimate award of a contract, a TLD or something of that nature.

The binding nature of the IRP is important but we have to be careful when it involves a commercial decision on the part of ICANN. For example if they've executed a contract and the IRP would effectively cause them to un-sign a contract or break a contract, maybe we can address that by having a tight statute of limitations on decisions.

You know, I'm throwing out potential solutions as well as identifying these problems but I think we need to keep this in mind that there may be and I hate to use an American playground expression here but there may be no back seats on some of these decisions or it may be very difficult for ICANN as an entity to get out of some of the decisions that it created.

And then finally, you know, we've had some talk about where this fits in the hierarchy and the ecosystem of appeals mechanisms and whether we want it to demonstrate the exhausted previous mechanisms before coming to an IRP.

I'm concerned about that because that could create a climate of regulatory uncertainty where different decisions go through various appeals and it's very disruptive to whomever it is that's responsible for constructing a business model to actually launch and deliver on whatever service that might be associated with this decision.

And that could be drug out for months or years and certainly we don't want to poison the innovation and the enterprise that kind of drives this industry. So I don't think any of these are show stoppers I think they're just important considerations and potential side rails that could get us into trouble.

We need to be aware of them when we're going through this and we need to make sure that whatever we put together addresses those potential vulnerabilities, thanks.

Mathieu Weill: And to respond to one of the chat comments I think there's some specific stress tests that have to be designed on this particular mechanism. But very valuable inputs, which I think needs to be investigated further.

Lee you're on next please.

Lee Bygrave Yes Lee Bygrave, special advisor. My concern is about the quality of the decision making by one of the panels. And in particular to what extent are we going to try to ensure consistency in the decision making?

So to what extent are we going to try to create a body of precedent and that may be binding to various degrees? And to what extent is that assumed precedent going to be documented?

So my look at many arbitration systems is that they function reasonably well as ways of expeditiously resolving disputes but the outcomes are often very difficult to explain.

And so I think here it's going to be very important that, you know, like cases are treated alike. And in that process you obviously have to take account of the traditional rule of law ideals about consistency and foreseeability of decision making and documentation obviously of decision making.

And baked into those issues are more sort of detailed issues like for example to what extent is one going to require that certain types of actions require in fact a three or more member panel treatment?

And to what extent then if you open up for three or maybe even five member panel decisions to what extent are you going to allow for minority opinions to be expressed or is one going to enforce a type of unitary decision?

So everyone, all the panelists have to come to some sort of compromised agreement before they make their statements. So yes, just the devil is in the details, thank you.

Mathieu Weill: To see all the further work that we have to go to. (Alice).

Alice Munyua: Thank you very much, Alice Munyua. Thank you Becky for the very comprehensive report back. There's one issue I wanted to bring up regarding one of the experiences we are currently having.

And I'm not sure it's covered anywhere but an issue perhaps to be considered as we consider stress test provision is redress in case the panel or the process itself goes off track.

For example it doesn't really follow the, you know, the (unintelligible) as required, which creates delays. And in terms of looking at the impact, non-commercial impact it's perhaps considering what impact it's having, the delays are having on a particular community in terms of broader commitment toward for example the service that a particular project or initiative is being proposed.

In this case for example with our experiences we're looking at, you know, one of - delays of one of the processes that have affect - that is affecting our, you know, creation or support of broadening the Internet community in the Africa region.

And then I think the issue of accessibility and stressing the importance of having regular public updates in as far as, you know, in terms of ensuring that these transparency particularly regarding other affected parties that are not, you know, are not involved in the case as in our case.

I'm trying to avoid mentioning specifics here. I think and simplifying it. I think (unintelligible) with former speakers we've talked about simplifying it, ensuring that those of us who do not understand the legal aspect, able to understand it, you know, from all aspects in terms of how the process itself is - sorry, is affecting every affected party, thank you.

Mathieu Weill: I will close the queue after Chris then give Becky a couple minutes to make some comments and then we'll go into some more, the closed question space so that we take stock of what we're hearing.

So next in the line is (Thomas).

Thomas Rickert: Thanks Mathieu. I think that when it comes to the IRP the crown jewel I really like that term for the IRP. I would tend to have different panel sizes but depending on what the powers of the IRP are you could make it mandatory to have a certain panel size for certain outcomes that you wish for.

So let's say some contractor or somebody who has pitched for a contract doesn't get its (will), that may be okay to have a decision by one panelist panel while if somebody finds out that the whole board is trading rocks in their spare time and so they want to get the board removed through the IRP.

Then you could ask for the full blown three panelist thing. If Becky wanted to give that power to the IRP, which I don't know but I guess that you can have different panel sizes mandatory for different types of activity of the IRP.

The other thing that I think we need to have in place is a summary proceeding. So if there is the, you know, I think even if we can get things done in less than 18 months it will still take some time for the decision to be made.

But there might be instances where it is important for the aggrieved party to get the implementation of the board decision suspended. So I think there needs to be either some fast track or preliminary injunction type mechanism built into the IRP.

When it comes to all the glorious detail that we might or might not need to discuss I think what our group should focus on is setting out the basic principles for this.

So I think one could be to have very easy rules. Easy to understand rules, a transparent process, it needs to be accessible. Whether the outcome is binding or not is a decision that our group should make.

But I had a conversation I think it was with Paul yesterday at the reception and he had an idea and I hope that it's okay for me to say it, which I think is quite intriguing and not only because this group might be apt to accept whatever it takes to get out of this room soon.

But the idea was to find people with expertise in the area and have them do the job and do the implementation on the basis of the basic principle that we provide them with.

You know, because I think a lot of what we're doing is speculating about what's best practice in this field, which I think is beyond our expertise. So as we do with legal advice why aren't we hiring somebody basically to do the job for us respecting the principles that we prescribe for them. So, you know, just an idea.

Mathieu Weill: Thank you (Thomas). Malcolm.

Malcolm Hutty: Thank you, this has been a very good discussion starting from some excellent work from Becky and her team here. Some of these things I really think are points of details that we can expect to surmount easily.

So for example one of the questions that was being raised was the problem of standing and, you know, to broad and what the negative consequences of that might be.

I mean there I would think that this is a problem that as (Thomas) was alluding to earlier that others have dealt with many times in the past and not necessarily dealt with by excluding people who from standing who have an actual grievance to raise.

So, you know, I would hope that something like this would have procedures for dealing with vexatious and frivolous claims or claims that otherwise had no reasonable prospects of success for example, it had already been dealt with so you're just repeating an issue we've already decided.

But I don't know that we need to as you were saying (Thomas) I don't think that we know that we need to get into the weeds of working that out. The sort of thing that I think that we might recommend might be something like this body shall be entitled to create rules of procedure for the efficient disposal of

frivolous and vexatious claims or those without reasonable prospect of success and then leave it up to it to deal with such practice.

So I think we need to think about what kind of level we want to address these questions at and that is an illustration I think of the kind of level that I think we should be looking for. The question of precedence is a very important and difficult one because I think being either having something that is both extremes to me seem dangerous.

Both a body that just simply acts as a decision maker between two parties with no concern I mean this is not being set up as a body to adjudicate particular issues here. This is say for example is a constitutional body and its function here is to enforce the constitutional rules.

And that again goes to the standing question you see it's the - it's not the problem, the problem isn't well this person is not the right person to be bringing this it's actually what is the basis for what they're saying, you know.

And that's going to be relevant to a precedent because it's going to be - give guidance to the board in its future actions as well and so that's important. But on the other hand you don't want anybody to be in a position where it creates a precedent that there's no way of everyone doing later.

If those circumstances would change or it just turns out that it was just a really bad policy decision, you know. So they are both two extremes (anyway) so I think I would put that in the (unintelligible) of difficult issues that we are going to have to wrestle with.

And some of the other things I think are really just things that we can work through and I would have every confidence that we do. One final thing

actually on the question of the size of the panel pool. I'd suggest that that kind of thing is an operational matter.

We should have a pool of panelists to draw upon that is large enough for the workload as it occurs from time to time.

Mathieu Weill: I think we're seeing something around the granularity and the level of detail that would be part of our own recommendations versus the implementation. And that's something we will certainly come to, come back to later on.

Chris is last and then Becky and then I'll hold you prisoner until I have answers to my questions.

Chris LaHatte: Thank you Mathieu. This is really great I mean very simple, I missed the beginning because I had to take a call but in a very simple time it seems to me we've set out down the right path, use the existing process, make it faster, cheaper, more flexible.

On the question of standing I've heard a couple of people talking about the possibility of somebody who puts a response into an RFP et cetera. Becky unless I've misunderstood this is an internal ICANN process used by agreement between the parties.

So are you intending that it would be open to external parties to use it? So it's contractors who put in an RFP and lose wouldn't actually be able to use this process right?

Becky Burr: Under the RFP?

Chris LaHatte: Yes but assuming that the RFP itself didn't say, you agree to use this process there's no natural rights to it, it can only be by agreement or by terms and conditions yes?

Becky Burr: That's an interesting and complicated question, which...

Chris LaHatte: Yes we - so yes that's why I asked it. We just need to think that through. A couple of other points and then I'll stop. Just on panel size my experience generally is that if you have different sizes, you know, can you have one or you can have three generally you leave it up to the election of the applicant to decide.

If you are going to try and say for certain types of action it's one and for others it's three then you're going to have to get really clear about what you mean, what those certain types of actions are and that's an incredibly complicated process to make really clear rules that say this particular action sits in the one panel, sits in the three. So just a little bit of caution on that one.

Finally, I'm hearing a little bit of - it may just be my interpretation but just a little bit of mismatch here. Malcolm talked about leaving it to the panel to make its rules, up its rules for dealing with vexatious claims et cetera.

I'm fine with that but that doesn't gel with some of the other things that I've heard about the panel making sure the panel makes - doesn't make road decisions.

I mean there's a price you pay for this right. The price of the crown jewel is binding and you allow that there's going to be a panel that's going to make a decision. You can't then start to build mechanisms that say what do we do if we don't like the decision. That won't work.

If you give them the right to make the decision in a binding way, they have to make that decision and then we all need to be bound by it, which brings me to my final point, which is I can't see how it would be equitable to have a decision binding on ICANN but not on the applicant.

That doesn't make sense to my legal brain from an equity point of view, thanks.

Mathieu Weill: So Becky for some comments.

Becky Burr: Sure, I think a huge amount of very, very helpful income. Steve you can write the sales pitch and, you know, I don't know if it's because I'm a lawyer or for other reasons that's not my thing.

Chris I want to challenge your premise just with respect on the notion that we've seen an artificial increase or surge in the IRP's because of the gTLD application round.

I think that there are a lot of people in this room who would say they had issues on which they would like to have brought a claim but couldn't because it was too expensive and not accessible.

So yes we have a lot and they're commercial disputes because that's the only thing this is really set up to handle. But I think that accessibility and price has been a bar in the past.

So I just beg you to keep an open mind on the, you know, sort of - that just using things like artificial surge because I think this is a long festering concern in the community.

I agree with all of the other things that you have suggested other than the caveat that I would say about the sort of paper job versus retainer issue. Depending on, you know, what kind of people we want what we may have to do is a combination of that.

Some ongoing retainer for their availability but with pay for when they're actually working. And things like discovery and all of those kind of issues are also things that can be dealt with by way of cost allocation as opposed to, you know, prohibiting them all together. I think there are flexibility things that we need to be there.

James I completely get your point on the not making this impossible for the commercial actors to live with. (Lee) I personally think that nothing would be better than being able to use this to create precedent.

And the reason why and this is something I'm quite passionate about is because I believe over time it would reduce the need to use it because ICANN actors, bodies, staff, board would understand that if they took some action they would get reversed by the panel or whatever it is.

And so it would correct behavior up front and reduce the cost and reliance on it over time. That is something that I think has some, you know, we have to think carefully about it. It is clearly why I'm wanting to get a standing panel as opposed to, you know, three arbitrators from outer space on any one case.

But I just wanted to highlight (Lee's) point because if you are driving towards making this sufficient and using the need to resort to these kinds of mechanisms to drive down the need to use them you setting it up is precedent in a proactive behavior correction that I think is incredibly valuable.

(Thomas) if the board is selling drugs at every ICANN meeting, we have the FBI, the Royal Canadian Mounted Police, INTERPOL and everybody else and I'm willing to hand it over to them.

So I guarantee you I'm not taking on the board selling drugs, it's just not happening.

Thomas Rickert: And we have a meeting in Amsterdam.

Becky Burr: I'm sure the Amsterdam Police can handle it too. And Chris as I said I can't see how we could make it binding on the board and not binding on the other party side I just don't see how that would be fair.

But these are all really great suggestions and I really want to encourage people to put, you know, to send more our way.

Mathieu Weill: So this is the time of the meeting when you start to be exhausted and we won't let you go until we have some answers to some questions. So the first question I'd like to ask and it's going to be driven by other and new objections because that's obviously questions I'm trying to ask because of what I've heard so far is are there any objections to this IRP proposal once refined the part of work stream one?

I did not anticipate any objection but I think it's good that we confirm that because it's the crown jewel and I think I'm very pleased with this and yet we need to be aware this is going to be under critical pass for implementation because the implementation challenge is extremely high as demonstrated by all the various details that have been addressed here and so we have a level of urgency in to working into this that is really high.

I have Avri on...

Avri Doria: Avri speaking, absolutely no objection but the notion of it being binding is one of the things that has a legal advice barrier on it. So...

Mathieu Weill: That's my next question.

Avri Doria: ...well I'm sorry okay, but that meant that it couldn't I mean that yes it should be part of WS1 but sorry.

Mathieu Weill: Okay, no it's okay Avri. Chris.

Chris LaHatte: So I wanted to just clarify what you just said. Are we saying that this has to be set up or are we saying that the bylaw needs to be in place? The latter right?

We're not saying we have to found the panelists we have to - so or with...

Mathieu Weill: Just checking okay.

Chris LaHatte: I do not know...

((Crosstalk))

Mathieu Weill: What the stakeholder expectations would be and I'm not in a position to say that the NTIA would be satisfied with the bylaw provision and only the bylaw provision.

I think that's something we'll need to clarify down the road but my expectation is that some stakeholders will ask for more than just a bylaw provision when passed bylaw provisions have not been followed on by the previous boards expeditiously.

So I think we need to be very careful there and that's what I'm saying we need to make sure we work on this as fast as - efficiently but as fast as possible But I don't think that's not a conclusion of the meeting it's something I want to draw attention to.

So the second thing is it would appear pending legal advice, pending legal advice to err on the side of a binding mechanisms as much as legal advice enables us to do this. Is there any objection to this?

And I noted (Chris') comment on binding to ICANN versus binding to the other parties and obviously that's a good point to investigate. I have Chris and then Steve. Chris you have your hand raised and you're on in the AC room.

Chris LaHatte: Yes thanks, Chris LaHatte for the record. I just wanted to add something to what Becky said. I hope I'm wrong that the new gTLD is not official inquiries in the number of IRP's but I do immediately recognize that if we make it more accessible and for a wider range of issues then we will have a much better process.

And I think that something we'll need to concentrate a lot on is the basic system for capturing that to make it accessible. And that's a process design that we don't need to talk about but I do agree with you on that.

Mathieu Weill: Steve.

Steve DelBianco: Yes you asked about should it be binding and you asked for any objections. What I have is a qualified objection to that because we wanted to be able to enforce the decisions upon the board.

So if we ask the lawyers can this be binding if you ask a yes, no question there's a severe risk the answer will be no. But you want to ask how can it be binding, under what structures, members, delegates, et cetera, bylaws, articles et cetera.

And keep in mind that if the answer is can't do it well then we have another community empowerment that we discussed earlier today the notion of spilling the board.

So if a board was being defiant of IRP rulings that we have other mechanisms to apply pressure. So we have a lot of ways to go here.

Mathieu Weill: Proposed measures in combination would still be adequate kind of thing but yes okay. So we are erring on this side and that's I think it's a good call for the legal group to take on the question how can we make this as binding as possible?

Then we are in agreement that this is an evolution of the IRP and not a new body. There's no objection I've heard on this. Excellent. There seemed to be agreement that it would be more of a standing panel than an external body appointing.

That's something that's not raising objections so far. Good, I'm trying to take stock. More complex and no one addressed this so far but I've heard in (Becky's) proposal in work party two's proposal two items that were actually related to work party one, which were the confirmation process, which could be handed to the work party one mechanism we've been discussing earlier and the removal process on specific codes.

Is that something that raises objections at this point? Obviously it's a new idea and it's certainly not definitive but do we want to ask work party one to actually work on this and see how it fits with the existing mechanism or actually investigate this or does the idea raise objections at this point on this?

I know it's more, it's raising something that hasn't been much discussed so far. So it would be the idea was that there would be elimination by the board based on engagement with the UDRP panels or international bar associations or whatever.

And then confirmation by the community and of course if we're looking for community confirmation then if we have a community tool it might be appropriate to add this to the list of attributions, not powers or I don't know if it's a power but to this group.

So that's a synch between the two groups that I want to ensure we have clarity on before I let you go. Is that raising any objection at this point and it's preliminary, it needs further investigation.

Man: Say it again please.

Mathieu Weill: So the idea is the proposal currently says, the standing panel members whatever the number are nominated by the board and need to be confirmed or maybe it's actually override kind of decision by the community. That's the proposal in the document...

Becky Burr: Or in reverse.

Mathieu Weill: ...or in reversal but if should we point the community to the same mechanism we've been discussing powers on earlier today. I think it's pretty logical but

(Jordan) has to and his group have to have that insight when designing the - I think it enables to not duplicate mechanisms and processes but I want to check we don't have any objections at this point on this?

Extra work (Jordan) excellent. And finally I think we have some form of agreement that and I want to check this that some specific stress tests, the existing stress tests do cover some of the risks we've identified on third party implications as well as unintended consequences.

But maybe I think we should task work party two to actually investigate further on maybe specific stress tests for this mechanism because we will get a lot of questions about the unintended consequences and the risk.

And maybe our current stress test level of detail is not sufficient to provide comfort to those who may raise these concerns. Is that something you're in agreement we ask Becky and her group to investigate on?

Okay and then the rest I think are items, which I would like to flag as further, to further investigate. The number of panelists, the flexibility in the number of panelists.

I think, I mean the precedent documentation, there was a question raised on the standard of review on the chat, which I noted and I wanted to make sure it's on record that some in the chat said beyond mission and values there might be a need for standing a review to include some contractual disputes or there was also mention of (unintelligible), which might go further than the mission and values.

And that's something which I don't think we can agree on right now because it hasn't been really investigated but needs further discussions. And I have in

line three distinguished speakers but before I leave them to their comments I think that would already be great strides of progress we're making on this.

And so after these three I think we'll try and wrap up this first day. Chris was that an old hand? Okay Izumi.

Izumi Okutani: This is Izumi, it's very helpful that issues are being raised here and confirmed and I think the idea of the stress test that has been raised is very helpful in confirming and considering implementation.

How much of the implementation must be in place to address some of the issues that might be needed to test and some, maybe some of the implementation details I'm not sure if all of them have to be implemented in place or some of them can be left up to like considering for a long term.

So I would find it helpful for the group in the course of discussions identifying whether we need to complete implementation on all the issues that have been listed or some can be left for long term consideration.

And this idea of comparing based on the stress test I would find it very helpful in making a reference for the decision.

Mathieu Weill: (Steve).

Steve DelBianco: As I noted in the chat stress test number 13 asks what happens if review mechanisms are made so accessible and affordable that they become abused by certain parties or grief parties to stymie ICANN's ability to do its job. That's the stress test that's in there now.

So we have to address that one once this mechanism is designed. But I want to remind you that over a dozen stress tests cite the IRP program and its binding accessible nature with standing by the community.

They cite that as the way in which we solve the stress test and meet it. So it's more often than not the IRP is a solution not a risk but we're going to do both.

And then finally when we met in Frankfurt one of the things you started us off with was a letter from the co-chairs of the CWG asking six questions about whether we had mechanisms that could be helpful.

And one of their questions was about the independent appeals panel that CWG at the time was considering. And our answer then has been more flushed out today that the improved IRP could be the mechanism that would do what the CWG thought they needed a separate mechanism for, the independent appeals panel provided that we have a standard that's appropriate for that.

It is not the bylaw standard for an IAP on an IANA assignment. This morning at breakfast talking with Eberhard and everyone about stress test 21 there might be for ccTLD operators an appeals panel that they need and they don't have today.

Again the structure could work but the standard has to be written for them, which is why I asked the question about standard in the chat.

Athina Fragkouli: Well the standard - so in that case it would be at the election of the ccNSO and the standard would need to be written by the ccNSO.

Steve DelBianco: Let's make sure we tell the CWG chairs we've made great progress on what we promised to do in Frankfurt so that they understand we're trying again to be cooperative partners.

Mathieu Weill: Action item that we can take as co-chairs to transfer information about where we will be by tomorrow evening on the IRP to their group so that they can benefit from understanding this within their - during their work here in Istanbul later this week.

I think we've just had a very rich discussion on the IRP and I sense a little bit of fatigue in the room or I see some (unintelligible). So I think we'll keep it at that for this day of meeting.

We've covered a lot of ground. If I - trying to wrap up and recap where we are now. It took more time than expected but that's because we're very impatient co-chairs.

But the ground we've covered is actually pretty impressive at the end of this first day. We've confirmed the work stream one proposals that we were working on based on further elaboration.

And I think that's something that should not be underestimated that we're still on the same track. We're still working on the principles, we're still working on the independent panel, we're still working on the community powers.

And that provides for the outside of our group this is very valuable because we are sort of in a process that is not reinventing itself at each stage. So I think this is extremely valuable to stress and will be valuable for the CWG analysis.

Secondly we are starting to see more clearly the mechanisms, the powers, the IRP, which are really the foundational blocks. Even the mission and values we've been discussing in greater details.

And while there is still a lot of details to be discussed I'd like to remind ourselves of the principles we set forth earlier today at the beginning of this meeting that we are aiming for quality proposals but the level of details at some point can be one of our margin of maneuver to enable us to inform the community in time and make progress on regular cycles and engage with the community.

Of course we'll get some feedback that is saying that we need further details to make a proper position that's always the case but at least the progress we're making in the way we're describing these mechanisms is significant and that's I think very encouraging.

Some key aspects of our work we haven't been able to discuss today so certainly we're going to reach out to (Jennifer) tomorrow so that we have time to address them.

And I'm thinking especially on incorporating the AOC review cycles. I am thinking of the jurisdiction issue, which was on the agenda for today. We're probably see with Becky whether it is critical or not to discuss the reconsideration process, which was one of the things we were considering to address tomorrow.

And we may have some other items fitting in or things that we've been discussing today we would like to have a second review of tomorrow. So that's I think just for the sake of transparency we're going to think with the rapporteurs a lot about whether they see a need for a review of some of the

items we've been discussing, whether they've been making progress or some points have been raised to them.

So that's just for you to know you can either go to them or co-chairs to discuss whether an agenda item should be inserted. We'll try to keep some flexibility. But most importantly and we've been touching this item a number of times today. We will keep some time for timeline. Next step what is going to happen, how do we organize for public comments to number of cycles and the level of details we want our proposals to include.

Whether we go all the way through finally implementation or what's the appropriate outcome that we must have. And that's certainly something where we'll be very careful to keep some time on because that's where I sense a need for greater clarity but also a discussion about what's the appropriate level because we might not have the same perspectives but we need to share about this.

It's as much a discussion point as a very specific mechanisms features we've been discussing and I think it's going to be an important part of tomorrow's discussion. So if you have thoughts about it consider it in advance any prepared option obviously we will come with some prepared proposals but that's an item I want to flag as one of the very important ones tomorrow.

Before we break and based on this perspective for tomorrow any objection, dissenting opinion, strong concern, any wish to continue the meeting until full exhaustion of participants?

Now I know how to frame a question. Yes excellent thank you (Thomas) for reminding me. The ICANN staff is very kindly offering that if anyone needs a

meeting room for quick meetings before we re-convene tomorrow it apparently is possible.

And (Teresa) and (Nancy) is here and she is your point of contact and ever useful and efficient so but this is possible. We're not imposing this but at least for us we will be drafting an agenda for tomorrow and you are co-chairs?

Can we adjourn already?

Woman: Yes.

Mathieu Weill: I was starting to enjoy this. With that let's adjourn for today and thank you very much for your great contributions and we look forward to great progress tomorrow. We start at 9:00 am sharp.

END